

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT OF THE COMMONWEALTH

BERKSHIRE, SS.

SUPERIOR COURT
Civil Action No. 2476CV _____

HORAN LAW LLC and RYAN D. SMITH
d/b/a TACONIC LAW,
Plaintiffs,

v.

CITY OF PITTSFIELD,
Defendant.

COMPLAINT

Introduction

1. Pursuant to the Massachusetts Public Records Law, two law firms that work in the field of indigent criminal defense bring this action against the City of Pittsfield for its failure to produce, in response to public records requests, Pittsfield Police Department policies and other information bearing on police interactions with the community. The City does not have and did not assert any valid basis for withholding the information. It simply ignored its statutory duty to provide a substantive response to the requests.

2. The law firms requesting the information appealed to the Massachusetts Supervisor of Records, which ordered the City to respond. The City did not comply. Thus, the City not only violated the statute, but also thumbed its nose at the state official who is charged with enforcing the Public Records Law.

3. Access to information under the Public Records Law is “an essential ingredient of public confidence in government.” *Attorney General v. District Attorney for Plymouth District*, 484 Mass. 260, 263 (2020). By failing to comply with the Public Records Law and

administrative orders issued pursuant to that law, the City erodes public confidence in government.

4. The plaintiffs seek declaratory and injunction relief necessary to obtain the requested records and hold the City to its duty under the law.

Parties

5. Plaintiff Horan Law LLC is a Massachusetts limited liability company with a principal place of business at 152 North Street, Suite 220, Pittsfield, Massachusetts 01201 (“Horan”).

6. Plaintiff Ryan D. Smith is a natural person who resides in New York doing business as Taconic Law, with a principal place of business at 85 East Street, Suite 11, Pittsfield, Massachusetts 01201 (“Taconic”).

7. Defendant City of Pittsfield is a municipal corporation organized under the laws of the Commonwealth of Massachusetts.

Jurisdiction and Venue

8. Jurisdiction and venue are proper under G.L. c. 66, § 10A(c), c. 212, § 4, c. 214, § 1, and c. 231A, § 1.

Horan’s Request

9. On or about January 11, 2024, Horan submitted a request to the City’s designated records access officer seeking two categories of Police Department records. First, Horan requested policies, procedures, directives, and other documents circulated to uniformed officers in the Patrol Division concerning the use of body worn cameras. Second, Horan requested

documents sufficient to show the date or dates when such documents were circulated to patrol officers.

10. The City did not respond to Horan's request.

11. The City's failure to respond to Horan's request constituted a constructive denial of the request.

12. Pursuant to the Public Records Law, Horan appealed to the Massachusetts Supervisor of Records from the City's constructive denial of the request.

13. On or about February 6, 2024, upon Horan's appeal, the Supervisor of Records ordered the Police Department to provide a response to Horan's request within 10 business days. A copy of the February 6 order is attached as Exhibit 1.

14. The City failed to comply with the Supervisor's February 6 order.

15. To date, the City has not provided any response to Horan's request.

Taconic's Request

16. On or about October 17, 2023, Taconic submitted a request to the City's designated records access officer seeking two categories of Police Department records. First, Taconic requested body camera footage relating to any welfare check, community caretaking visit, or other investigation into Robert Alan Czubryt taking place on or about July 3, 2023 at the residence of Mr. Czubryt. Second, Taconic requested Pittsfield Police Department policies, regulations, procedures, directives, guidelines, and procedural documents relating to welfare checks, community caretaking, and similar types of investigations.

17. On or about November 28, 2023, the City provided an initial response to Taconic's request. With respect to the requested policies and similar documents, the City referred Taconic to a page on the Police Department's website containing links to various policies. With respect

to the requested body camera footage, the City stated that it would provide the requested information “ASAP” once the applicable fee was paid by Taconic.

18. On November 28, 2023, the day it received the City’s initial response, Taconic paid the applicable fee with respect to its request for the body camera footage.

19. Notwithstanding the payment made by Taconic, the City did not produce the requested body camera footage and provided no basis for withholding it.

20. The City’s failure to provide a substantive response to Taconic’s request for the body camera footage constituted a constructive denial of the request.

21. Pursuant to the Public Records Law, Taconic appealed to the Massachusetts Supervisor of Records from the City’s constructive denial of the request.

22. On or about January 4, 2024, upon Taconic’s appeal, the Supervisor of Records ordered the Police Department to provide a response to Taconic’s request within 10 business days. A copy of the January 4 order is attached as Exhibit 2.

23. The City failed to comply with the Supervisor’s January 4 order.

24. On or about January 30, 2024, Taconic asked the Supervisor of Records to notify the Attorney General of the City’s failure to comply with the January 4 order.

25. To date, the City has not produced records responsive to Taconic’s request for body camera footage.

COUNT I
Public Records Law (G.L. c. 66, § 10A)

26. Paragraphs 1 through 25 are repeated and realleged as if fully set forth in this paragraph.

27. The Public Records Law strongly favors disclosure by creating a presumption, in actions seeking disclosure, that all government records are public records. G.L. c. 66, § 10A(d)(1)(iv).

28. Plaintiffs made requests for public records to Defendant's designated public records officer for the Pittsfield Police Department.

29. Defendant has custody of the public records requested by Plaintiff.

30. Under the Public Records Law, Defendant was required to respond to Plaintiffs' requests within 10 business days, to conduct an adequate search for responsive documents, and to demonstrate the basis for any withholding of responsive documents.

31. Defendant failed to produce the records or otherwise provide a substantive response to Plaintiffs' requests within 10 days of the respective requests.

32. Defendant failed to comply with lawful orders of the Supervisor of Records requiring that Defendant provide substantive responses to Plaintiffs' requests.

33. Plaintiffs are entitled to injunctive relief requiring Defendant to produce the responsive records without further delay.

34. Plaintiffs are entitled to an award of reasonable attorneys' fees and costs. G.L. c. 66, § 10A(d)(2).

COUNT II
Declaratory Judgment (G.L. c. 231A, § 1)

35. Paragraphs 1 through 25 are repeated and realleged as if fully set forth in this paragraph.

36. Plaintiffs have made requests under the Public Records Law to which Defendant has failed to respond. There is therefore an actual controversy between Plaintiffs and Defendant regarding the production of the responsive records.

37. Plaintiffs are entitled to a declaration that the records they seek are public records as defined in the Public Records Law and that the release of the records is required under the law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment against Defendant

- (i) declaring that the records requested by Plaintiffs are public records as defined in the Public Records Law and that the release of the records is required under the law;
- (ii) declaring that Defendant has violated the Public Records Law by not providing substantive responses to Plaintiffs' requests in the time allowed under the law;
- (iii) enjoining Defendant to immediately produce the records requested by Plaintiffs;
- (iv) awarding Plaintiffs their reasonable attorneys' fees and costs; and
- (v) granting such other relief as may be just and proper.

Dated: May 1, 2024

HORAN LAW LLC and
RYAN D. SMITH d/b/a TACONIC LAW,
Plaintiffs,

By Counsel,

/s/ Brian T. Horan

Brian T. Horan (BBO# 710450)
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/s/ Ryan D. Smith

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EXHIBIT 1



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

February 6, 2024
SPR24/0252

Kerri Striebel
Records Access Officer
Pittsfield Police Department
39 Allen Street
Pittsfield, MA 01201

Dear Ms. Striebel:

I have received the petition of Brian Horan, of *Horan Law LLC*, appealing the nonresponse of the Pittsfield Police Department (Department) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On January 11, 2024, Mr. Horan requested the following documents:

[1] Any policy, procedure, directive, and/or other document circulated to uniformed officers in the Patrol Division concerning the use of body worn cameras[;]

[2] With respect to any document produced in response to Request No. 1 ("Responsive Document"), documents sufficient to show the date or dates when such Responsive Document was circulated to uniformed officers in the Patrol Division, if such date is not evident on the face of the Responsive Document itself.

Claiming to not yet have received responsive records, Mr. Horan petitioned this office and this appeal, SPR24/0252, was opened as a result.

Despite being notified of the opening of this appeal, it remains unclear whether the Department has provided a response. Accordingly, the Department is ordered to provide Mr. Horan with a response to his request, provided in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of the response to this office at pre@sec.state.ma.us. Mr. Horan may appeal the substantive nature of the Department's response within ninety (90) days. See 950 C.M.R. 32.08(1).

Kerri Striebel
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February 6, 2024

SPR24/0252

Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur". The signature is fluid and cursive, with the first name "Manza" being more prominent and the last name "Arthur" following in a similar style.

Manza Arthur
Supervisor of Records

cc: Brian Horan

EXHIBIT 2



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

January 4, 2024
SPR23/3057

Abigail Hunt
Records Access Officer
Pittsfield Police Department
39 Allen Street
Pittsfield, MA 01201

Dear Ms. Hunt:

I have received the petition of Alex Domberg, of *Taconic Law*, appealing the response of the Pittsfield Police Department (Department) to his request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On October 17, 2023, Mr. Domberg requested the following records:

[1.] Any and all body camera footage whatsoever, specifically related to the Department conducting a welfare check, community caretaking, or any other Investigation, related to [an identified individual], on or about 7/3/2023, at [an identified location].

[2.] ... any and all Department policies, any and all Department regulations, any and all Department procedures, any and all Department directives, and any and all Department guidelines, or procedural documents, of any kind.

On November 28, 2023, the Department provided a response. Unsatisfied with the Department's response, Mr. Domberg petitioned this office and this appeal, SPR23/3057, was opened as a result.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency or municipality of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

Abigail Hunt
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January 4, 2024

SPR23/3057

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

The Department's November 28th Response

In its November 28, 2023 response, The Department stated, “[o]ur policies are linked on our website here ... I will get started into the body camera footage for you and work to get that to you ASAP once we have received the money order.”

Based on a conversation between a representative of *Taconic Law* and a staff member at the Division of Public Records, this office was advised that the requested fee has been paid to obtain the requested body camera footage.

G. L. c. 66, § 10(a) provides that:

A records access officer appointed pursuant to section 6A, or a designee, *shall at reasonable times and without unreasonable delay* permit inspection or furnish a copy of any public record . . . or any segregable portion of a public record, not later than 10 business days following the receipt of the request, provided that . . .

- (i) the request reasonably describes the public record sought;
- (ii) the public record is within the possession, custody or control of the agency or municipality that the records access officer serves; and
- (iii) *the records access officer receives payment of a reasonable fee as set forth in subsection (d)*

G. L. c. 66, § 10(a)(iii) (*emphasis added*).

Where it appears Mr. Domberg has paid the fee to receive the requested records, it is unclear why the Department has not provided the responsive records. The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii). Custodians are expected to use their superior knowledge of the records in their custody to assist requestors in obtaining the desired information. See 950 C.M.R. 32.04(5).

Abigail Hunt
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January 4, 2024

SPR23/3057

Conclusion

Accordingly, the Department is ordered to provide Mr. Domberg with a response to the request, provided in a manner consistent with this order, the Public Records Law, and its Regulations within ten (10) business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of the response to this office at pre@sec.state.ma.us. Mr. Domberg may appeal the substantive nature of the Department's response within ninety (90) days. See 950 C.M.R. 32.08(1).

Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur". The signature is fluid and cursive, with the first name "Manza" being more prominent and the last name "Arthur" following in a similar style.

Manza Arthur
Supervisor of Records

cc: Alex Domberg