

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
C.A. No. 1885CV01526A

_____)
GATEHOUSE MEDIA, LLC,)
)
Plaintiff,)
)
v.)
)
CITY OF WORCESTER,)
)
Defendant.)
_____)

**GATEHOUSE MEDIA, LLC'S MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS**

INTRODUCTION

Gatehouse Media, LLC submits this memorandum of law in support of its motion for an award of its reasonable attorneys' fees and costs under the Public Records Law, G.L. c. 66, § 10A(d)(2). Gatehouse requests an award of \$214,467.00 in attorneys' fees for the three years over which this litigation has extended, as well as \$3,228.05 in costs. The number of hours that Gatehouse's attorneys and paralegal staff devoted to bringing this case to a successful conclusion was reasonable, as are their requested hourly rates. Gatehouse's modest request for an award of costs is also reasonable.

In further support of its motion, Gatehouse submits the accompanying Affidavit of Jeffrey J. Pyle, and states as follows.

ARGUMENT

**I. GATEHOUSE IS ENTITLED TO AN AWARD OF ITS REASONABLE
ATTORNEYS' FEES AND COSTS.**

Under the Public Records Law, a requester of public records is presumptively entitled to an award of reasonable attorneys' fees and costs when the requester "obtains relief through a

judicial order, consent decree, or the provision of requested documents after the filing of a complaint.” G.L. c. 66, § 10A(d)(2). The presumption applies “unless the agency or municipality establishes” that:

- (i) the supervisor of records of the Secretary of State’s Office found that the . . . municipality did not violate this chapter;
- (ii) the . . . municipality reasonably relied upon a published opinion of an appellate court of the commonwealth based on substantially similar facts;
- (iii) the . . . municipality reasonably relied upon a published opinion by the attorney general based on substantially similar facts;
- (iv) the request was designed or intended to harass or intimidate; or
- (v) the request was not in the public interest and made for a commercial purpose unrelated to disseminating information to the public about actual or alleged government activity.

(*Id.*)

Here, Gatehouse “obtain[ed] relief” through a “judicial order,” specifically, the Court’s June 2, 2021 Findings of Fact, Conclusions of Law, and Order (the “Order”), which required the City to produce hundreds of pages of records. G.L. c. 66, § 10A(d)(2). Gatehouse thereafter received the “requested documents” in substantially unredacted form. None of the exceptions to the “presumption in favor of an award of fees and costs” listed above is present in this case. (*Id.*). Accordingly, Gatehouse is entitled to an award of its reasonable attorneys’ fees and costs.

II. THE “LODESTAR” METHOD OF FEE CALCULATION APPLIES TO THIS MOTION.

“The basic measure of reasonable attorney’s fees is a ‘fair market rate for the time reasonably spent preparing and litigating a case.’” *Stowe v. Bologna*, 417 Mass. 199, 203 (1994), *abrogated on other grounds by Fabre v. Walton*, 441 Mass. 9 (2002), *quoting Fontaine v. Ebttec Corp.*, 415 Mass. 309, 326 (1993). A court’s determination of reasonable attorneys’ fees under the “lodestar” method proceeds in three steps.

First, to determine “time reasonably expended,” courts begin with “the amount of time documented by the plaintiff’s attorney” and decide whether it is reasonable. *Stowe*, 417 Mass. at 203 (internal citations omitted). In making this determination, courts must consider the plaintiff’s “interests sought to be protected by the statute in question and the public interest in having persons with valid claims under the statute represented by competent legal counsel.” *Stowe*, 417 Mass. at 203.

Second, courts determine “the amount of a reasonable hourly rate. This amount should be the average rate in the community for similar work by attorneys with the same years’ experience.” *Stowe*, 417 Mass. at 203-204.

Third, the motion judge may consider the factors set forth in *Linthicum v. Archambault*, 379 Mass. 381, 388-89 (1979). *See Killeen v. Westban Hotel Venture, LP*, 69 Mass. App. Ct. 784, 791 (2007); *Fontaine*, 415 Mass. at 324-25. Those factors are “the nature of the case and the issues presented, the time and labor required . . . the result obtained, the experience, reputation and ability of the attorney, the usual price charged for similar services by other attorneys in the same area, and the amount of awards in similar cases.” *Linthicum*, 379 Mass. at 388-89.

III. THE TIME DOCUMENTED WAS REASONABLY SPENT.

Gatehouse seeks compensation for 568 hours of attorney and paralegal time in this case. The time was spent by three timekeepers: Attorney Jeffrey Pyle (316.5 hours); Attorney Michael Lambert (260.3 hours), and Paralegal Janine Sheehan (5.9 hours), all of the law firm Prince Lobel Tye LLP. Detailed billing records are contained at Exhibit 7 to the Affidavit of Jeffrey J. Pyle.

The time spent in the case can be grouped into roughly five chronological phases: (1) the initial phase of assessing the case, preparing and filing the complaint, moving for a preliminary

injunction, and arguing that motion; (2) the preparation of a motion for summary judgment and supporting papers, and opposing the City’s cross-motion for summary judgment;

(3) the pre-trial phase, including the preparation of a motion to expedite resolution of the matter and a comprehensive trial memorandum; (4) trial; and (5) post-trial proceedings and motions.

The dates of these phases, and the hours and cost for each of them, is set forth in the chart below.

Phase	Dates	Timekeeper Hours	Fees Incurred
Complaint and Preliminary Injunction Phase	8/7/2018 through 11/28/2018	68.7	\$23,055.00
Summary Judgment Phase	11/29/2018 through 12/18/2019	156.2	\$52,482.50
Pretrial Phase	12/19/2019 through 11/1/2020	182.5	\$65,940.50
Trial	11/2/2020 through 1/11/2021	124.7	\$49,539.50
Post-trial Phase	1/12/2021 through 9/23/2021	50.6	\$23,449.50
Totals		582.7	\$214,467.00

This expenditure of time by Gatehouse’s counsel was reasonable. Over the course of the three-year course of this litigation, Gatehouse’s counsel prepared more than 145 pages of substantive briefing and analysis, including 40 pages at the summary judgment stage and 67 pages of trial memoranda. Counsel appeared in court on at least eight separate occasions: for a preliminary injunction hearing, a summary judgment hearing, two pretrial conferences, three days of trial testimony, and closing arguments.

The legal and factual issues in this case were also complex, as exemplified by the depth and detail of the Court’s 35-page Findings of Fact, Conclusions of Law, and Order. (Order, Paper No. 26). The litigation concerned 12 separate internal affairs investigations, and the disciplinary histories of 17 police officers. Over these 29 separate public records, the City asserted six different claims of exemption: statutory (G.L. c. 4, § 7, cl. 26(a)); privacy (exemption (c)); medical (exemption (c)); personnel (exemption (c)); “policy positions”

(exemption (d)); and investigatory (exemption (f)). Within the statutory exemption, the City asserted that at least four different statutes applied to permit it to withhold documents or portions of them: G.L. c. 41, § 97D; G.L. c. 66, § 10B; G.L. c. 119, § 60A; G.L. c. 6, § 167.

The number of hours that it took Gatehouse's counsel to develop, research, analyze, argue, and try the issues in this case was partly a function of the sheer number of exemptions the City asserted, which it easily could have narrowed.¹ For example, the City persisted in its assertion of the investigatory exemption throughout trial, notwithstanding that all of the internal affairs investigations had long since concluded. (City's Trial Memorandum at 11-12). If the City had properly withdrawn its reliance on the investigatory exemption once the investigations closed, significant effort and expense in this case could have been avoided. Likewise, the City insisted on blanket redaction of the names of all complainants in every investigation file and officer history, based on a raft of exemptions. (City's Trial Memorandum at 12-14). However, once the Court issued its Order requiring the City to particularize its arguments, the City disclosed all the complainant names, suggesting that it never had a legitimate "privacy" or "investigatory" reason to withhold them in the first place. And, as noted in Gatehouse's accompanying motion for a permanent injunction, the City continued to argue that the "personnel" records exemption applied to the records at issue, even though binding appellate caselaw held to the contrary.

"The government cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response." *City of Riverside v. Rivera*, 477 U.S. 561, 581 n. 11 (1986); *Gay Officers Action League v. Puerto Rico*, 247 F.3d 288, 298 (1st Cir.

¹ In contrast, Gatehouse filed a "Stipulation" before trial waiving objection to a number of different redactions, notwithstanding that the City had the burden to prove each one. (Paper No. 24).

2001)(declining to find case overstuffed where the defendant “mounted a Stalingrad defense . . . battling from rock to rock and tree to tree.”) That principle applies here.

In addition, courts assessing fee applications must consider the “interests sought to be protected by the statute in question and the public interest in having persons with valid claims under the statute represented by competent legal counsel.” *Stowe*, 417 Mass. at 203. Here, that public interest is transparency into “whether public servants are carrying out their duties in [a] . . . law-abiding manner,” which lies at the heart of the Public Records Law. *Suffolk Const. Co. v. Div. of Capital Asset Mgmt.*, 449 Mass. 444, 453 (2007)(discussing reasons for enactment of the Public Records Law). The records Gatehouse requested and obtained in this case go directly to that issue. Their importance can scarcely be questioned, especially in light of national events of the last 18 months. The Court’s Order sets important precedent in furtherance of the public interest in accountability for police officers who allegedly commit misconduct. The Court should consider this public interest in assessing Gatehouse’s fee request.

IV. THE REQUESTED RATES ARE REASONABLE.

The next step in the lodestar process is to determine reasonable rates for the work performed. The rate is based on the “average rate in the community for similar work by attorneys with the same years’ experience.” *Stowe*, 417 Mass. at 203-204. (The qualifications of each of the timekeepers in this case, Jeffrey Pyle, Michael Lambert, and Janine Sheehan, are set forth in the Affidavit of Jeffrey J. Pyle).

In recognition of the fact that this litigation has extended over four calendar years, Gatehouse seeks rates for its two attorneys that increase with each year in which services were performed. *Haddad v. Wal-Mart Stores, Inc. (No. 2)*, 455 Mass. 1024, 1026 (holding that rates increase over time, and “[a]n increase in hourly rates over the last four years is to be expected”).

The rates Gatehouse requests are as follows.

Name	Year admitted	Rates requested			
		2018	2019	2020	2021
Jeffrey J. Pyle (Partner)	2001	\$425	\$440	\$455	\$470
Michael Lambert (Associate)	2015 (La.) 2018 (Mass.)	\$250	\$265	\$280	\$295
Janine Sheehan (Paralegal)	---	---	---	\$200	---

These rates are in line with those that other courts have awarded in cases litigated in this geographic region.² For example, in *Thayer v. City of Worcester*, the United States District Court for the District of Massachusetts held that for work performed between 2013 and 2017, a reasonable rate in Worcester/Central Massachusetts for a senior attorney at a large firm was \$400.00 per hour.³ (Pyle Aff., Ex. 2). The court set the rate of mid-level associates in the same case at \$225.00 per hour. (*Id.*).

The City of Worcester was the defendant in the *Thayer* case. In connection with its opposition to the fee application, the City submitted evidence that in 2015, larger Worcester law firms were charging up to \$450 per hour for partners, and up to \$265 for associates. (Pyle Aff., Ex. 3). Accordingly, Gatehouse's requests for a 2018 rate of \$425 for Attorney Pyle, and a \$250 hourly rate for Attorney Lambert, are reasonable, as are the modest increases thereafter to account for the passage of time.

² Gatehouse seeks rates that are lower than the normal hourly rates its counsel has charged in the corresponding years. Attorney Pyle's affidavit states that his normal hourly rate for the years 2018 through 2021 has ranged from \$455 to \$510, while Attorney Lambert's were \$285 to \$325. (Pyle Aff., ¶¶ 9 and 16).

³ This rate was approved for Attorney Kevin Martin of Goodwin Procter, who was admitted to the bar in 2002, after Attorney Pyle.

Similarly, in *Schand v. McMahon*, 487 F. Supp. 3d 71, 82 (D. Mass. 2020), appeal dismissed, No. 20-1994, 2020 WL 9258755 (1st Cir. Dec. 30, 2020), and appeal dismissed, No. 20-1995, 2020 WL 9348176 (1st Cir. Dec. 30, 2020), the Court held that “a reasonable hourly rate” for a “civil rights attorney in Springfield, Massachusetts” with “over 10 years of experience” was “\$450 per hour.” Gatehouse’s requested rate for Attorney Pyle, who had 17 years of experience when this matter began, is consistent with this decision, as well.

The Court may also consider that courts elsewhere in Massachusetts have approved significantly higher rates for comparable work. In a June 2021 public records decision, the Suffolk Superior Court approved a rate of \$550 per hour for an attorney with six years less experience than Attorney Pyle. (Pyle Aff., ¶ 13 and Ex. 5). In another case, the Middlesex Superior Court approved as reasonable Attorney Pyle’s normal hourly rate of \$510 per hour for work performed in 2021. (Pyle Aff., ¶ 14).

Accordingly, the rates requested in Gatehouse’s petition are reasonable, and should be awarded.

V. THE *LINTHICUM* FACTORS DO NOT FAVOR ANY REDUCTION.

The factors identified in *Linthicum* also favor a full award of Gatehouse’s requested fees and costs. 379 Mass. at 388-89. Those factors have largely been addressed above, but they also include “the result obtained,” which was total victory, and “the experience, reputation and ability of the attorney(s),” which the Court can judge for itself from the information contained in the Affidavit of Jeffrey J. Pyle and its own assessment of counsel’s work. *Id.* Accordingly, all relevant factors favor a full award of fees.

VI. THE COURT SHOULD AWARD THE COSTS REQUESTED.

Gatehouse's costs in this action included the payment of a filing fee, photocopying costs, Westlaw research costs, and postage. The costs are set forth in detail in Exhibit 8 to the Pyle Affidavit, and are summarized in the chart below:

Disbursement	Amount
Filing Fee (Complaint)	\$280.00
Photocopy Charges	\$1,618.80
Westlaw Charges	\$1,074.80
Postage Charges	\$2.80
Hand Delivery Charges	\$60.65
Transcripts	\$191.00
Total	\$3,228.05

CONCLUSION

For the foregoing reasons, Gatehouse respectfully requests that its Motion for Award of Attorneys' Fees and Costs be granted.

Respectfully Submitted,

GATEHOUSE MEDIA, LLC

By its attorneys,

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Date: October 6, 2021

CERTIFICATE OF SERVICE

I, Jeffrey J. Pyle, hereby certify that I served the foregoing document on the City of Worcester by email on October 6, 2021

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/s/ Jeffrey J. Pyle

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