

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

CENTER FOR LAW AND EDUCATION, INC.,  
LAWYERS FOR CIVIL RIGHTS and  
MULTICULTURAL EDUCATION, TRAINING,  
AND ADVOCACY, INC.,

Plaintiffs,

v.

CITY OF BOSTON, BOSTON POLICE  
DEPARTMENT, MARTHA DEMAIIO, in her  
capacity as Director of Public Information of the  
Boston Police Department, and WILLIAM G.  
GROSS, in his capacity as Commissioner of the  
Boston Police Department,

Defendants.

CIVIL ACTION  
NO.

**COMPLAINT**

1. This is an action for injunctive and declaratory relief pursuant to the Massachusetts Public Records Law, G.L. c. 66, §§ 10 and 10A, and the Massachusetts Declaratory Judgment Act, G.L. c. 231A, § 1. Plaintiffs, Center for Law and Education, Inc. (“CLE”), Lawyers for Civil Rights (“LCR”) and Multicultural Education, Training, and Advocacy, Inc. (“META”), collectively, the “Plaintiffs,” seek an order requiring the City Of Boston, Boston Police Department (“BPD”), Martha DeMaio, in her capacity as Director of Public Information of Boston Police Department, and William Gross, in his capacity as Commissioner of the Boston Police Department, collectively, the “Defendants,” to produce: (1) all BPS documents received from and/or generated by BPS and sent to, transmitted to, or otherwise made available or accessible to the Boston Regional Intelligence Center (“BRIC”) between September 1, 2014 and the present; (2) all BPS documents received from and/or generated by BPS that BPD sent to, transmitted to, or otherwise made available or accessible to BRIC and/or Immigration and Customs Enforcement (“ICE”) and/or any of their employees or

agents between September 1, 2014 and the present; (3) all BPS documents generated by BPD that BPD sent to, transmitted to, or otherwise made available or accessible to BRIC and/or ICE and/or any of their employees or agents between September 1, 2014 and the present; (4) all documents indicating, reflecting or referencing any policies, processes, practices, guidance, directives, memoranda and/or recommendations regarding BPS generating, sending and/or transmitting BPS documents to any divisions, employees and/or agents of BRIC and/or ICE between September 1, 2014 and the present; (5) all documents indicating, reflecting or referencing any policies, processes, practices, guidance, directives, memoranda and/or recommendations regarding BPD generating, sending and/or transmitting BPS documents to any divisions, employees and/or agents of BRIC and/or ICE between September 1, 2014 and the present; and (6) all documents indicating, reflecting or referencing any policies, processes, practices, guidance, directives, memoranda and/or recommendations regarding access to BPS documents by any divisions, employees and/or agents of BPD, BRIC and/or ICE.

2. The issue of public schools' cooperation with law enforcement – already of intense public importance – has taken on heightened urgency for immigrant families since 2017. As federal deportation efforts have intensified, the question of how and under what circumstances police departments are providing information relating to public school students to the U.S. Department of Homeland Security Immigration and Customs Enforcement has become even more crucial. The threats to students and their families are real: the Plaintiffs' initially sought public records from BPS relating to information sharing with BRIC upon learning of an incident where BPS shared information that led to a BPS student being taken into ICE custody and was subsequently deported. As a result of that incident, Plaintiffs sought to obtain public records relating to BPS' sharing of student information in December of 2017 and was forced to instigate litigation to obtain the records sought (the "Initial Public Records Suit")<sup>1</sup>.

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<sup>1</sup> See Case No. 1884-CV-01938, *Center for Law and Education, Inc., et al. v. City of Boston, et al.*, Suffolk Superior Court.

3. The records obtained through the Initial Public Records Suit evidenced that BPS' sharing of student information was not an isolated incident as public officials had initially insisted and that BPD was integral in the sharing of this information. As a result, the Plaintiffs submitted a request for public records on February 11, 2020, to which they have not received any substantive response. The public has a right to know the extent to which BPD is sharing information on schoolchildren via the BRIC, particularly in this new era of heightened public scrutiny of the Nation's police and a call for accountability to the public which they serve.

### **PARTIES**

4. Plaintiff, Center for Law and Education, Inc. is a nonprofit corporation dedicated to the pursuit of high-quality education for all children, in particular, children and youth from low-income families. Its principal place of business is Boston, Suffolk County, Massachusetts.

5. Plaintiff, Lawyers for Civil Rights, is a nonprofit corporation that fosters equal opportunity and fights discrimination on behalf of people of color and immigrants. Its principal place of business is Boston, Suffolk County, Massachusetts.

6. Plaintiff, Multicultural Education, Training, and Advocacy, Inc. ("META"), is a nonprofit corporation that advocates for equal educational opportunity for low-income, immigrant and language minority children, including, specifically, such children in the Boston Public Schools. Its principal place of business is Somerville, Middlesex County, Massachusetts.

7. Defendant City of Boston (the "City") is a municipal corporation organized under the laws of the Commonwealth.

8. Defendant Boston Police Department is an agency of the City of Boston with a principal place of business at 1 Schroeder Plaza, Boston, MA 02120.

9. Defendant Martha DeMaio is the Director of Public Information of the Boston Police Department with a principal place of business at 1 Schroeder Plaza, Boston, MA 02120.

10. Defendant William G. Gross is the Commissioner of the Boston Police Department with a principal place of business at 1 Schroeder Plaza, Boston, MA 02120.

## **JURISDICTION AND VENUE**

11. This Court has jurisdiction pursuant to G.L. c. 66, § 10A(d)(1)(i) and c. 231A, § 1.

12. Venue is proper because G.L. c. 66, § 10A(c) requires that any action filed by a requestor of public documents must be filed in the superior court in the county in which the noncompliant municipality is located.

## **FACTS**

13. On February 11, 2020, CLE, LCR, and META (collectively “the Students’ Rights Groups”) sent a letter to Martha DeMaio, Director of Public Information of BPD, wherein the Students’ Rights Groups sought the production of public records evidencing sharing of information between BPS and BRIC, BPD and/or ICE (the “February 11th Request”). A true copy of the February 11th Request is attached hereto as **Exhibit 1**.

14. Pursuant to G.L. c. 66, § 10, Defendants had until February 26, 2020 to respond to the February 11th Request.

15. On February 12, 2020, Defendants confirmed receipt of the February 11th Request but did not provide a substantive response.

16. By correspondence dated April 24, 2020, the Students’ Rights Groups reminded Ms. DeMaio that a substantive response to the February 11th Request was overdue and that the information sought in the February 3rd Request was critical in light of an upcoming Boston School Committee meeting. The April 24, 2020 correspondence is attached hereto as **Exhibit 2**.

17. On April 30, 2020, Shawn A. Williams, Director of Public Records, Records Access Officer for the City of Boston, advised the Students’ Rights Groups that he was “reviewing all of the outstanding requests for records to City departments in the hopes of getting as many resolved as possible” and that “while the City is open virtually all of the attorneys are working remotely at this time.” The Students’ Rights Groups advised Mr. Williams that the response to the February 11th Request was long overdue and that the deadline to respond had expired prior to the issuance of any applicable emergency orders relating to COVID-19.

18. To date, the Students' Rights Groups' have not received a response to their February 3rd Request that is compliant with the Massachusetts Public Records Law, G.L. c. 66, §§ 10 and 10A.

19. Upon information and belief, BPD continues to disclose student information to BRIC and, as a result, the student information is being used by ICE to investigate violations of federal immigration laws.

20. It is critical that the Students' Rights Groups receive the public records requested in a timely fashion as funding of BRIC and the BPS policy relating to the sharing of student information are both under review. Absent this information, the Students' Rights Groups and the public at large lack the ability to participate in the discussion of these issues in any meaningful way.

#### **The Massachusetts Public Records Law**

21. "Public records" are defined by G.L. c. 4, § 7 cl. 26, as, in pertinent part:

[A]ll books, papers . . . or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the Commonwealth, or of any political subdivision thereof . . .

G.L. c. 4, § 7 cl. 26.

22. The requested records were "made or received" by an employee of a "department . . . of [a] political subdivision" of the Commonwealth and therefore are public records.

23. General Laws c. 66, § 10(a), provides that "[a] records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request . . . ."

24. General Laws c. 66, § 10A(d)(1)(iv) provides that in any proceeding such as this one to compel compliance with the Public Records Law, "a presumption shall exist that the record sought is public and the burden shall be on the defendant agency or municipality to prove,

by a preponderance of the evidence, that such record or portion of the record may be withheld in accordance with state or federal law.”

25. Further, “the superior court shall determine the propriety of any agency or municipal action de novo and may inspect the contents of any defendant agency or municipality record in camera ... .” G.L. c. 66, § 10A(d)(1)(ii).

**Defendants Have Not Met Their Burden in Responding to the Students’ Rights Groups’ February 3rd Request**

26. Defendants have failed to timely provide any substantive response to the Students’ Rights Groups’ February 11th Request in violation of the Public Records Law.

27. Defendants have failed to timely advise the Students’ Rights Groups that it does not intend to permit inspection or furnish a copy of the records requested and the reason for withholding such records or that it is not in possession of the records sought, to the extent either is applicable, nor have the Defendants sought an extension of the timeframe to respond, all in violation of the Public Records Law.

**COUNT I**  
**Injunctive Relief**

28. The Plaintiffs repeat the allegations of ¶¶ 1-27 above.

29. G.L. c. 66, § 10A(d)(1)(i) provides in relevant part that “the superior court shall have jurisdiction to enjoin agency or municipal action”

30. The Defendants have refused to produce documents that are public records pursuant to G.L. c. 66, § 10 and G.L. c. 4, § 7 cl. 26.

31. The Plaintiffs are entitled to injunctive relief ordering Defendants to provide documents responsive to the February 11th Request.

**COUNT II**  
**Declaratory Judgment Under The Public Records Law**

32. The Plaintiffs repeat the allegations of ¶¶ 1-31 above.

33. There exists an actual controversy between the Plaintiffs and the Defendants concerning whether documents responsive to the February 11th Request are public records under G.L. c. 66, § 10 and G.L. c. 4, § 7 cl. 26 to which Plaintiffs are entitled.

34. The Plaintiffs are entitled to a declaration of the rights of the parties pursuant to G.L. c. 231A, § 1, determining that documents responsive to the February 11th Request are public records pursuant to G.L. c. 66, § 10 and G.L. c. 4, § 7 cl. 26.

WHEREFORE, Plaintiffs respectfully pray that the court:

1. Enter a permanent injunction granting the relief sought in Count I above;
2. Enter a declaratory judgment pursuant to Count II of this Complaint declaring that the records responsive to the February 11th Request are public records pursuant to G.L. c. 66, § 10 and G.L. c. 4, § 7 cl. 26;
3. Order costs and attorneys' fees pursuant to G.L. c. 66, § 10(A)(d); and,
4. Enter such other relief as the Court deems just and proper.

Respectfully submitted,

CENTER FOR LAW AND EDUCATION,  
LAWYERS' FOR CIVIL RIGHTS,  
MULTICULTURAL EDUCATION, TRAINING,  
AND ADVOCACY, INC.,

By their attorneys,

*/s/ Wayne E. George*

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Jonathan M. Albano, BBO #013850

Wayne E. George, BBO #656286

MORGAN LEWIS & BOCKIUS, LLP

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*/s/ Oren Sellstrom*

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Oren Sellstrom, BBO #569045  
Janelle H. Dempsey, BBO # 699379  
LAWYERS FOR CIVIL RIGHTS  
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[jdempsey@lawyersforcivilrights.org](mailto:jdempsey@lawyersforcivilrights.org)

*/s/ Roger L. Rice*

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Roger L. Rice, BBO #418340  
MULTICULTURAL EDUCATION, TRAINING,  
AND ADVOCACY (META), INC.  
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Email: [rlr24@comcast.net](mailto:rlr24@comcast.net)

*/s/ Alan Jay Rom*

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Alan Jay Rom, BBO #425960  
MULTICULTURAL EDUCATION,  
TRAINING, AND ADVOCACY (META), INC.  
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*/s/ Kathleen B. Boundy*

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Kathleen B. Boundy, BBO #050960  
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Dated: July 23, 2020

DB1/ 115024882.1



# EXHIBIT 1



**LAWYERS FOR  
CIVIL RIGHTS  
BOSTON**



February 11, 2020

*Via First Class and electronic mail (martha.demaio@pd.boston.gov;  
PublicRecordRequest@pd.boston.gov)*

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

**RE: Public Records Request**

Dear Ms. DeMaio:

This request is submitted pursuant to the Public Records Act, G.L. c. 66, § 10 (“Public Records Act”), for public records in the custody of Boston Police Department (“BPD”) and any division or entity thereof, including but not limited to the Boston Regional Intelligence Center (“BRIC”).

As used in this request, “public records” is defined as in the Public Records Act. “BPS” refers to the Boston Public Schools and includes any division, employee or agent thereof, including Boston School Police. “BPD” refers to the Boston Police Department and includes any division, entity, employee, or agent thereof, including the BRIC. The term “BPS Documents” refers to incident reports, intelligence reports, intelligence bulletins, gang intelligence bulletins, BPD 1.1 reports, Boston School Police (“BSP”) – SSR1s, BSP Intelligence Reports/Form 26s, Department of Safety Incident Reports, Field Interrogation and Observation Reports, Face Sheets, and BPD incident reports containing, referencing, reflecting, and/or indicating information concerning BPS students.

We hereby request the following public records:

1. For the time period September 1, 2014 to the date of this request, all BPS Documents received from and/or generated by BPS and sent to, transmitted to, or otherwise made available or accessible to BRIC.
2. For the time period September 1, 2014 to the date of this request, all BPS Documents received from and/or generated by BPS that BPD sent to, transmitted to, or otherwise made

available or accessible to BRIC and/or Immigration and Customs Enforcement (“ICE”) and/or any of their employees or agents.

3. For the time period September 1, 2014 to the date of this request, all BPS Documents generated by BPD that BPD sent to, transmitted to, or otherwise made available or accessible to BRIC and/or ICE and/or any of their employees or agents.
4. For the time period September 1, 2014 to the date of this request, all documents indicating, reflecting, or referencing any policies, processes, practices, guidance, directives, memoranda, and/or recommendations regarding BPS generating, sending, and/or transmitting BPS Documents to any divisions, employees, and/or agents of BPD, BRIC and/or ICE.
5. For the time period September 1, 2014 to the date of this request, all documents indicating, reflecting, or referencing any policies, processes, practices, guidance, directives, memoranda, and/or recommendations regarding BPD generating, sending, and/or transmitting BPS Documents to any divisions, employees, and/or agents of BRIC and/or ICE.
6. For the time period September 1, 2014 to the date of this request, all documents indicating, reflecting, or referencing any policies, processes, practices, guidance, directives, memoranda, and/or recommendations regarding access to BPS Documents by any divisions, employees, and/or agents of BPD, BRIC, and/or ICE.

We understand that BPD may redact personally identifiable information from documents, such as student names, parent names, home addresses, and birthdates. To the extent this is necessary to avoid disclosing individual students’ identities, we have no objection to that—and indeed support it. However, we request that any redactions of personally identifiable information not extend any further than necessary, and in particular, that demographic information such as race, national origin, citizenship, language status, gender, and age (to the extent noted on documents) not be redacted.

The Public Records Law requires that you comply with this request within ten (10) business 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.

The purpose of this request is to gain information about how BPD handles Boston Public Schools (“BPS”) student information. The information will not be used for any commercial purpose.

Martha DeMaio  
Boston Police Department  
February 11, 2020  
Page 3 of 3

Should you have any questions regarding this request, please do not hesitate to contact Janelle Dempsey at 617-984-5246 or [jdempsey@lawyersforcivilrights.org](mailto:jdempsey@lawyersforcivilrights.org). Thank you for your time and prompt attention this matter.

Sincerely,



Janelle H. Dempsey  
Lawyers for Civil Rights

Roger L. Rice  
Alan Jay Rom  
Multicultural Education, Training and Advocacy, Inc. (META)

Kathleen B. Boundy  
Center for Law and Education

# EXHIBIT 2



**LAWYERS FOR  
CIVIL RIGHTS  
BOSTON**



April 24, 2020

*Via Public Records Center (Boston PD) and Email (martha.demaio@pd.boston.gov;  
shawn.williams@boston.gov, publicrecords@boston.gov)*

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

Shawn A. Williams  
Director of Public Records  
Records Access Officer  
City of Boston  
1 City Hall Plaza, Room 615  
Boston, MA 02201

**RE: Public Records Request B000255-021220 (Dated February 11, 2020)**

Dear Ms. DeMaio and Mr. Williams:

Pursuant to the Public Records Act, G.L. c. 66, § 10 (“Public Records Law”), Lawyers for Civil Rights (“LCR”), Multicultural Education, Training and Advocacy, Inc (“META”), and Center for Law and Education (“CLE”) submitted a public records request to Boston Police Department (“BPD”) on February 11, 2020 (“Request”). The Request sought public records in the custody of BPD—and any division or entity thereof, including but not limited to the Boston Regional Intelligence Center (“BRIC”)—concerning information about students of Boston Public Schools.

On February 12, 2020, you confirmed receipt of the Request. To date, however, BPD has failed to provide a substantive response, and the statutory timeframe for same has now lapsed several times over. As you are aware, the Public Records Law requires that you comply with the Request within ten (10) days following receipt. LCR, META, and CLE have been more than accommodating, and we are no longer willing to accept any additional delays.

Although we recognize that there has been a state of emergency in place since March 10, 2020 in response to the global COVID-19 pandemic, BPD’s delay is nevertheless extremely lengthy. Indeed, had you compiled the requested records within the statutory time period, it would have been resolved well before any State and/or City shutdowns.

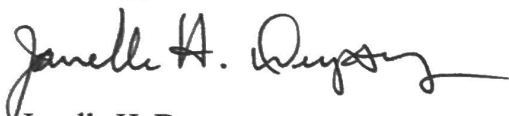
Martha DeMaio, Boston Police Department  
Shawn A. Williams, City of Boston  
April 24, 2020  
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Moreover, there are action items on the Boston School Committee's agenda that the requested information directly bears upon and would inform. The information sought through the Request is therefore critical, and it is necessary in order for the community to advocate for students.

With haste, we expect production of the records, or we feel that we will have no other option but to pursue legal action to compel compliance with the Public Records Law.

Should you have any questions about the scope of this Request, please contact Janelle Dempsey at 617-984-5246 or via email at [jdempsey@lawyersforcivilrights.org](mailto:jdempsey@lawyersforcivilrights.org), so that we may resolve any outstanding issues quickly. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Janelle H. Dempsey". The signature is fluid and cursive, with a long horizontal stroke at the end.

Janelle H. Dempsey  
Oren Sellstrom  
Lawyers for Civil Rights

Roger L. Rice  
Alan Jay Rom  
Multicultural Education, Training and Advocacy, Inc. (META)

Kathleen B. Boundy  
Center for Law and Education