

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
TRIAL COURT DEPARTMENT

ILYAS J. RONA,

Plaintiff,

v.

MASSACHUSETTS DEPARTMENT
OF STATE POLICE,

Defendant,

C.A. No.

2022 MAR 17 P 3:49
MICHAEL JOSEPH DURAN
CLERK / MAGISTRATE
SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE

**VERIFIED COMPLAINT FOR DECLARATORY AND PRELIMINARY RELIEF
UNDER THE MASSACHUSETTS PUBLIC RECORDS ACT, G.L. c. 66, § 10**

Plaintiff Ilyas J. Rona ("Requestor"), by and through his attorney Michael J. Duran, hereby brings the following claims against the Massachusetts Department of State Police ("Agency") for failure to comply with the requirements of the Commonwealth's Public Records Law. Requestor seeks declaratory and injunctive relief, expedited hearing, and – if appropriate – reasonable attorney's fees and costs. As grounds for this action, Requestor states and alleges and follows:

INTRODUCTION

1. On June 6, 2019, female employees of John Hancock's Boston headquarters were shocked to learn for the first time that a hidden camera had been found in the women's locker room at John Hancock's former offices located at 601 Congress Street in Boston. It was unknown how long the camera had been positioned in the locker room to

capture video, but for years dozens of women had regularly used the gym as a benefit of being an employee of John Hancock. The scale of the privacy violations against these women is massive and difficult to quantify.

2. The land upon which the building at 601 Congress Street was built is owned by the Massachusetts Port Authority, known as Massport. The policing and security of all Massport properties, including 601 Congress Street, is primarily provided by the Massachusetts State Police. The Massachusetts State Police conducted an investigation into the circumstances of the camera found in the women's locker room.

3. On or about January 30, 2020, the Massachusetts State Police informed John Hancock that it had closed or would be closing the investigation. No findings as to the cause or extent of the privacy violations or the existence of any remediation efforts were shared with victims.

4. Plaintiff is an attorney who represents one or more of the victims of this invasion of privacy.

5. On October 6, 2021, November 10, 2021, and again on January 6, 2022, Plaintiff submitted the public records request pursuant to G.L. c. 66, § 10, a copy of which is attached as Exhibit A ("the Public Records Request").

6. While the Department of State Police has acknowledged receipt of the submissions, the Department of State Police has not provided any adequate response or provided any documents.

PARTIES

7. Plaintiff Ilyas J. Rona is an attorney whose principal place of business is located in Boston, Massachusetts, in the County of Suffolk.

8. Defendant Department of State Police is a department of the Commonwealth's Executive Office of Public Safety and Security and is an "agency," as that term is defined by G.L. c. 66, § 6A and G.L. c. 4 § 7(26), that makes and receives "public records" as defined by 950 CMR 32.02. The Department of State Police has its principal place of business in Framingham, Massachusetts, in the County of Middlesex.

JURISDICTION AND VENUE

9. Jurisdiction is conferred by G.L. c. 66, § 10A.

10. Venue is proper under G.L. c. 66, § 10A(c).

FACTS

Background Facts

11. In 2001, John Hancock signed a 95-year ground lease with Massport for the land in the Boston seaport area upon which 601 Congress Street is located.

12. Construction of the building at 601 Congress Street, which would serve as John Hancock's headquarters, took place from roughly December 2001 to roughly August 2004.

13. In 2004, Manulife Financial, a Canadian corporation, purchased John Hancock.

14. On or about June 6, 2019, a hidden camera was found in the women's locker room of 601 Congress, a building that for over a decade had housed John Hancock's headquarters.

15. The camera, which appeared to have been connected to a live feed of the women's locker room, was found during regular maintenance of the building.

16. The discovery of the hidden camera was disclosed for the first time to the members of the public and to the employees of John Hancock on June 6, 2019.

17. In a public statement issued on June 6, 2019, John Hancock stated: "We were shocked and disappointed to learn about this serious invasion of privacy. Once we were alerted to the issue, we immediately launched an internal investigation. We take the safety and privacy of our employees extremely seriously and are working with law enforcement to ensure whomever is responsible will be held accountable for this action."

18. Among other police agencies, the matter was reported to the Massachusetts State Police, which is responsible for policing and providing security for all Massport properties.

19. The Massachusetts State Police conducted an investigation into the circumstances of the camera found in the women's locker room.

20. On or about January 30, 2020, the Massachusetts State Police informed John Hancock that it had closed or would be closing the investigation. No findings as to the cause or extent of the privacy violations or the existence of any remediation efforts were shared with victims.

21. The victims of the massive privacy invasion have not received any closure. The victims are still in the dark about what steps if any were taken to investigate this privacy violation.

Requests for Records

22. Plaintiff is an attorney who represents people who used the locker room at 601 Congress Street and thus had their privacy violated.

23. On October 6, 2021, Plaintiff submitted the Public Records Request pursuant to G.L. c. 66, § 10. *See Exhibit A.*

24. The Public Records Request reasonably described the public records sought, which were within the possession, custody or control of the Department of State Police.

25. The October 6th submission of the Public Records Request was sent by email and acknowledged by the Department of State Police that same day.

26. The Department of State Police did not produce any records responsive to the Public Records Request within ten business days, as required by G.L. c. 66, § 10(a).

27. Further, the Department of State Police did not provide any written response to the Public Records Request within ten business days, as required by G.L. c. 66, § 10(b).

28. The Department of State Police did not indicate that it did not intend to permit inspection or furnish a copy of the requested records within ten business days, as required by G.L. c. 66, § 10(b).

29. The Department of State Police did indicate that the magnitude or difficulty of the request unduly burdens the other responsibilities of the Department of State

Police such that it is unable to permit inspection or furnish a copy of the requested records within ten business days, as required by G.L. c. 66, § 10(b).

30. Aside from confirming receipt of the October 6th submission of the Public Records Request, the Department of State Police has failed to provide any written response: (a) identifying any public records or categories of public records sought that are not within the possession, custody, or control of Department of State Police; (b) identifying the agency or municipality that may be in possession, custody or control of the public record sought, if known; (c) identifying any records, categories of records or portions of records that the Department of State Police intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based; (d) identifying any public records, categories of records, or portions of records that the Department of State Police intends to produce, and providing a detailed statement describing why the magnitude or difficulty of the request unduly burdens the other responsibilities of the agency or municipality and therefore requires additional time to produce the public records sought; (e) identifying a reasonable timeframe in which the Department of State Police shall produce the public records sought; (f) suggesting a reasonable modification of the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the agency or municipality to produce records sought more efficiently and affordably; (g) including an itemized, good faith estimate of any fees that may be charged to produce the records; and (h) including a statement informing the Plaintiff of the right of appeal to the supervisor of records under subsection (a) of

section 10A and the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under subsection (c) of section 10A.

31. By November 10, 2021, twenty-four business days had passed and still no records or written response had been received.

32. On November 10, 2021, Plaintiff's office sent an email attaching the Public Records Request and asking to "follow up" on the status of the State Police's response and again attached the Public Records Request.

33. The November 10th submission of the Public Records Request was sent by email and acknowledged by the Department of State Police that same day.

34. The Department of State Police did not produce any records responsive to the November 10th submission of the Public Records Request within ten business days, as required by G.L. c. 66, § 10(a).

35. The Department of State Police did not provide a written response to the November 10th submission of the Public Records Request within ten business days, as required by G.L. c. 66, § 10(b).

36. The Department of State Police did not indicate that it did not intend to permit inspection or furnish a copy of the requested records within ten business days, as required by G.L. c. 66, § 10(b).

37. The Department of State Police did indicate that the magnitude or difficulty of the request unduly burdens the other responsibilities of the Department of State Police such that it is unable to permit inspection or furnish a copy of the requested records within ten business days, as required by G.L. c. 66, § 10(b).

38. Aside from confirming receipt of the November 10th submission of the Public Records Request, the Department of State Police has failed to provide any written response: (a) identifying any public records or categories of public records sought that are not within the possession, custody, or control of Department of State Police; (b) identifying the agency or municipality that may be in possession, custody or control of the public record sought, if known; (c) identifying any records, categories of records or portions of records that the Department of State Police intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based; (d) identifying any public records, categories of records, or portions of records that the Department of State Police intends to produce, and provide a detailed statement describing why the magnitude or difficulty of the request unduly burdens the other responsibilities of the agency or municipality and therefore requires additional time to produce the public records sought; (e) identifying a reasonable timeframe in which the Department of State Police shall produce the public records sought; (f) suggesting a reasonable modification of the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the agency or municipality to produce records sought more efficiently and affordably; (g) including an itemized, good faith estimate of any fees that may be charged to produce the records; and (h) including a statement informing the Plaintiff of the right of appeal to the supervisor of records under subsection (a) of section 10A and the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under subsection (c) of section 10A.

39. On January 6, 2022, Plaintiff resubmitted the Public Record Request by email. The email was immediately acknowledged by the Department of State Police.

40. The Department of State Police did not produce any records responsive to the January 6th submission of the Public Records Request within ten business days, as required by G.L. c. 66, § 10(a).

41. The Department of State Police did not provide a written response to the January 6th submission of the Public Records Request within ten business days, as required by G.L. c. 66, § 10(b).

42. The Department of State Police did not indicate that it did not intend to permit inspection or furnish a copy of the requested records within ten business days, as required by G.L. c. 66, § 10(b).

43. The Department of State Police did indicate that the magnitude or difficulty of the request unduly burdens the other responsibilities of the Department of State Police such that it is unable to permit inspection or furnish a copy of the requested records within ten business days, as required by G.L. c. 66, § 10(b).

44. Aside from confirming receipt of the January 6th submission of the Public Records Request, the Department of State Police has failed to provide any written response: (a) identifying any public records or categories of public records sought that are not within the possession, custody, or control of Department of State Police; (b) identifying the agency or municipality that may be in possession, custody or control of the public record sought, if known; (c) identifying any records, categories of records or portions of records that the Department of State Police intends to withhold, and

provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based; (d) identifying any public records, categories of records, or portions of records that the Department of State Police intends to produce, and provide a detailed statement describing why the magnitude or difficulty of the request unduly burdens the other responsibilities of the agency or municipality and therefore requires additional time to produce the public records sought; (e) identifying a reasonable timeframe in which the Department of State Police shall produce the public records sought; (f) suggesting a reasonable modification of the scope of the request or offer to assist the requestor to modify the scope of the request if doing so would enable the agency or municipality to produce records sought more efficiently and affordably; (g) including an itemized, good faith estimate of any fees that may be charged to produce the records; and (h) including a statement informing the Plaintiff of the right of appeal to the supervisor of records under subsection (a) of section 10A and the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under subsection (c) of section 10A

45. A total of 109 business days¹ have passed since the Public Records Request was first sent; a total of 85 business days have passed since the Public Records Request was resubmitted for a second time; and a total of 48 days have passed since the Public Records Request was resubmitted for the third and final time.

¹ According to the Division of Public Records, the term "business days" excludes Saturdays, Sundays, legal holidays, or other weekdays where a custodian's office is closed unexpectedly.

46. The Plaintiff has still received no written response from the Department of State Police, as that term is defined by G.L. c. 66, § 10(b).

47. It has been more than two years since the grotesque invasion of privacy was discovered, and more than two years since the investigation was closed. Members of the public, including the victims of this horrific invasion of privacy, have a right to know what was uncovered, how their privacy was invaded, and what efforts the government took in the public interest.

COUNT I

Declaratory Judgment under G.L. c. 66, § 10

48. Plaintiff restates and re-alleges all of the forgoing Paragraphs as if fully set forth herein.

49. The Department of State Police has failed or refused to provide any records concerning the shocking invasion of privacy discovered on the premises of 601 Congress Street, where dozens of women who used the locker room were victimized.

50. Accordingly, Plaintiff seeks declaratory judgment that the records sought herein are public records pursuant to G.L. c. 66, § 10.

WHEREFORE, for the reasons set forth above, Plaintiff is entitled to Declaratory Judgment.

COUNT II

Injunctive Relief on a Preliminary and Permanent Basis

51. Plaintiff restates and re-alleges all of the forgoing Paragraphs as if fully set forth herein.

52. The Department of State Police has failed or refused to provide any records concerning the shocking invasion of privacy discovered on the premises of 601 Congress Street, where dozens of women who used the locker room were victimized.

53. Accordingly, Plaintiff seeks a preliminary and permanent injunction pursuant to Massachusetts Rule of Civil Procedure 65 and G.L. c. 214, § 1 requiring the Department of State Police to produce the records sought herein.

WHEREFORE, for the reasons set forth above, Plaintiff is entitled to Injunctive Judgment and any other appropriate equitable relief.

COUNT III

For Attorney's Fees and Costs under G. L. c. 66, § 10A(d)(2),
and for Waiver of any Fees under G. L. c. 66, § 10(d)

54. Plaintiff restates and re-alleges all of the forgoing Paragraphs as if fully set forth herein.

55. Pursuant to G. L. c. 66, § 10A(c)-(d), the superior court may award reasonable attorney's fees and costs in this case.

56. The Department of State Police has violated G. L. c. 66, § 10.

57. In support of its violation, the Department of State Police has not reasonably relied upon a published opinion of an appellate court of the commonwealth or the attorney general based on substantially similar facts.

58. The Public Records Request attached as Exhibit A was submitted in good faith and was not designed or intended to harass or intimidate.

59. The subject matter of the Public Records Request is in the public interest and was not made for a commercial purpose unrelated to disseminating information to the public about actual government activity.

60. Because an award of attorney's fees and costs is appropriate, any fees assessed or that could have been assessed against the Requestor under G. L. c. 66, § 10(d) should be waived.

WHEREFORE, for the reasons set forth above, Plaintiff is entitled to an award of reasonable attorney's fees and costs under G. L. c. 66, § 10A(d)(2), and Plaintiff is further entitled to an order waiving any fees assessed or that could have been assessed against him under G. L. c. 66, § 10(d).

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff requests that the Court:

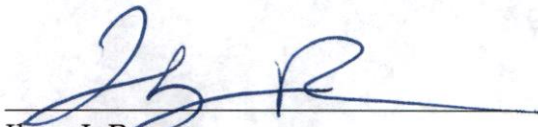
1. Declare that Public Records Request attached as Exhibit A sought from the Department of State Police are public records within the meaning of pursuant to G.L. c. 4, § 7(26) and G. L. c. 66, § 10;
2. Enter a preliminary and permanent injunction ordering the Department of State Police to allow the Plaintiff to inspect and copy the requested records within five business days;
3. Issue a short order of notice for hearing to show cause why the Department of State Police should not produce the records;
4. Award the Plaintiff attorney's fees and costs;

5. Enter an order that all fees assessed or that could have been assessed against Plaintiff under G. L. c. 66, § 10(d) are waived; and

6. Award such other relief as the Court deems just or necessary to effectuate the above relief or is otherwise warranted and available under the law.

VERIFICATION

The foregoing allegations are true and correct to the best of my knowledge and belief. Signed under the pains and penalties of perjury on this 17th day of March 2022.


Ilyas J. Rona

Respectfully submitted,

ILYAS J. RONA,
By his attorney,

Dated: March 17, 2022


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