

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT
C.A. No. 1885CV-01526A

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

COMPLAINT

Fifteen years ago, the Appeals Court held that internal affairs investigation materials of the Worcester Police Department are not categorically exempt from disclosure under the Public Records Law, G.L. c. 66, § 10. *Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester*, 58 Mass. App. Ct. 1, 8 (2003). “The internal affairs procedure,” the Court noted, is intended to foster “the public’s trust and confidence in the integrity of the police department, its employees, and its processes for investigating complaints because the department has the integrity to discipline itself.” The Court observed that the ability of the citizenry to make a “full and fair assessment of a police department’s internal investigation of its officer’s actions” protects and preserves “the core value of trust between citizens and police essential to law enforcement and the protection of constitutional rights.” *Id.*

Disregarding these important principles, the City of Worcester (the “City”) is again seeking to prevent the public from reviewing public records concerning internal affairs investigations. In particular, the City has failed to comply with the Public Records Law with respect to two requests for internal affairs records made on June 6, 2018, by *Worcester Telegram*

& *Gazette* reporter Brad Petrishen. In response to one of Petrishen's requests, the City stated that it would produce the requested records upon payment, only to reverse course and erroneously withhold the documents in their entirety. As to the other request, the City has wrongfully invoked inapplicable exemptions to the Public Records Law to withhold the vast majority of the requested records.

No exemption to the Public Records Law protects the internal affairs records Petrishen has requested from disclosure. The release of the records will serve the public interest by shedding light on allegations of misconduct within the Worcester Police Department, and the extent of the City's response to them. Accordingly, Gatehouse Media, LLC, publisher of the *Worcester Telegram and Gazette* newspaper, brings this action to enforce the Public Records Law, G.L. c. 66, § 10, and for a declaratory judgment, a preliminary and permanent injunction, an award of punitive damages, and an award of reasonable attorneys' fees and costs.

I. THE PARTIES

1. Gatehouse Media, LLC ("Gatehouse") is a Delaware limited liability corporation with a principal place of business at 175 Sully's Trail, 3rd Floor, Corporate Crossings Office Park, Pittsford, New York. Gatehouse owns and operates the *Worcester Telegram & Gazette*, ("T&G"), a daily newspaper that has covered the news in Worcester and its environs for more than 150 years.

2. The City of Worcester is a political subdivision of the Commonwealth of Massachusetts.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to G.L. c. 66, § 10A, which permits a requester of public records to bring an action in the Superior Court “to enforce the requirements” of the Public Records Law and obtain injunctive relief, among other remedies.

4. This Court has jurisdiction over plaintiff’s request for a declaratory judgment because the question of its right of access to the requested documents amounts to an actual case or controversy subject to G.L. c. 231A, § 1.

5. Venue is proper pursuant to G.L. c. 66, 10A, which provides that any suit to enforce the Public Records Act against a municipality shall be brought in the county in which the municipality is located.

III. FACTS

6. On June 6, 2018, *T&G* reporter Brad Petrishen submitted two public records requests to Lt. Michael Hanlon, the designated “Records Access Officer” of the Worcester Police Department.

7. Petrishen’s first request asked the department to provide public records relating to internal affairs investigations of twelve identified incidents between 2008 and 2016 (the “First Request”). (Ex. 1).

8. Petrishen’s second request asked the City to provide “concise officer histories” for seventeen identified Worcester Police Department officers (the “Second Request”). (Ex. 2). Such “concise officer histories” list the active and closed internal affairs investigations pertaining to particular officers, and are kept by the Worcester Police Department in the ordinary course of business. (Ex. 3). An example of a “concise officer history” produced in response to a public records request to the Massachusetts State Police is attached hereto as Exhibit 4.

9. On June 16, 2018, the City sent Petrishen a single letter responding to his two requests. (Exhibit 5). The letter stated that investigations of four of the incidents referenced in the requests were still open, and therefore records relating to them were being withheld pursuant to “exemption (f)” to the public records law. That exemption, contained in G.L. c. 4, § 7, cl. 26(f), shields from disclosure “investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.” The City did not explain why no records whatsoever concerning the four incidents could be released without causing “prejudice” to “effective law enforcement,” nor why redaction could not protect any alleged law enforcement interest in the files.

11. The City’s June 16 response went on to state that apart from the four open investigations, the remaining records responsive to the two requests comprise 2,269 pages: 2,189 for the First Request, and 80 for the Second Request. According to the City, there was “a very high likelihood” that the responsive records contain “information which we are prohibited by law from disclosing,” and thus would need to be redacted. (Ex. 5). The City did not further explain what categories of information in these records it was “prohibited by law” from releasing, but it propounded a fee estimate for both requests combined.

12. In an attempt to obtain at least some timely information at modest cost, on June 29, 2018, Petrishen, without waiving any portion of his two requests, asked the City to provide him with a separate cost estimate for the Second Request. (Ex. 6) On July 5, the City informed Petrishen that the cost to produce the 80 pages of “concise officer histories” requested in the Second Request would be \$133.00. (Exhibit 7).

13. On July 10, Petrishen provided a check to the City in the amount of \$133.00, as it had requested.

14. The City, however, never complied with the Second Request. Instead, on August 3, 2018, Records Access Officer Joshua Martunas sent an email to Petrishen stating that despite the City's previous positions, it now deemed the concise officer histories wholly exempt from the Public Records Law under "exemption (d)," for "inter-agency or intra-agency memoranda or letters relating to policy positions being developed by" a municipality. (Ex. 8). The City stated that the 80 pages of concise officer histories "pertain to ongoing and incomplete litigation," and asserted (erroneously) that all records "concerning ongoing litigation fall within exemption (d)." (Exhibit 8 ("The City has determined that the requested records are substantially related to said ongoing litigation, and that their release could impact ongoing proceedings; accordingly the requested records are exempt from disclosure.))) The City did not identify the "ongoing litigation" to which it referred, nor explain why a City record necessarily constitutes an "intra-agency memorand[um] or letter[] relating to policy positions" simply because it may be relevant to litigation.

15. On information and belief, the City's reversal of its position in early August concerning the release of the concise officer histories did not arise because of a belated realization that "litigation-related" documents are exempt (they are not). Rather, it came in reaction to an article by Petrishen, published the week before in the *T&G*, concerning allegations of misconduct in the Worcester police department. See Ex. 9, Brad Petrishen, "Watchdog Report: Lawyer Calls for Probe of Worcester Police Credibility," *Telegram & Gazette*, July 28, 2018. The article reports on allegations made in a 749-page letter to law enforcement officials by Hector Piniero, a Worcester attorney, of serious misconduct by gang- and drug-unit officers in

the police department. The story points out that in several of the cases, “judges or defense attorneys pointedly questioned police conduct, and charges in many of them were dismissed.”

Id. On information and belief, the City decided to withhold the “concise officer histories” sought in the Second Request simply to prevent further adverse publicity to the Worcester Police Department.

16. On August 7, 2018, the City sent a letter to Petrishen reiterating its denial of the Second Request under exemption (d). (Exhibit 10). For good measure, the letter invoked two other exemptions: exemption (c), for “personnel . . . files or information,” and exemption (f), the investigatory exemption. The City did not explain why any portion of the 80 pages of concise officer histories is subject to these exemptions.

17. In fact, none of the exemptions invoked in the City’s August 7 letter protects the “concise officer histories” from disclosure. Concise officer histories contain basic facts concerning both open and completed investigations of particular officers. (Ex. 4). Contrary to the City’s contention, exemption (d) does not permit a municipality to withhold records held in the ordinary course of municipal business simply because they may prove relevant to ongoing litigation. Rather, the exemption protects a narrow category of documents relating to policy positions being developed by the municipality. The release of the requested concise officer histories also would not threaten “effective law enforcement” so as to bring it within the “investigatory exemption,” G.L. c. 4, § 7, cl. 26(f), and the Appeals Court has already ruled that internal affairs records are generally not subject to the “personnel . . . files or information” exemption. G.L. c. 4, § 7, cl. 26(c); *Worcester Telegram & Gazette Corp.*, 58 Mass. App. Ct. at 8.

18. On August 22, Petrishen sent an email to Martunas, asking whether the City would now be taking the position that the documents sought in the First Request—the internal affairs records themselves—are subject to the same exemptions invoked in his August 7 letter relating to the Second Request. Petrishen also asked for clarification of the City’s June 16, 2018 response, which had stated as a basis for its fee estimate that the requests sought information the City was “prohibited by law” from releasing. Petrishen asked the City to identify what law “prohibits” information in the internal affairs records from being produced. (Exhibit 11)

19. On September 13, 2018, the City responded to Petrishen’s email by stating that, contrary to its previous stance, it would withhold nine of the twelve internal affairs investigations files. (*Id.*) The City stated that it would withhold three files under the “investigatory” exemption (rather than the four originally claimed to be under investigation), and would withhold six of the files under exemption (d), because there was a “pending case in court.” The remaining three files it would release, it said, after reviewing for redactions allegedly required by law. The City informed the *T&G* it would charge it one minute per page to conduct this review, at an hourly rate of \$25.00. In response to Petrishen’s request to identify legal authority requiring redaction of information, the City stated that it did not know what statutes would require redaction without reviewing the records themselves. (*Id.*)

20. Under the Public Records Law, “[a] records access officer may assess a reasonable fee for the production of a public record,” but the “reasonable fee shall not exceed the actual cost of reproducing the record.” The law expressly prohibits a municipality from charging a requester “for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the supervisor of records” under a procedure the City did not follow in this case. G.L. c. 66, § 10(d)(iii). A municipality may not charge a requester for time

spent segregating or redacting records to weed out information the municipality is merely *permitted* to withhold under the Public Records Law.

Count I
(Violation of Public Records Law)
(G.L. c. 66, § 10)

21. Plaintiff realleges and incorporates by reference the allegations above.

22. Under the Public Records Law, G.L. c. 66, § 10, public entities of the Commonwealth and its political subdivisions must “at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record.” The City of Worcester is subject to the Public Records Law.

23. On June 6, 2018, the *T&G* made written requests for public records from the City of Worcester. The City of Worcester has refused to provide the majority of the requested records to the *T&G*.

24. No exemption to the Public Records Act permits the City of Worcester to refuse to provide access to and copies of the requested records. The City of Worcester’s failure to do so violates the Public Records Law.

25. The City of Worcester has invoked pretextual reasons for its refusal to disclose the records at issue. Accordingly, the City has “not act[ed] in good faith” in “failing to . . . furnish the requested record[s] or any portion of the record[s],” and is liable for punitive damages pursuant to G.L. c. 66, § 10A(d)(4), in addition to all other remedies requested herein.

26. The Public Records Law prohibits municipalities (a) from charging unreasonable fees for access to public records, (b) from charging fees that exceed the actual cost of reproducing the records, and (c) from charging requesters for time spent segregating or redacting records unless such segregation or redaction is required by law or approved by the supervisor of

records. The City has not reviewed the records at issue to determine whether any provisions of law require redaction, but is nonetheless demanding the payment of substantial fees to produce the records. To the extent the City intends to charge plaintiff fees for redacting information not “required by law” to be redacted, the requested fees are unlawful.

27. Pursuant to G.L. c. 66, § 10A(c), a person who requests a public record “may initiate a civil action to enforce the requirements of this chapter” in the Superior Court, which has “available all remedies at law or in equity” to remedy a violation.

Count II
(Declaratory Judgment Under Massachusetts Public Records Law)
(G.L. c. 231A, § 1)

28. Plaintiff realleges and incorporates by reference the allegations above.

29. A genuine case or controversy has arisen between the *T&G* and the City of Worcester as to whether the documents sought in the requests at issue are public records available for inspection and copying.

30. The *T&G* requests that the Court issue a declaratory judgment as follows:

- (A) the requested documents are public records for purposes of the Public Records Law;
- (B) the City of Worcester has violated plaintiff’s right of access under the Public Records Law to the records requested;
- (C) the fee estimate rendered by the City of Worcester is unreasonable and exceeds the actual cost of reproducing the records.

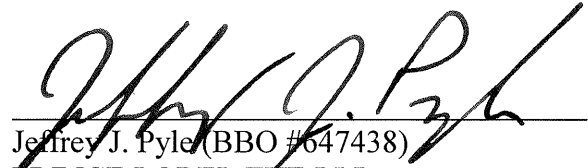
RELIEF REQUESTED

WHEREFORE, Plaintiff Gatehouse Media, LLC respectfully requests that this Honorable Court:

- A. Issue a declaratory judgment as requested herein;
- B. Issue a preliminary and permanent injunction enforcing plaintiff's right to the requested records pursuant to the Public Records Act, G.L. c. 66, §§ 10, 10A;
- C. Award plaintiff its reasonable attorney's fees and costs as allowed by G.L. c 66, § 10A(d)(2);
- D. Assess punitive damages against the City of Worcester in an amount not less than \$1,000 nor more than \$5,000, to be deposited into the Public Records Assistance Fund pursuant to G.L. c. 66, § 10A;
- E. Grant such other and further relief as the Court may deem just and proper.

GATEHOUSE MEDIA, LLC

By its attorney,



Jeffrey J. Pyle (BBO #647438)
PRINCE LOBEL TYE LLP
One International Place, Suite 3700
Boston, MA 02110
(617) 456-8000 (tel)
(617) 456-8100 (fax)
jpyle@princelobel.com

Date: October 2, 2018

EXHIBIT 1

Lt. Michael Hanlon
Records Access Officer
Worcester Police Department
9-11 Lincoln Square
Worcester, MA 01608

June 6, 2017 (via email)

Dear Lt. Hanlon,

Under the Massachusetts Public Records statute (§ 66-10 et seq.), I am requesting access to the following public records:

Internal affairs investigations, if they exist, that correspond to the following arrests and/or police interactions:

1. 10/8/15 arrest of Alison Skerrett
2. 8/26/2014 arrest of Hernan Ortiz
3. 12/18/2013 arrest of Juan Roman Rivera
4. 8/29/2014 arrest of Carl S. Johnson
5. 7/10/2013 arrest of Jose Burgos-Martinez
6. 3/8/2014 detention of Jose L. Ortiz
7. 3/31/2014 arrest of Luke Deptula
8. 6/4/2012 arrest of Adalberto Ruiz
9. 2/23/2016 charges against Grace Katana
10. 4/8/2011 warrant served on Jimmie Cotto at 73 Fairfax Road, Worcester
11. 10/8/2008 search warrant execution at 85 Lamartine Street, Worcester
12. 2/19/2010 arrest of Kenneth Brooks Jr. and Kenneth Brooks III

If you deny any or all of this request, please provide the specific exemption from the public records law you are using as grounds for such denial. Thank you.

Sincerely,

Brad Petrishen
Reporter, Worcester Telegram & Gazette
508-793-9464

EXHIBIT 2

Lt. Michael Hanlon
Records Access Officer
Worcester Police Department
9-11 Lincoln Square
Worcester, MA 01608

June 6, 2017 (via email)

Dear Lt. Hanlon,

Under the Massachusetts Public Records statute (§ 66-10 et seq.), I am requesting access to the following public records:

The list of internal investigations (referred to as a concise officer history by state police) for the following WPD officers:

1. Neftali Batista
2. Steve Bonczek
3. Jesus Candelaria
4. Terrance Cahill
5. Jeffrey Carlson
6. James Carmody
7. Thomas Duffy
8. Terrance Gaffney
9. Patrick Moran
10. Gary Morris
11. Robert O'Rourke
12. Brian Piskator
13. Nathan Reando
14. Steven Roche
15. Kellen Smith
16. Carl Supernor
17. Larry Williams

If you deny any or all of this request, please provide the specific exemption from the public records law you are using as grounds for such denial. Thank you.

Sincerely,

Brad Petrishen
Reporter, Worcester Telegram & Gazette
508-793-9464

EXHIBIT 3

----- Forwarded message -----

From: **Hanlon, Michael J.** <HanlonMJ@worcesterma.gov>

Date: Wed, Jan 10, 2018 at 12:32 PM

Subject: Re: Call

To: "Petrishen, Brad" <brad.petrishen@telegram.com>

Brad,

I spoke with the commander of our bureau of professional standards and was informed that they do keep a list of investigations for each officer

Sent from my iPhone

On Jan 9, 2018, at 10:37 AM, Petrishen, Brad <brad.petrishen@telegram.com> wrote:

Thanks Mike -- I appreciate it very much,
Brad

On Tue, Jan 9, 2018 at 10:36 AM, Hanlon, Michael J. <HanlonMJ@worcesterma.gov> wrote:
Brad - I have reached out to our bureau of professional standards to see if they keep a similar type of record - once I hear back from them I will let you know

Sent from my iPhone

On Jan 8, 2018, at 4:31 PM, Petrishen, Brad <brad.petrishen@telegram.com> wrote:

Hey Lt. Hanlon,
Below is the "concise officer history" I was referencing in my prior email. Attached is the history for a specific MSP officer whose information I had requested. I'm wondering whether WPD has similar histories for its officers, and if so, if you would be the person to go through to request the history for a specific officer. Thanks,
Brad

----- Forwarded message -----

From: **Halpin, Michael (POL)** <Michael.Halpin@massmail.state.ma.us>

Date: Wed, Feb 15, 2017 at 5:57 PM

Subject: Re: Call

To: "Petrishen, Brad" <brad.petrishen@telegram.com>

Cc: "Procopio, David (POL)" <david.procopio@state.ma.us>

Dear Mr. Petrishen:

I am sorry I was unable to get back to you earlier today. Attached is the "Concise Officer History" for Trooper Nicholas J. Holden we discussed yesterday. Pursuant to M.G.L. c. 4, §7, cl. (26)(n), the physical location of Trooper Holden's current assignment was redacted because the Department, in its reasonable judgment, believes the same would, if disclosed, jeopardize personal and public safety. Additionally, information concerning personnel action taken in relation to Case No. IAS03-0020 was redacted pursuant to the personnel exemption found in M.G.L. c. 4, §7, cl. (26)(c). As we also discussed, a number of the more recent cases remain open for active investigation(s) and/or pending/ongoing personnel action(s). Consequently, material in Case Nos. IAS2014-0047, IAS2014-0061, IAS2015-0006, and IAS 2016-0056 is presently exempt, in its entirety, from public disclosure pursuant to M.G.L. c. 4, §7, cl. (26) (c) and (f). Please review the History and let me know if you desire a cost estimate to produce copies of any of the other IA material that may be presently available to the public.

If you wish to challenge any aspect of this response, you may appeal to the Supervisor of Public Records following the procedure set forth in 950 C.M.R. 32.08, a copy of which is available at <http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-source/cmr/>. You may also file a civil action in accordance with M.G.L. c. 66, § 10A.

Sincerely,

Michael B. Halpin
Chief Legal Counsel
Massachusetts State Police
470 Worcester Road
Framingham, MA 01702
(508) 820-2303

From: Petrishen, Brad <brad.petrishen@telegram.com>
Sent: Wednesday, February 15, 2017 4:14 PM
To: Halpin, Michael (POL)
Subject: Re: Call

OK, thanks Mike I appreciate it,
Brad

On Wed, Feb 15, 2017 at 4:13 PM, Halpin, Michael (POL)
<michael.halpin@state.ma.us> wrote:

No. Sorry. I have been occupied all day. I will check on the requested information ASAP.

Sent from my iPhone

On Feb 15, 2017, at 2:51 PM, Petrishen, Brad <brad.petrishen@telegram.com> wrote:

Did you just call? Just missed one wasn't quick enough to my desk. Here now, thanks,
Brad

--

Follow @BPetrishenTG

Brad Petrishen
Reporter

O: [508-793-9464](tel:508-793-9464)

F: [508-793-9281](tel:508-793-9281)

<image003.jpg>

[100 Front St., Worcester, MA 01608](#)
P.O Box. 15012, Worcester, MA 01615-0012

brad.petrishen@telegram.com
www.telegram.com

This message may contain confidential and/or privileged information. If you are not the intended recipient or authorized to receive this for the intended recipient, you must not use, copy, disclose or take any action based on this message or any information herein. If you have received this message in error, please advise the sender immediately by sending a reply e-mail and delete this message. Thank you for your cooperation.

--

Follow @BPetrishenTG

Brad Petrishen
Reporter

<image003.jpg>

O: [508-793-9464](tel:508-793-9464)

F: [508-793-9281](tel:508-793-9281)

EXHIBIT 4

Concise Officer History

Trooper Nicholas J Holden [3005]

ID Number: 3005 Hire date: Mar 04, 2002
Current assignment(s):
Division: Division of Field Services
Unit / Section / Troops: Field Services
Barracks: [REDACTED]

Involved Officer: External Investigation Case Number: 2003-DST-0040B
Received: Feb 12, 2003

Allegations:

Conduct - - Exonerated - Mar 18, 2003

Involved Officer: External Investigation Case Number: IAS030020
Received: Feb 27, 2003

Allegations:

Policy, Procedure, Operations - - Sustained - Apr 05, 2004
Enforcement Action - - Exonerated - Apr 05, 2004
Conduct - - Exonerated - Apr 05, 2004
Enforcement Action - - Exonerated - Apr 05, 2004

Actions taken:

CLOSED-FILED: **Exemption (c) (Personnel)**

[REDACTED]
Exemption (c) (Personnel)

Involved Officer: External Invest. Case Number: 2009-DST-0088C
Received: May 28, 2009

Allegations:

Conduct - - Exonerated - Jul 13, 2009

Involved Officer: External Invest. Case Number: 2010-DST-0119C
Received: Jul 10, 2010

Allegations:

Conduct - - Exonerated - Aug 23, 2010

Involved Officer: External Invest. Case Number: 2010-0235
Received: Oct 20, 2010

Troop/Division No.: C2010-0214

Allegations:

Enforcement Action - - Exonerated - Dec 03, 2010

Involved Officer: Intake Informal Resolution Case Number: 2012-0029
Received: Jan 12, 2012

Allegations:

Enforcement Action - - FILED - Jan 18, 2012

Involved Officer: External Investigation Case Number: 2012-0120
Received: Apr 09, 2012

Troop/Division No.: C2012-0003

Allegations:

Conduct - - Exonerated - Jun 02, 2012
Enforcement Action - - Exonerated - Jun 02, 2012
Conduct - Verbal Abuse - - Exonerated - Jun 02, 2012
Policy, Procedure, Operations - - Exonerated - Jun 02, 2012
Policy, Procedure, Operations - - Exonerated - Jun 02, 2012

Involved Officer: External Investigation Case Number: 2014-0222
Received: Aug 07, 2014

Troop/Division No.: IAS2014-0047

Allegations:

Conduct - - Not Sustained - Apr 06, 2015
Enforcement Action - - Exonerated - Apr 06, 2015
Harassment - - Unfounded - Apr 06, 2015
Enforcement Action - - Exonerated - Apr 06, 2015
Conduct - - Sustained - Apr 06, 2015
Policy, Procedure, Operations - - Not Sustained - Apr 06, 2015
Conduct - Profanity - - Sustained - Apr 06, 2015
Conduct - - Sustained - Apr 06, 2015

Involved Officer: Internal Investigation Case Number: 2014-0270
Received: Oct 06, 2014

Troop/Division No.: IAS2014-0061

Allegations:

Conduct -
Policy, Procedure, Operations - - Sustained - Jun 03, 2016
Policy, Procedure, Operations - - Sustained - Jun 03, 2016
Conduct - - Sustained - Jun 03, 2016
Policy, Procedure, Operations - - Sustained - Jun 03, 2016
Policy, Procedure, Operations - - Sustained - Jun 03, 2016
Policy, Procedure, Operations - - Sustained - Jun 03, 2016
Policy, Procedure, Operations - - Sustained - Jun 03, 2016
Conduct - - Sustained - Jun 03, 2016
Conduct - - Sustained - Jun 03, 2016
Policy, Procedure, Operations - - Sustained - Jun 03, 2016
Conduct - - Sustained - Jun 03, 2016
Policy, Procedure, Operations - - Not Sustained - Jun 03, 2016
Conduct - - Not Sustained - Jun 03, 2016

Involved Officer: Internal Investigation
Received: Jan 28, 2015

Case Number: 2015-0017

Troop/Division No.: IAS2015-0006

Allegations:

Conduct - Profanity -
Policy, Procedure, Operations -

Involved Officer: External Investigation
Received: Aug 18, 2015

Case Number: 2015-0209

Troop/Division No.: C2015-0005

Allegations:

Conduct - - Not Sustained - Oct 29, 2015
Enforcement Action - - Exonerated - Oct 29, 2015

Involved Officer: Internal Investigation
Received: Oct 24, 2016

Case Number: 2016-0272

Troop/Division IAS2016-0056

Allegations:

Conduct -

Report summary: totals by incident type:

| Incident type | Received |
|----------------------------|----------|
| Admin | 0 |
| Criminal | 0 |
| Early Intervention | 0 |
| External Investigation | 8 |
| Harassment Investigation | 0 |
| Informal Resolution | 0 |
| Intake Informal Resolution | 1 |
| Internal Investigation | 3 |
| Profile | 0 |
| Total | 12 |

Printed: Feb 14, 2017 15:32 By: Program Coordinator II Lisa Botka

EXHIBIT 5



DEPARTMENT OF POLICE
CITY OF WORCESTER
MASSACHUSETTS 01608 -1172



508-799-8600

Steven M. Sargent
Chief of Police

June 16, 2018
Brad Petrishen
Reporter, Worcester Telegram & Gazette

The Worcester Police Department has received your public records requests, received on June 6, 2018, for reports relative to 12 distinct internal affairs investigations, and "concise officer history" records for 17 named officers.

The Worcester Police Department's Bureau of Professional Standards has located documents related to the requested incidents which may be responsive to your request. Out of the incidents requested, 4 of the cases are open internal affairs investigations and as such are not subject to release under the Public Records Law at this time, pursuant to exemption (f), the investigatory exemption. Exemption (f), the investigatory exemption, applies to "investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest." For the remaining investigations that are complete, BOPS has located 2189 pages of records which may be responsive. With respect to the second portion of your request, the WPD has located 80 pages of documents which may be responsive to your request. Due to the nature of the documents requested, there is a very high likelihood that the records will contain information which we are prohibited by law from disclosing.

I estimate that it will take approximately 4 minutes per page to review the documents to identify responsive records and perform any redactions required by law. The hourly rate for the lowest paid employee capable of performing the required work exceeds \$25.00 per hour; the city has reduced the hourly rate for labor charges to \$25.00 per hour. The Worcester Police Department has already spent approximately two hours in performing the preliminary search for the potentially responsive documents and is not including those costs in this estimate. I estimate that it will take approximately 151 hours of labor to review for responsiveness and perform any redactions required by law. At the rate of \$25.00/hour, with no charge included for the first two hours of work already performed, I estimate that it will cost \$3,775.00 to perform the remainder of the work necessary to provide the responsive records.

Payment is required prior to commencing the work to fulfill your request. Please advise as to whether you would like the City to proceed with this work. If you decide to proceed, you may make payment by check payable to the City of Worcester. You may present a check in person or mail check payment to: Office of the City Manager, Attn: Records Access Officer, 455 Main Street, 3rd Floor, Worcester, MA 01608. Cash payments may only be made in person and in exact amount. Please be advised that the amount set forth above constitutes a good faith estimate; the actual cost may vary.

The city will advise you as soon as possible if the actual cost differs from the estimate. In the event that the estimate exceeds the actual cost, the city will return any excess amounts paid.

Please be advised that if you decide to proceed the city will require an additional 15 business days to provide the requested records, as provided by statute.

If you are unsatisfied with the city's response, you may appeal the substantive nature of the city's response by submitting an appeal in writing to the Commonwealth of Massachusetts' Supervisor of Records within ninety (90) days. See 950 C.M.R. 32.08(1).

Respectfully,

Lieutenant Michael Hanlon

EXHIBIT 6

----- Forwarded message -----

From: **Petrishen, Brad** <brad.petrishen@telegram.com>
Date: Fri, Jun 29, 2018 at 5:45 PM
Subject: Re: Record requests
To: "Hanlon, Michael J." <HanlonMJ@worcesterma.gov>

Hi Lt. Hanlon,

Thanks again for the response to this request. Would it be possible (early next week?) to get an estimate for the second request, the 80 pages of concise histories, separately from the IA requests? Appreciate your time on this,
Brad

On Tue, Jun 19, 2018 at 5:41 PM, Hanlon, Michael J. <HanlonMJ@worcesterma.gov> wrote:

Please see the attached response to your recent public records request

Respectfully

Lieutenant Michael Hanlon

From: Petrishen, Brad [<mailto:brad.petrishen@telegram.com>]
Sent: Wednesday, June 06, 2018 5:38 PM
To: Hanlon, Michael J.
Cc: Gerard Russell
Subject: Re: Record requests

Sorry - wrote 2017 instead of 2018 -- here are two corrected requests. Thanks,

Brad

On Wed, Jun 6, 2018 at 5:36 PM, Petrishen, Brad <brad.petrishen@telegram.com> wrote:

Hi Lt. Hanlon,

Attached are two public record requests. Thanks for your time on this and please give me a call if anything needs clarification or discussion.

-Brad 978-440-0373 (cell)

--

EXHIBIT 7

----- Forwarded message -----

From: publicrecords <publicrecords@worcesterma.gov>
Date: Thu, Jul 5, 2018 at 11:23 AM
Subject: FW: response to Brad Petrishen's second request for estimate
To: "Petrishen, Brad" <brad.petrishen@telegram.com>
Cc: publicrecords <publicrecords@worcesterma.gov>

Good morning Brad,

Please see the estimate below from the Police Department for the narrowed request (80 pages of records). Please let me know if you have any questions.

Joshua Martunas

Staff Assistant & Records Access Officer

Office of the City Manager Edward M. Augustus, Jr.

P: 508-799-1175

F: 508-799-1208

From: Hazelhurst, Kerry F.
Sent: Wednesday, July 04, 2018 12:42 PM
To: publicrecords; Martunas, Joshua A.
Cc: Hanlon, Michael J.; Murtha, Sean
Subject: response to Brad Petrishen's second request for estimate

Joshua,

Here is the estimated cost pertaining to the response to Mr. Petrishen's second request that is attached below. The Lieutenant is away and will be back on Monday, July 9, 2018.

With respect to the second portion of Mr. Petrishen's request, the WPD has located 80 pages of documents which may be responsive to his request. Due to the nature of the documents requested, there is a very high likelihood that the records will contain information which we are prohibited by law from disclosing.

It has been estimated that it will take approximately 4 minutes per page to review the documents to identify responsive records and perform any redactions required by law. The hourly rate for the lowest paid employee capable of performing the required work exceeds \$25.00 per hour; the city has reduced the hourly rate for labor charges to \$25.00 per hour. The Worcester Police Department has already spent approximately two hours in performing the preliminary search for the potentially responsive documents and is not including those costs in this estimate. It has been estimated that it will take approximately 5.5 hours of labor to review for responsiveness and perform any redactions required by law. At the rate of \$25.00/hour, with no charge included for the first two hours of work already performed, it is estimated that it will cost \$133.00 to perform the remainder of the work necessary to provide the responsive records.

Payment is required prior to commencing the work to fulfill your request. Please advise as to whether you would like the City to proceed with this work. If you decide to proceed, you may make payment by check payable to the City of Worcester. You may present a check in person or mail check payment to: Office of the City Manager, Attn: Records Access Officer, 455 Main Street, 3rd Floor, Worcester, MA 01608. Cash payments may only be made in person and in exact amount. Please be advised that the amount set forth above constitutes a good faith estimate; the actual cost may vary.

The city will advise you as soon as possible if the actual cost differs from the estimate. In the event that the estimate exceeds the actual cost, the city will return any excess amounts paid.

Please be advised that if you decide to proceed the city will require an additional 15 business days to provide the requested records, as provided by statute.

If you are unsatisfied with the city's response, you may appeal the substantive nature of the city's response by submitting an appeal in writing to the Commonwealth of Massachusetts' Supervisor of Records within ninety (90) days. See 950 C.M.R. 32.08(1).

Respectfully,

Sergeant Kerry F. Hazelhurst

Hi Lt. Hanlon,

Thanks again for the response to this request. Would it be possible (early next week?) to get an estimate for the second request the 80 pages of concise histories, separately from the IA requests? Appreciate your time on this,

Brad

--

Follow @BPetrishenTG

TELEGRAM & GAZETTE
telegram.com

A Halifax Media Group Company

Brad Petrishen
Reporter

O: 508-793-9464

F: 508-793-9281

100 Front St., Worcester, MA 01608
P.O. Box. 15012, Worcester, MA 01615-0012

brad.petrishen@telegram.com

www.telegram.com

This message may contain confidential and/or privileged information. If you are not the intended recipient or authorized to receive this for the intended recipient, you must not use, copy, disclose or take any action based on this message or any information herein. If you have received this message in error, please advise the sender immediately by sending a reply e-mail and delete this message. Thank you for your cooperation.

EXHIBIT 8

----- Forwarded message -----

From: **publicrecords** <publicrecords@worcesterma.gov>
Date: Fri, Aug 3, 2018 at 4:27 PM
Subject: RE: FW: response to Brad Petrishen's second request for estimate
To: "Petrishen, Brad" <brad.petrishen@telegram.com>
Cc: publicrecords <publicrecords@worcesterma.gov>

Dear Mr. Petrishen,

The City of Worcester ("City") has received your request for concise officer history records for 17 named officers. The city initially provided you with a cost estimate to identify the records and perform any redactions required by law. After careful review of the records, the city has determined that at this time these records are exempt from disclosure pursuant to Massachusetts General Laws, Chapter 4, § 7 cl. 26 (d).

Exemption (d), the deliberative process exemption, applies to records which are "inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based." Massachusetts courts and the Massachusetts Supervisor of Records have found that records concerning ongoing litigation fall within exemption (d). A government entity may use the deliberative process exemption as a basis for withholding requested materials where the deliberative process is "ongoing and incomplete." Lafferty v Martha's Vineyard Comm'n, No. 03-3397, 2004 WL 792712 (Mass. Super. Apr. 9, 2004), at *3.

The requested records pertain to ongoing and incomplete litigation. The City has determined that the requested records are substantially related to said ongoing litigation, and that their release could impact ongoing proceedings; accordingly the requested records are exempt from disclosure.

The city did not process any payment for your request. The check can be mailed to you if provide an address where you would like to receive it. Alternatively, the check can be picked up from the Office of the City Manager, City Hall Room 306, if you would prefer to collect it in person.

If you are unsatisfied with the city's response, you may appeal the substantive nature of the city's response by submitting an appeal in writing to the Commonwealth of Massachusetts' Supervisor of Records within ninety (90) days. See 950 C.M.R. 32.08(1).

If you would like to make another request or have any questions, please do not hesitate to reach out again. Thank you, have a nice day.

Joshua Martunas

Staff Assistant & Records Access Officer

Office of the City Manager Edward M. Augustus, Jr.

P: 508-799-1175

F: 508-799-1208

From: Petrishen, Brad [mailto:brad.petrishen@telegram.com]

Sent: Thursday, July 05, 2018 2:15 PM

To: publicrecords

Subject: Re: FW: response to Brad Petrishen's second request for estimate

Thanks Joshua, appreciate it,

Brad

On Thu, Jul 5, 2018 at 11:23 AM, publicrecords <publicrecords@worcesterma.gov> wrote:

Good morning Brad,

Please see the estimate below from the Police Department for the narrowed request (80 pages of records). Please let me know if you have any questions.

Joshua Martunas

Staff Assistant & Records Access Officer

Office of the City Manager Edward M. Augustus, Jr.

P: 508-799-1175

F: 508-799-1208

From: Hazelhurst, Kerry F.

Sent: Wednesday, July 04, 2018 12:42 PM

To: publicrecords; Martunas, Joshua A.

Cc: Hanlon, Michael J.; Murtha, Sean

Subject: response to Brad Petrishen's second request for estimate

Joshua,

Here is the estimated cost pertaining to the response to Mr. Petrishen's second request that is attached below. The Lieutenant is away and will be back on Monday, July 9, 2018.

With respect to the second portion of Mr. Petrishen's request, the WPD has located 80 pages of documents which may be responsive to his request. Due to the nature of the documents requested, there is a very high likelihood that the records will contain information which we are prohibited by law from disclosing.

It has been estimated that it will take approximately 4 minutes per page to review the documents to identify responsive records and perform any redactions required by law. The hourly rate for the lowest paid employee capable of performing the required work exceeds \$25.00 per hour; the city has reduced the hourly rate for

labor charges to \$25.00 per hour. The Worcester Police Department has already spent approximately two hours in performing the preliminary search for the potentially responsive documents and is not including those costs in this estimate. It has been estimated that it will take approximately 5.5 hours of labor to review for responsiveness and perform any redactions required by law. At the rate of \$25.00/hour, with no charge included for the first two hours of work already performed, it is estimated that it will cost \$133.00 to perform the remainder of the work necessary to provide the responsive records.

Payment is required prior to commencing the work to fulfill your request. Please advise as to whether you would like the City to proceed with this work. If you decide to proceed, you may make payment by check payable to the City of Worcester. You may present a check in person or mail check payment to: Office of the City Manager, Attn: Records Access Officer, 455 Main Street, 3rd Floor, Worcester, MA 01608. Cash payments may only be made in person and in exact amount. Please be advised that the amount set forth above constitutes a good faith estimate; the actual cost may vary.

The city will advise you as soon as possible if the actual cost differs from the estimate. In the event that the estimate exceeds the actual cost, the city will return any excess amounts paid.

Please be advised that if you decide to proceed the city will require an additional 15 business days to provide the requested records, as provided by statute.

If you are unsatisfied with the city's response, you may appeal the substantive nature of the city's response by submitting an appeal in writing to the Commonwealth of Massachusetts' Supervisor of Records within ninety (90) days. See 950 C.M.R. 32.08(1).

Respectfully,

Sergeant Kerry F. Hazelhurst

Hi Lt. Hanlon,

Thanks again for the response to this request. Would it be possible (early next week?) to get an estimate for the second request the 80 pages of concise histories, separately from the IA requests? Appreciate your time on this,

Brad

--

Follow @BPetrishenTG

TELEGRAM & GAZETTE
telegram.com

A Halifax Media Group Company

Brad Petrishen
Reporter

O: 508-793-9464

F: 508-793-9281

EXHIBIT 9

Watchdog Report: Lawyer calls for probe of Worcester police credibility

By Brad Petrishen

Telegram & Gazette Staff

Posted Jul 28, 2018 at 7:28 PM

Updated Aug 18, 2018 at 10:25 AM

WORCESTER – Some city police officers habitually engage in deception and misconduct in their arrests, local civil rights lawyer Hector E. Pineiro alleges in a letter to authorities demanding an investigation.

In a 749-page submission to local, state and federal prosecutors, Mr. Pineiro alleges some police gang- and drug-unit members have credibility problems not being disclosed to defendants. He charges that officers in drug investigations lie, fabricate evidence, file malicious charges and suppress exculpatory evidence.

“This has occurred in cases your office prosecuted, in some instances with actual knowledge of prosecutors,” Mr. Pineiro wrote Worcester District Attorney Joseph D. Early Jr. in an April 10 cover letter urging an investigation.

The materials, also sent to Attorney General Maura T. Healey and U.S. Attorney for Massachusetts Andrew E. Lelling, cite 12 cases alleged to highlight a pattern of misconduct.

In several cases, judges or defense attorneys pointedly questioned police conduct, and charges in many of them were dismissed.

“There is this thing called the Constitution,” Worcester First Justice David P. Despotopoulos told a prosecutor in one of the cases. “Maybe they (police) should read it.”

The judge's statement came after police entered a man's home without a warrant using house keys they took from him after an arrest in his car on suspicion of dealing drugs.

Other cases cited in the letter include one in which a judge remarked that it appears police "stepped on" themselves, two in which defense attorneys accused police of staging evidence and another in which an off-duty officer sent the brother of a fellow officer home from a shooting with which the brother was eventually charged.

"What's happening is wrong," said Joseph F. Hennessey, a police officer outside Worcester for 23 years who now practices defense law in the city. "A police officer is supposed to be truthful, law-abiding."

Neither Police Chief Steven M. Sargent nor City Manager Edward M. Augustus Jr. agreed to be interviewed or answer questions for this story.

In a brief statement, Mr. Augustus noted most of the cases cited have resulted in lawsuits against the city, and said police internal affairs investigators would probe the others.

Mr. Early also declined an interview. His office provided a letter of response to Mr. Pineiro dated May 8 that states the office "will review your correspondence."

Asked for comment, the attorney general's office said only that it received the letter, while the U.S. attorney's office in Massachusetts said it does not confirm or deny investigations.

The U.S. attorney's office in April launched a probe into possible civil rights violations by the Springfield police narcotics unit. That followed a 2016 controversy in which a detective there was recorded threatening to kill a teenager and plant drugs on another.

None of the materials in Mr. Pineiro's submission contain such brazen threats, nor is it clear that any police officer was determined by the court to have lied. But several Worcester defense attorneys with connections to the cases he cited said they have serious concerns about the practices described. In

multiple cases, videos or photos appear to call into question accounts given by officers, and judges approved requests to suppress evidence based on violations of the Constitution.

Nancy Gertner, a retired Massachusetts federal judge, said after reading Mr. Pineiro's cover letter that the accusations appear to merit investigation.

"The issue in Worcester, as in every other city and town, is accountability," she said.

Judge Gertner, who now teaches at Harvard Law, frequently speaks on issues of civil rights. Asked about Worcester's reputation for accountability, she said that while she did not sit here as a judge, she has not heard good things.

Judge Gertner used the phrase "culture of impunity" to describe the department's reputation, saying officers have believed they "could get away with virtually anything."

'Protective sweep'

The case that drew Judge Despotopulos' ire sprung from an Aug. 29, 2014, stop of a vehicle in Main South.

Carl S. Johnson, a 63-year-old who had not been arrested by city police before that night, was stopped after a passenger he'd picked up briefly was caught with a small bag of suspected crack after exiting his car.

Police said in reports they'd conducted controlled purchases from Mr. Johnson before the stop. After arresting him but failing to find drugs in his car, they took his keys, went to his home nearly a mile away and, without a warrant, entered his home to conduct a "protective sweep."

A 1990 Supreme Court ruling limits protective sweeps to cases in which someone was arrested at home and police believe there may be an imminent danger remaining at the arrest scene.

After his criminal case was dismissed, Mr. Johnson - who has not been arrested in Worcester since - filed a federal lawsuit.

At a hearing on the lawsuit in Worcester in January, U.S. District Court Judge Timothy S. Hillman appeared to express skepticism after a city lawyer called the search constitutional.

“Says who?” Judge Hillman asked.

“There are - there are cases that I’ve - I’ve,” staff attorney Wendy L. Quinn started to respond before Judge Hillman cut her off, saying, “I can’t wait.”

Lynne S. Martin, a longtime defense attorney in the city who represented Mr. Johnson, said she’s defended several other cases in which city police took someone’s keys for a “protective sweep” without a warrant.

“I think it’s unfortunate we all just kind of accept that this is what goes on,” she said, agreeing that many of the issues raised by Mr. Pineiro warrant scrutiny.

Mr. Pineiro, 58, has long been the chief critic of the Worcester police and is often criticized by city officials as trying to “extort” settlements from taxpayers.

Recently, he has been working with Mr. Hennessey, 53, who moved his practice here a year and a half ago and says his concerns are buttressed by things he saw during his police career.

“I worked with a supervisor who said, ‘You can justify any search after you do it,’” said Mr. Hennessey, who served for about six years in Ashland, two years in Waltham and 15 years in Sherborn.

Mr. Hennessey, who served on multiple drug task forces and performed undercover work, believes untruthfulness in drug investigations is a problem in departments everywhere.

Untruthfulness by police officers, commonly referred to as “testilying,” has long been documented in courts nationwide.

The New York Times in March uncovered 25 instances in the past three years in which testimony by police officers in the nation’s largest city was deemed to likely be untrue by judges or prosecutors.

The Times noted there are hundreds of thousands of cases resolved in New York City each year - it tallied 270,000 in 2016. It reported the 25 cases are “almost certainly” a fraction in which police lying was suspected because the majority of such cases end in plea deals before officers are called to the stand.

The Times found that most often the false statements were made to hide illegal searches and seizures – a common thread in many of the allegations Mr. Pineiro made against Worcester police, who average about 7,000 arrests per year.

The Times noted some officers believe the ends – getting drugs and dealers off the streets – justify the sometimes illegal means, an idea Mr. Hennessey refuses to accept.

“Justice is never served if obtained by deceit,” he said. Sometimes, the guilty go free because of police conduct, he said, while other times, the innocent can be swept up.

“There are some great police officers out there, and when things like this are done by some officers, it tarnishes the entire group,” he said.

Mr. Pineiro’s letter cites two drug cases in which Mr. Hennessey raised concerns about the truthfulness and legality of the police’s work.

In one case, charges against a man charged with selling heroin did not move forward after Mr. Hennessey, citing surveillance video of the arrest he obtained, informed the court he planned to file a motion questioning the credibility of the officers’ accounts.

“The police step on themselves here a little bit?” Judge Robert G. Harbour asked a prosecutor on April 29, 2016, after Mr. Hennessey informed the court of his motion.

Police wrote in a report that Mr. Hennessey’s client, Alison Skerrett, was in the driver’s seat of a vehicle where heroin was found just before his arrest.

But the surveillance video appears to show that Mr. Skerrett was apprehended instead after he walked out of a nearby restaurant with food in his hands and saw police approaching his vehicle.

After Mr. Hennessey disclosed his motion, the prosecutor told the judge the police officers wanted to see the matter ended quickly.

“They would like to see it ended. That’s unusual for the Worcester police,” Judge Harbour said. “You tell them that I wasn’t happy with the situation, OK?”

In the second case, Mr. Hennessey alleged in an affidavit included in Mr. Pineiro’s submission that police photos taken at an apartment where drugs were seized showed officers had staged evidence in order to justify a search warrant.

“It is obvious that the scene was manipulated, or staged by one or more officers with intent to perpetrate a fraud on the court,” Mr. Hennessey wrote.

Mr. Hennessey alleged timestamps on the photos showed sandwich bags atop a fridge that police used as part of their justification for a warrant were moved there after police began searching.

The former officer had planned to request a Franks hearing - a hearing to determine whether an officer made a false statement to obtain a search warrant - but that was not held because a judge prior to that ruled that the search was illegal.

Worcester Superior Court Judge Daniel M. Wrenn suppressed the evidence from the search after finding that the search warrant affidavit did not prove that an amount of marijuana police said they observed from a doorway of an apartment was enough to justify a search.

Police had found 240 grams of cocaine and more than \$15,000 in the apartment. Charges against the defendant, Hernan Ortiz, were dropped after the judge’s ruling, and the money eventually returned.

In another affidavit included in Mr. Pineiro’s packet, longtime city defense lawyer Peter L. Ettenberg alleged evidence was staged in one of his drug cases.

In that case, Mr. Ettenberg noted that Assistant District Attorney Michael D. McHugh informed him before trial that photographs of cut corner baggies on a car’s seat entered into evidence were actually found somewhere else in the

car.

“Hence, the photographs of the evidence were staged,” Mr. Ettenberg wrote.

Mr. Ettenberg further wrote that three city detectives testified there were cut corner baggies in the car and that an exhibit claiming to contain them was entered into evidence.

When the exhibit was opened at trial, Mr. Ettenberg said, “no cut corner baggies existed.”

Mr. Piniero commended Mr. McHugh for giving Mr. Ettenberg the information. But he and Mr. Hennessey say such disclosures are not generally being made.

Mr. Hennessey said that in Mr. Skerrett’s heroin case, he gave a different prosecutor the video that called into question the officers’ statements “long before” he filed his motion, but that to his knowledge no inquiry into their conduct was performed before Mr. Pineiro’s letter.

Records included in the packet show another local judge, Worcester District Court Judge Andrew M. D’Angelo, has also criticized city police tactics.

In a 2014 ruling suppressing evidence in a drug case, Judge D’Angelo wrote that the affidavit police used to obtain a search warrant was deficient in numerous ways.

“Based on the violations of the entire affidavit, along with the hope that this decision will deter such violations in the future, the court finds suppression is necessary,” he wrote.

‘Noble cause’ corruption?

While Mr. Johnson, whose home was illegally swept, has not been arrested again since 2014, most of the men whose cases Mr. Pineiro cited have considerable records in the county. Police are charged with getting guns and drugs off the streets – arrests often welcomed in neighborhoods plagued by street violence – and shootings in Worcester have decreased in recent years.

Howard Friedman, a longtime Boston civil rights attorney and former longtime president of the National Police Accountability Project, said a number of the allegations appear to portend a problem in the department with something known as “noble cause” corruption.

In such cases, he said, officers operate with the mindset that in the end, getting the “bad guy” off the streets justifies an any-means-necessary approach.

In addition to violating the rule of law, Mr. Friedman said such acts, if unchecked by supervisors, can embolden officers to act with impunity.

“It may start with people who actually have criminal records,” he said. “But in the end, no one can feel safe.”

Mr. Friedman noted that in a recent case he settled in Lowell, a police officer’s allegedly false police report helped charge an innocent person who had drugs planted on them by a crooked informant.

The case was one of 17 dismissed involving the informant, and Lowell paid \$750,000 to resolve the lawsuit.

“That’s what can happen if you’re not properly supervising,” Mr. Friedman said, adding that Mr. Pineiro’s letter seems to indicate a problem in Worcester.

Mr. Friedman, who has been suing Boston police for three decades, said he could not recall a situation where officers there took someone’s keys and searched their home as is alleged in the Carl Johnson case.

Judge Despotopulos’ comment should have spurred a serious probe, he said, because judges “don’t say things like that lightly.”

The Telegram & Gazette, in a public records request, asked the police department for internal affairs investigations of officers involved in the dozen cases cited by Mr. Pineiro.

The department said it would cost \$3,642 to provide the records. It said there were 2,189 pages of records responsive to the request, which would take four minutes per page to redact in accordance with exemptions to public records law at \$25 an hour.

Mr. Friedman agreed that people facing criminal charges need to be made aware of credibility issues of the officers who have charged them.

“The bottom line is, when people are caught lying on video, or writing a report that isn’t even good fiction ... something needs to happen to them, or you know it’s going to continue,” he said.

Mr. Friedman cited an example in Boston where such practices can lead to tragedy. In 1988, Officer Sherman Griffiths was killed while serving a warrant obtained by a fellow officer that was based on a fictitious informant.

A murder charge against Albert Lewin, the man who shot the officer, was dismissed after the revelation, and instead, the officer who obtained the warrant was indicted on a perjury charge.

Mr. Friedman said it’s important that police, prosecutors and judges all strive to eliminate “noble cause” corruption to prevent the subversion of justice.

The cases cited by Mr. Pineiro, he said, raise questions about whether authorities in Worcester are committed to doing so.

“They’ll dismiss the case for that (specific) criminal defendant, but the system doesn’t seem to change,” he said.

Jacqueline Dutton, who runs the public defender’s office in Worcester, said defense attorneys often wonder how many times people not charged with crimes have their civil rights violated.

Ms. Dutton said that cases around the country show that police, like others in society, exhibit conscious or unconscious bias based on race that can lead to profiling.

“The reality of it is, it’s happening to people who aren’t committing crimes,” she said. “To pretend like it’s not – to pretend like it’s just a gang issue – misunderstands how a lot of people live their daily lives in Worcester and other places.”

Mr. Hennessey said he has had concerns about police conduct in all of the 15 to 20 drug cases he has defended here. He believes supervisors are aware of civil rights violations but do not make it a priority to investigate.

“They’re turning their backs because the job is getting done,” he said. “They’re getting the drugs off the street, they’re getting the drug dealers off the street.”

Mr. Hennessey said police officers in the elite units face pressure to continue making arrests that often spawn press releases showcasing the drugs seized.

“If you don’t produce, you’re not staying in these units,” said Mr. Hennessey, which can lead to officers cutting corners.

Michael S. Hussey, who oversaw the public defender’s office in Worcester for 23 years, said in an interview that he believes the so-called War on Drugs has placed police officers countrywide in positions that can lead to untruthfulness.

“Like in any war, the people who fight it often believe they’re in the right, and the ends justify the means when you’re going after the so-called bad guys,” he said. “The potential for abuse is inherent in a situation in which you’re trying to combat a public health problem through the use of force.”

Mr. Hussey said he does not know whether “testilying” happens any more or any less in Worcester than anywhere else. It’s something that needs to be addressed in the criminal justice system, he said, though he is not sure the district attorney, by virtue of their close relationship with police, is the appropriate person to investigate.

“There’s nothing that justifies not telling the truth,” he said, adding that while defense attorneys can highlight the issue, it will take judges and prosecutors to root it out.

“If a prosecutor believes a police officer is not telling the truth, he shouldn’t call the witness,” he said. “Most of the time, police can get away with saying whatever they want.”

Contact Brad Petrishen at brad.petrishen@telegram.com. Follow him on Twitter [@BPetrishenTG](https://twitter.com/BPetrishenTG).

This story has been amended to correct the date that Officer Sherman Griffiths was killed.

EXHIBIT 10



August 7, 2018

Dear Mr. Petrishen,

This letter constitutes a supplemental response to your request for concise officer history records for 17 named officers. The city previously determined that that at this time these records are exempt from disclosure pursuant to Massachusetts General Laws, Chapter 4, § 7 cl. 26 (d).

As set forth in the city's prior response, exemption (d) remains applicable as each of the requested records is substantially related to ongoing and incomplete litigation, and their release could impact ongoing proceedings. Exemption (d), the deliberative process exemption, applies to records which are "inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based." Massachusetts courts and the Massachusetts Supervisor of Records have found that records concerning ongoing litigation fall within exemption (d). A government entity may use the deliberative process exemption as a basis for withholding requested materials where the deliberative process is "ongoing and incomplete." Lafferty v Martha's Vineyard Comm'n, No. 03-3397, 2004 WL 792712 (Mass. Super. Apr. 9, 2004), at *3.

The city has determined that portions of these records are also exempt from disclosure pursuant to Massachusetts General Laws, Chapter 4, § 7 cl. 26 (c) and (f).

Exemption (c) applies to records which are, "personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy." The city has determined that the first clause of exemption (c) pertaining to personnel files is applicable to portions of the requested records. The city has evaluated the nature and character of the responsive records and has determined that these records constitute personnel records exempt from disclosure.

Exemption (f), the investigatory exemption, applies to "investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest." According to the Secretary of the Commonwealth, Division of Public Records publication, A Guide to the Massachusetts Public Records Law, this exemption "allows investigative officials to withhold materials that could compromise investigative efforts if disclosed." (Available at: <http://www.sec.state.ma.us/pre/prepdf/guide.pdf>). The city has determined that the responsive records contain materials substantially related to ongoing investigative efforts, and accordingly portions of the records are exempt from disclosure pursuant to exemption (f).



The City of
WORCESTER
City Manager Edward M. Augustus, Jr.

Office of the City Manager
City Hall, 455 Main Street, Worcester MA 01608
P | 508-799-1175 F | 508-799-1208
citymanager@worcesterma.gov
www.worcesterma.gov

If you are unsatisfied with the city's response, you may appeal the substantive nature of the city's response by submitting an appeal in writing to the Commonwealth of Massachusetts' Supervisor of Records within ninety (90) days. See 950 C.M.R. 32.08(1).

Sincerely,

A handwritten signature in cursive script that reads "Joshua Martunas".

Joshua A. Martunas
Records Access Officer

EXHIBIT 11

----- Forwarded message -----

From: **publicrecords** <publicrecords@worcesterma.gov>
Date: Thu, Sep 13, 2018 at 5:17 PM
Subject: RE: Request for clarification on public record request
To: "Petrishen, Brad" <brad.petrishen@telegram.com>
Cc: publicrecords <publicrecords@worcesterma.gov>

Good afternoon Mr. Petrishen,

You inquired regarding the status of certain records you previously requested and for which the City previously provided an estimate. In response to your follow up inquiry, the City has performed a preliminary review to determine the current status of each case. Please see the case statuses below.

Please note that based on this additional information the city has determined that some of the requested records will be withheld pursuant to exemptions (d)(highlighted in green) and (f)(highlighted in yellow), as further explained below. The remaining records are highlighted in blue and will be released once the city performs any redactions required by law.

1. 10/8/15 arrest of Alison Skerrett (Investigation ongoing; withholding citing exemption (f))
2. 8/26/2014 arrest of Hernan Ortiz (Investigation ongoing; withholding citing exemption (f))
3. 12/18/2013 arrest of Juan Roman Rivera (Pending case in court; withholding citing exemption (d))
4. 8/29/2014 arrest of Carl S. Johnson(Pending case in court; withholding citing exemption (d))
5. 7/10/2013 arrest of Jose Burgos-Martinez (Pending case in court; withholding citing exemption (d))
6. 3/8/2014 detention of Jose L. Ortiz(Pending case in court; withholding citing exemption (d))
7. 3/31/2014 arrest of Luke Deptula(Pending case in court; withholding citing exemption (d))
8. 6/4/2012 arrest of Adalberto Ruiz(Pending case in court; withholding citing exemption (d))
9. 2/23/2016 charges against Grace Katana (Investigation ongoing; withholding citing exemption (f))

10. 4/8/2011 warrant served on Jimmie Cotto at 73 Fairfax Road, Worcester (Case closed/settled; 233 pages for review)

11. 10/8/2008 search warrant execution at 85 Lamartine Street, Worcester (Case closed/settled; 215 pages for review)

12. 2/19/2010 arrest of Kenneth Brooks Jr. and Kenneth Brooks III (Case closed/settled; 417 pages for review)

Exemption (d), the deliberative process exemption, applies to records which are “inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based.” Massachusetts courts and the Massachusetts Supervisor of Records have found that records concerning ongoing litigation fall within exemption (d). A government entity may use the deliberative process exemption as a basis for withholding requested materials where the deliberative process is “ongoing and incomplete.” Lafferty v Martha’s Vineyard Comm’n, No. 03-3397, 2004 WL 792712 (Mass. Super. Apr. 9, 2004), at *3.

The requested records pertain to ongoing and incomplete litigation. The City has determined that the requested records are substantially related to said ongoing litigation, and that their release could impact the ongoing proceedings; accordingly the requested records are exempt from disclosure.

Exemption (f), the investigatory exemption, applies to “investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.” According to the Secretary of the Commonwealth, Division of Public Records publication, A Guide to the Massachusetts Public Records Law, this exemption “allows investigative officials to withhold materials that could compromise investigative efforts if disclosed.” (Available at: <http://www.sec.state.ma.us/pre/prepdf/guide.pdf>). The city has determined that the responsive records are substantially related to current ongoing investigations, and that their release would impede the ability of law enforcement to effectively complete said investigations.

The city has located 865 pages of records that may be responsive and which are not related to ongoing and incomplete litigation or open investigations. The city will review these records to perform redactions required by law, as set forth in the estimate below. The lowest hourly rate of an employee capable of performing this work exceeds \$25.00 per hour; therefore the city has reduced the hourly rate to \$25.00 per hour for purposes of this estimate.

- 865 pages at 1 minute per page = 14 hours

- 14 hours at \$25.00/hour = \$350.00

- Two hours, free of charge = -\$50.00

- Total charge to requester: \$300.00

Due to the nature of the requested records, there is a very high likelihood that the records will contain information which we are prohibited by law from disclosing. The applicable exemption for this is type of information is exemption (a), the statutory exemption. Exemption (a) is not discretionary; it means there is a statute which requires the city to redact or withhold certain information. Therefore, whenever we cite exemption (a) we also have to identify which statute or statutes is applicable in that particular case. However, we will not

know which information is contained in a particular record and which statute is applicable until each document is reviewed. We have not reviewed the files as of yet so we cannot cite the statutes with any specificity but in the past these types of documents have tended to include information redacted pursuant to statutes including M.G.L. c. 6, §167; M.G.L. c. 41, §97D; and M.G.L. c. 66, §10B. These records are likely to contain CORI protected information, and may contain information related to domestic violence incidents, identifying information of victims of adjudicated crimes, and information related to sexual assault incidents. This is not an exhaustive list but these are some examples of information which is prohibited from public disclosure by law.

Please let me know if you would like the City to proceed with the review of these records; payment is required in order to commence this work. If you have any other questions, please don't hesitate to reach out via email, phone, or in person.

Joshua Martunas

Staff Assistant & Records Access Officer

Office of the City Manager Edward M. Augustus, Jr.

P: 508-799-1175

F: 508-799-1208

From: Petrishen, Brad [mailto:brad.petrishen@telegram.com]

Sent: Wednesday, August 22, 2018 3:15 PM

To: publicrecords

Cc: Vigneux, Michael; Hanlon, Michael J.

Subject: Request for clarification on public record request

Hi Joshua,

We are evaluating how to proceed on the estimate we received for the internal affairs records we sought this June (response you sent us attached).

In light of the city's reversed position regarding the release of the concise officer histories, we seek to clarify whether the city is still willing to release the internal affairs records at the quoted price of \$3,775 (actually I assume it would be \$133 less or so because that initial estimate included the concise officer histories).

If you are no longer willing to provide the records, could you please state the basis for that?

Additionally, in your June 16, 2018 reply, you stated that you would need to redact information you are "prohibited by law" from disclosing. So that we can evaluate the fee estimate, can you please articulate which law(s) to which you are referring?

Thanks,

Brad

--

Follow [@BPetrishenTG](https://twitter.com/BPetrishenTG)

TELEGRAM & GAZETTE
telegram.com

A Halifax Media Group Company

Brad Petrishen
Reporter

O: 508-793-9464

F: 508-793-9281

100 Front St., Worcester, MA 01608
P.O. Box. 15012, Worcester, MA 01615-0012

brad.petrishen@telegram.com
www.telegram.com

This message may contain confidential and/or privileged information. If you are not the intended recipient or authorized to receive this for the intended recipient, you must not use, copy, disclose or take any action based on this message or any information herein. If you have received this message in error, please advise the sender immediately by sending a reply e-mail and delete this message. Thank you for your cooperation.

--
[Follow @BPetrishenTG](https://twitter.com/BPetrishenTG)

TELEGRAM & GAZETTE
telegram.com

A Halifax Media Group Company

Brad Petrishen
Reporter

O: 508-793-9464

F: 508-793-9281

100 Front St., Worcester, MA 01608
P.O. Box. 15012, Worcester, MA 01615-0012

brad.petrishen@telegram.com
www.telegram.com

This message may contain confidential and/or privileged information. If you are not the intended recipient or authorized to receive this for the intended recipient, you must not use, copy, disclose or take any action based on this message or any information herein. If you have received this message in error, please advise the sender immediately by sending a reply e-mail and delete this message. Thank you for your cooperation.