

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT

\_\_\_\_\_)  
LAWYERS FOR CIVIL RIGHTS, INC., )  
 )  
Plaintiff, )  
 )  
v. ) CIVIL ACTION No.  
 )  
CITY OF BOSTON, )  
BOSTON POLICE DEPARTMENT, )  
SHAWN WILLIAMS, in his official capacity as )  
Records Access Officer for the City of Boston, and )  
MARTHA DEMAIO, in her official capacity as )  
Records Access Officer for the Boston Police )  
Department, )  
 )  
Defendants. )  
\_\_\_\_\_)

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. Plaintiff Lawyers for Civil Rights, Inc. (“LCR”) seeks declaratory and injunctive relief requiring the City of Boston, the Boston Police Department (“BPD”), Records Access Officer Shawn Williams, and Records Access Officer Martha DeMaio to produce records in response to a January 2019 request for public records, as required by the Massachusetts Public Records Law (“Public Records Law”). The request in question seeks documents that are critical to ascertaining the racial impact of BPD employment practices, specifically in relation to the hiring, promotion, discipline, and termination of applicants or employees of color. Plaintiff made the request 167 days ago (116 business days), yet Defendants have produced no records to date.

2. Plaintiff also seeks declaratory and injunctive relief requiring BPD to comply with the timelines set forth in the Public Records Law in the future. BPD's failure to comply with the law's timelines in this instance is not an isolated event. To the contrary, upon information and belief, BPD engages in a regular practice of violating the Public Records Law by failing to produce responsive public records within the timeframe prescribed by law. Here, and in response to prior public record requests, LCR has been forced to file litigation before BPD will comply with the statutory timelines and produce responsive records. Further, a cursory review of the Secretary of the Commonwealth of Massachusetts Public Record Appeal Tracking System indicates that in 2019 alone, Defendants failed to timely respond in at least 18 of 23 public record cases decided by the Supervisor of Records. Indeed, in most of those cases BPD appears not to have responded at all.

3. The timelines that the Legislature set forth in the Public Records Law are a critical component of the statutory scheme. Access to public records in a timely manner increases transparency and permits community members to hold government accountable on an ongoing basis. When a public agency flouts the strict timelines that the Legislature saw fit to enact, it relegates the public to receiving stale information. Moreover, BPD's delays are not a matter of just a day or two; rather, in many cases (*see, e.g.*, ¶ 1, *supra*), BPD delays months in responding, and then often only complies with the law when forced to do so by a court or by the Supervisor of Records.

4. Timely information regarding the largest public safety agency in Boston is critical. Access to information surrounding diversity and inclusion measures for BPD is particularly important because BPD has failed to keep pace with the growing diversity in

Boston. The statutory scheme of the Public Records Law shows that the Legislature took timelines seriously and set forth requirements that balance the public's need for timely information with recognition that agencies may in certain circumstances need slightly more time to comply. Here, Defendants have failed to grasp that balance, and injunctive relief is necessary to ensure that they comply with the critical statutory timelines in the Public Records Law.

### **PARTIES**

5. Plaintiff LCR is a non-profit, non-partisan organization formed at the request of President John F. Kennedy to foster equal opportunity and fight discrimination on behalf of people of color and immigrants. LCR is organized pursuant to G.L. c. 180 and has its principal place of business at 61 Battery March Street, 5<sup>th</sup> Floor, Boston, Massachusetts 02110.

6. Defendant City of Boston is a municipal corporation and political subdivision of the Commonwealth of Massachusetts, located at Boston City Hall, 1 City Hall Plaza, Boston, Massachusetts 02201.

7. Defendant Boston Police Department is an agency or other entity acting under the auspices of the City of Boston, with headquarters at 1 Schroeder Plaza, Boston, Massachusetts 02120.

8. Defendant Shawn Williams is the Records Access Officer for the City of Boston. He is sued in his official capacity only. His usual place of employment is at 1 City Hall Plaza, Boston, Massachusetts 02120.

9. Defendant Martha DeMaio is the Records Access Officer for the Boston Police Department. She is sued in her official capacity only. Her usual place of employment is at 1 Schroeder Plaza, Boston, Massachusetts 02120.

10. Defendants are custodians of records for the purposes of G.L. c. 66, 10.

**JURISDICTION AND VENUE**

11. This Court has jurisdiction over this proceeding pursuant to G.L. c. 66, § 10A(c), G.L. c. 212, § 4, and G.L. c. 231A, § 1, as this is a civil action seeking injunctive and declaratory relief regarding production of public records by the BPD.

12. Venue is properly in this Court pursuant to G.L. c. 66, § 10A(c), G. L. c. 223, §§ 1, 8, and § 9 as the Plaintiff's usual place of business is in the City of Boston and the suit is against the City of Boston, a department of the City, and two of its Records Access Officers.

**REQUIREMENTS OF THE PUBLIC RECORDS LAW**

13. Under the Massachusetts Public Records Law, "[a] records access officer...shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record...not later than 10 business days following the receipt of the request." G.L. c. 66, § 10(a). "If the agency or municipality does not intend to permit inspection or furnish a copy of a requested record, or the magnitude or difficulty of the request...unduly burdens the other responsibilities of the agency or municipality such that the agency or municipality is unable to do so within the timeframe established in subsection (a), the agency or municipality shall inform the requestor in writing not later than 10 business days after the initial receipt of the request for public records." G.L. c. 66, § 10(b).

14. The written response shall "identify a reasonable timeframe in which the agency or municipality shall produce the public records sought; provided, that for an agency, the timeframe shall not exceed 15 business days following the initial receipt of the request for public records and for a municipality the timeframe shall not exceed 25 business days following the initial receipt for the request for public records." *See id.*

15. If an agency or municipality is unable to complete a request within the extended time period provided by G.L. c. 66, § 10(b), it may "petition the supervisor of records for an extension of the time . . . a single extension to an agency not to exceed 20 business days and a single extension to a municipality not to exceed 30 days" G.L. c. 66, § 10(c). The records access officer must furnish a copy of the petition for an extension to the requestor. *See id.*

16. Thus, in summary, the statutory default timeframe is 10 business days to produce the responsive records. If additional time is needed, an agency or municipality can notify a requestor in writing that it requires up to 15 additional business days (only 5 additional days for agencies). In uniquely burdensome circumstances, an agency or municipality can petition the Supervisor of Records for a one-time extension for up to 30 days (only a 20-day extension for agencies). In total, the statute allows at maximum 55 business days for municipalities to comply (35 days for agencies).

17. Pursuant to G.L. c. 66 §10A(c), the Superior Court reviewing an action brought to enforce the requirements of the Public Records Law, such as the present action, "shall have available all remedies at law or in equity."

### **FACTUAL ALLEGATIONS**

18. LCR's current public record request seeking production of documents related to the racial and gender impact of BPD employment practices has been outstanding for 167 days (116 business days) as of the date of filing this Complaint. To date, BPD has not provided any documents.

19. On January 4, 2019, LCR delivered a public record request to Defendants by first-class mail and email. A copy of said request is attached as Exhibit 1.

20. On January 15, 2019, Defendant Shawn Williams, Director of Public Records for the City of Boston, confirmed receipt of the request by email, but failed to specify when a response would be provided. A copy of that response is attached as Exhibit 2.

21. Several subsequent assurances were made by Defendants to LCR regarding the production of responsive records, but no records were ever produced. Correspondence from LCR to Defendants regarding subsequent efforts to receive the responsive records are outlined in a letter attached here as Exhibit 3.

22. BPD's failure to comply with the law's timelines in this instance is not an isolated event.

23. LCR regularly submits public records requests to BPD and has submitted several requests to BPD on important racial justice matters during the last several years. In the instances described below, BPD has failed to produce any responsive records absent initiating litigation.

24. For example, in December 2014, LCR requested records related to the "hair drug test" that BPD administers in an attempt to screen officers for drug usage. BPD's use of that test is highly controversial, particularly in light of questions regarding the test's reliability in testing African-American hair. BPD did not produce any responsive documents.

25. In December 2015, LCR requested records regarding the racial and gender demographics of the BPD Recruit Class and district assignments to evaluate police diversity in Boston. BPD did not produce any responsive documents.

26. In January 2016, LCR filed a civil lawsuit seeking the assistance of the Suffolk Superior Court in forcing BPD to produce records in response to the December 2014 and December 2015 requests. Only after being served with the lawsuit did BPD produce the records.

27. On information and belief, BPD's failure to respond to LCR's requests for public records in the timeframe set forth by statute is part of a regular practice of failing to adhere to the statutory time requirements. The website for the Secretary of the Commonwealth of Massachusetts provides a Public Record Appeal Tracking System which allows the public to view all appeals to the Supervisor of Records claiming violations of the Public Record Law. The tracking system indicates that in 2019 alone, BPD was found to have failed to respond in at least 18 of 23 public record cases decided by the Supervisor of Records (approximately five cases are still awaiting a decision). In those 18 decided cases, the decisions note that BPD failed to respond to a requestor's initial record request and follow-up attempts. In each decision the Supervisor of Records ordered BPD to produce the requested records.

28. Defendants' actions and inactions, in failing to comply with the Public Records Law's timelines, demonstrate that Defendants have not acted in good faith.

**COUNT I – VIOLATION OF MASSACHUSETTS PUBLIC RECORDS LAW**  
**ORDER OF COMPLIANCE**

29. LCR repeats and realleges each and every allegation of Paragraph 1 through 28 above as if fully set forth herein.

30. Defendants did not produce any records in response to LCR's request for public records, thus failing to comply with the requirements of G.L. c. 66, § 10(a).

31. Defendants' confirmation of receipt of LCR's request did not note a need for additional time in compliance with G.L. c. 66, §10(a) or (b).

32. Defendants did not notify LCR that it had petitioned the Supervisor of Records for an extension of time, pursuant to G.L. c. 66, §10(c).

33. To date, 167 days (116 business days) since LCR's request, Defendants have not produced any records in violation of G.L. c. 66, § 10(a).

34. On information and belief, BPD engages in a regular practice of violating the timelines prescribed in the Public Records Law.

35. In light of BPD's persistent and ongoing failure to follow the timelines set forth by the Legislature in the Public Records Law, there is a reasonable basis and a likelihood that this conduct will continue to occur unless enjoined by this Court. Injunctive relief is necessary to serve the important public purposes underlying the timelines set forth by the Legislature in the Public Records Law, and there is no other adequate remedy at law.

WHEREFORE, LCR requests that the Court enter judgment in its favor against the City of Boston, the Boston Police Department, Shawn Williams, and Martha DeMaio as follows:

1. Declare that Defendants violated G.L. c. 66, § 10 by failing to produce the records requested in Plaintiff's January 2019 request;
2. Order Defendants to produce the records requested in Plaintiff's January 2019 request;
3. Declare that Defendants violate G.L. c. 66, § 10 by failing to comply with the timelines set forth therein for public records requests made to Defendant Boston Police Department;



4. Grant an injunction enjoining Defendants from failing to comply with the timelines set forth in G.L. c. 66, § 10 for public records requests made to Defendant Boston Police Department;
5. Order the remedies provided for in G.L. c. 66 §10A(d), including costs and attorneys' fees and punitive damages; and
6. Order such other and further relief as the Court deems necessary, just and appropriate in the circumstances.

Respectfully submitted,

PLAINTIFF,  
LAWYERS FOR CIVIL RIGHTS,  
By its attorneys,



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SOPHIA L. HALL  
Lawyers for Civil Rights  
61 Battery March Street, 5<sup>th</sup> Floor,  
Boston, MA 02110  
(617) 984-0274  
[Shall@lawyersforcivilrights.org](mailto:Shall@lawyersforcivilrights.org)

DAVID S. GODKIN  
Birnbaum & Godkin LLP  
280 Summer Street #500  
Boston, MA 02210  
(617) 307-6110  
[godkin@birnbaumgodkin.com](mailto:godkin@birnbaumgodkin.com)

Dated: June 21, 2019

**EXHIBIT 1**

January 4, 2019

Martha DeMaio  
Director of Public Information  
One Schroeder Plaza  
Boston, MA 02120

**RE: Public Record Request**

Dear Director DeMaio:

This request is submitted pursuant to the Public Records Act, G.L. c.66, § 10, for public records in the custody of the Boston Police Department ("BPD"). As used in this request, "public records" is defined as in the Public Records Act; "bypass" refers to the hiring process in which a candidate is removed from the civil service list in favor of a lower-ranking candidate; and "Hair Test" refers to the annual hair drug test required of BPD officers pursuant to Rule 111 of the Rules and Procedures of BPD ("Rule 111"). The timeframe for this request is January 1, 2017, to present day, unless the specific request indicates otherwise.

I hereby request copies of the following:

1. All records indicating or reflecting the overall demographics by gender and race of all civil service employees of the BPD, disaggregated by zones and/or districts and by rank and/or grade.
2. All records indicating or reflecting the overall demographics by gender and race of all non-civil service (i.e. civilian) employees of the BPD, disaggregated by department, division or unit and by job title, including but not limited to records reflecting who serves in any supervisory and/or management position.
3. All records indicating or reflecting the process used for hiring or promoting non-civil service (i.e. civilian) employees of the BPD.
4. All records indicating or reflecting complaints of discrimination or unfairness in the process for determining promotions of employees of the BPD, including both civil service and non-civil service (i.e. civilian) positions.
5. All records used or referenced to create employee training for diversity, cultural competency, and/or implicit bias, including, but not limited to, information regarding the various facilitators and/or companies that were considered to conduct the training.

61 BATTERY MARCH STREET • 5TH FLOOR • BOSTON, MA 02110  
(617) 482-1145 (TELEPHONE) • (617) 482-4392 (FACSIMILE)  
[WWW.LAWYERSFORCIVILRIGHTS.ORG](http://WWW.LAWYERSFORCIVILRIGHTS.ORG)

6. All records indicating or reflecting employee training for diversity, cultural competency, and/or implicit bias, including, but not limited to, training materials (i.e. handouts, PowerPoint slides, etc.) and the contract with the training facilitator.
7. All records indicating or reflecting the creation, mission and/or mandate of the BPD Bureau of Community Engagement.
8. All records indicating or reflecting any community policing policy, procedure, rule, or instruction.
9. All records indicating or reflecting the number and/or type of alleged police misconduct allegations reviewed and/or investigated by BPD's Internal Investigations Unit.
10. All records indicating or reflecting a communication and/or request by BPD to the Commonwealth of Massachusetts' Human Resources Division (HRD) to consider language skills in the hiring process for BPD employees since January 1, 2018.
11. All records indicating or reflecting a communication and/or response by HRD to BPD regarding a request to consider language skills in the hiring process for BPD employees since January 1, 2018.
12. All records indicating or reflecting the overall demographics by gender and race of any candidate bypassed for employment with BPD, and if available, disaggregated by the underlying rationale or reason for the bypass.
13. All records indicating or reflecting the termination or demotion of any BPD employee due, in whole or in part, to a failure to take the Hair Test during the time and in the manner required by Rule 111.
14. All records indicating or reflecting the race and gender of any BPD employee terminated or demoted due, in whole or in part, to a failure to take the Hair Test during the time and in the manner required by Rule 111.
15. All records indicating or reflecting, for any BPD employee terminated or demoted due in whole or in part to a failure to take the Hair Test during the time and in the manner required by Rule 111, the reason for failure to take the Hair Test (e.g., insufficient head/body hair, failure to keep appointment, etc...).
16. All records indicating or reflecting whether any BPD employee who is required by Rule 111 to take the Hair Test has been allowed to remain employed at BPD despite a failure to take the Hair Test during the time and in the manner required by Rule 111, and whether that employee was demoted or sanctioned in any fashion.

17. All records indicating or reflecting the race and gender of any BPD employee required by Rule 111 to take the Hair Test who has been allowed to remain employed at BPD despite a failure to take the Hair Test during the time and in the manner required by Rule 111.
18. All records indicating or reflecting that any BPD employee required by Rule 111 to take the annual Hair Test has been granted a waiver of any part of that requirement and the grounds for that waiver.
19. All records indicating or reflecting the race and gender of any BPD employee required by Rule 111 to take the annual Hair Test who has been granted a waiver of any part of that requirement.
20. All records indicating or reflecting the amount of money paid, or expenses incurred, by the City to external sources for legal expenses related to defending against cases challenging the Hair Test required by Rule 111, including but not limited to *Jones v. City of Boston*, Case No.: 1:05-cv-11832; *In re Boston Police Department Drug Testing Appeals ("D" Cases)*, Civil Service Commission Case No. D-01-1409 *et al.*; and *Smith v. City of Boston*, C.A. No.: 12-10291-WGY.

As this request involves a matter of public concern, we ask that all fees associated with this request be waived pursuant to 950 C.M.R. 32.06(5). The purpose of this request is to gain information about the diversity of BPD personnel and the equity measures taken to ensure fairness for said diverse personnel. The information will not be used for any commercial purpose. If the waiver is denied and you expect the fee to exceed \$10.00, please provide a detailed fee estimate.

The Public Records Law requires that you comply with this request within 10 days following receipt. If your response to any portion of the request is that any record or portion of it is not public, please set forth in writing the specific reasons for such denial, including which specific exemption you believe applies.

To the extent that you have provided us with responsive records in connection with our prior public record requests, those records need not be produced again. I can be reached at the contact information below with any questions or concerns regarding this request. Thank you for your time and prompt attention to this request.

Sincerely,



Sophia L. Hall, Esq.

Supervising Attorney

(P): (617) 984-0274

(E): [Shall@lawyersforcivilrights.org](mailto:Shall@lawyersforcivilrights.org)

cc: Commissioner William Gross

## EXHIBIT 2



Sophia Hall <shall@lawyersforcivilrights.org>

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## 19-01-04 Request for Public Records

7 messages

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**Shawn Williams** <shawn.williams@boston.gov>

Tue, Jan 15, 2019 at 3:26 PM

To: shall@lawyersforcivilrights.org

Cc: Martha DeMaio <martha.demaio@pd.boston.gov>, David Fredette <david.fredette@pd.boston.gov>, Laura Oggeri <laura.oggeri@boston.gov>

Good Afternoon Sophia:

The City of Boston has received your request for records from the Boston Police Department. We will review your request to determine if responsive public records exist and will provide a response once that review is complete.

Yours truly,



**Shawn A. Williams, Esq.**

Director of Public Records

Records Access Officer

City of Boston

1 City Hall Plaza, Room 615

Boston, MA 02201

[www.boston.gov/departments/public-records](http://www.boston.gov/departments/public-records)

[publicrecords@boston.gov](mailto:publicrecords@boston.gov)

(617) 635-4037

## EXHIBIT 3



June 12, 2019

Martha DeMaio  
Director of Public Information  
One Schroeder Plaza  
Boston, MA 02120

**RE: Public Record Request Follow-Up**

Dear Director DeMaio:

158 days has passed since the Lawyers for Civil Rights (LCR) submitted a public records request pursuant to the Public Records Act, G.L. c.66, §10, for public records in the custody of the Boston Police Department (BPD) reflecting diversity of BPD personnel and the equity measures taken to ensure fairness for said diverse personnel. To date, the City of Boston has failed to produce *any* responsive documents.

On January 4, 2019, LCR submitted the public records request at issue to your attention. On January 15, 2019, Shawn Williams, the Director of Public Records for the City of Boston, confirmed receipt of that request. The City did not communicate with LCR again for 38 days, and then only after I sent a follow-up letter demanding production and compliance with the law.

On February 4, 2019, after receiving no responsive documents or subsequent communications, I sent a follow-up email to the City asking when I should expect to receive production and noting that a rolling production would be acceptable. Another two and a half weeks passed, and I sent a follow-up letter demanding production and compliance with the law. At that point, Mr. Williams replied, "IF there are responsive records I ask that you permit me the opportunity to work with BPD to provide them to you promptly...I will aggressively pursue the matter directly with BPD."

17 days later, on March 11, 2019, Mr. Williams provided an update by email noting that he had "reached out to several departments within BPD in an effort to search for records...." He did not produce any records or communicate a deadline by which I would receive any records. Three days later, Mr. Williams also communicated by email that he finally "met with BPD to discuss my request...and that it is taking longer than expected to review my request." He noted that you were out of the office that week, but he assured me that "in the event that [he] received any portions of the responsive records in [your absence], he will provide them."

Another 15 days passed, and I did not receive any responsive documents or updates from the City. In response to my inquiry about the status of LCR's request, Mr. Williams replied by email and noted that "We have made great progress in searching for records." He specifically noted that "I think we have complete responses for five of the requests, and portions for several others."

34 additional days passed, and the City failed to produce any records. On May 2, 2019, I followed up with Mr. Williams again by phone and email inquiring about the status of my request and the production. Mr. Williams responded that day and noted that "...our response is near the end." I immediately asked Mr. Williams to produce the responsive documents that he already had in his possession and provide an estimated production date for the remainder. He did not produce any records. On May 9, 2019, I again emailed Mr. Williams about the request, and was told "I will check in with BPD to confirm the portions we have completed and if that works I'll provide those portions to you asap." He again did not produce any records.

My last inquiry regarding the status of LCR's request was sent by email to Mr. Williams on May 24. I have not received a response. The statutory timeframe for a response has now lapsed 15 times over, and to date, I have not received any records.

As you are aware, the Public Records Act requires that you comply within ten (10) business days following receipt. I have been more than accommodating, and I am no longer willing to accommodate any additional delays. Please produce the records responsive to my January 4, 2019, request within one week. If I do not receive those documents electronically by close of business on June 19, 2019, or receive email notification by that date informing me that you have sent those records by mail, then I will proceed to file a lawsuit to compel production, seek injunctive and declaratory relief requiring the City to comply with the law going forward, and attorney's fees and costs.

If you have any questions about the request, its scope or contents, please contact me directly at (617) 984-0274. Thank you for your time and prompt attention to this request.

Sincerely,



Sophia L. Hall, Esq.

Supervising Attorney

(P): (617) 984-0274

(E): [Shall@lawyersforcivilrights.org](mailto:Shall@lawyersforcivilrights.org)

cc: Commissioner William Gross (email only)  
Mr. Shawn Williams (email only)