

Via Email to pre@sec.state.ma.us

May 28, 2021

Supervisor of Public Records
Division of Public Records
Office of the Secretary of the Commonwealth
One Ashburton Place, Room 1719
Boston, Massachusetts 02108

To Whom It May Concern:

I write to appeal the non-production, and/or compel production, of certain public records requested in writing from the Massachusetts Department of Correction (the “DOC”) on March 9, 2021 (received by the DOC on March 11, 2021 (the “March 11 PRR”).¹ A true and correct copy of the March 11 PRR is attached hereto as **Exhibit A**.

The DOC’s Director of Communications, Kate Silvia, responded to the March 11 PRR on March 24, 2021, stating “we have estimated that a charge of \$900.00 is necessary to process this production”. *See 3/24/21 Email and Letter from Kate Silvia* (attached hereto as **Exhibit B**) at 7. I responded to Ms. Silvia the next day, March 25, challenging the \$900 charge as excessive and pointing out Ms. Sylvia’s failure to address the arguments in the March 11 PRR in favor of waiving any fees incurred. *See Communications re: March 11 PRR* (attached hereto as **Exhibit C**) at 1. However, in that same email and “in an effort to expedite [the March 11 PRR]”, I added that I would promptly mail a check to the DOC for the requested \$900 amount (and in fact did so later that day, March 25). *Ibid.* I followed up by email on April 2 (enclosing copies of the \$900 check, the accompanying cover letter, and the mailing envelope), asking Ms. Silvia to confirm receipt of my payment. *See Exhibit C* at 2-5.

Ms. Silvia responded that same day, April 2, saying “yes, your check was received, and we are in the process of redacting the requested records”. *See Exhibit C* at 6. Moreover, according to my bank records, my \$900 check to the DOC was cashed on April 7, 2021. *See 4/7/21 Cashed Check Copy* (attached as **Exhibit D**).

Since April 2, I have heard nothing further concerning the March 11 PRR. Neither Ms. Silvia nor anyone else from the DOC has responded to my four subsequent emails asking as to the status of the DOC’s anticipated response. *See Exhibit C* at 7-10 (emails to Ms. Silvia dated April 3, April 14, April 30, and May 17).

State law governing public records requires an initial response from the recipient state agency within ten (10) business days. The DOC complied with this requirement in the form of Ms. Silvia’s March 24 email and letter. *See Exhibit B.* Depending on the circumstances, additional time for a response is allowed, but in no event is such extension to exceed a total of fifteen (15) business days “following the initial receipt of the request for public records”. *See M.G.L. c. 66, §10(b)(vi).* Accordingly, the deadline for the DOC to produce the requested public records (or otherwise substantively respond to the March 11 PRR) was April

¹ The March 11 PRR was submitted via the online platform Muckrock.com, which is “a non-profit, collaborative news site that brings together journalists, researchers, activists, and regular citizens to request, analyze, and share government documents, making politics more transparent and democracies more informed”. *See https://www.muckrock.com/about/* (accessed May 28, 2021). Muckrock.com “provides a repository of hundreds of thousands of pages of original government materials, information on how to file requests, and tools to make the requesting process easier. In addition, MuckRock staff and outside contributors are using these primary source documents received through the site to create original investigative reporting and analysis”. *Ibid.*

2, 2021, which means the DOC's response is currently overdue by 41 business days.² And in total, 56 business days have transpired since the DOC received the March 11 PRR.

In its responses to the March 11 PRR, the DOC did not seek additional time to respond, nor did it ask for clarification, narrowing, or revising of any part of the March 11 PRR. Moreover, the DOC has not (i) claimed that any document or category of documents responsive to the March 11 PRR is beyond its possession, custody, or control; (ii) lodged any objections concerning the scope, content, or burdensomeness of any part of the March 11 PRR; or (iii) asserted that all or any part of the March 11 PRR is exempt from production under applicable state law (*see* M.G.L. c. 4, §7(26)).³ As such, DOC has waived its right to assert any basis for withholding (or further delaying the production of) any part of its response to the March 11 PRR.

In direct contravention of the state's public records laws and regulations, DOC has effectively ignored the March 11 PRR, which failure is made even more egregious by the fact that it demanded (and was paid) \$900 to respond said request. I am therefore asking the Supervisor of Public Records to issue an order to the DOC, requiring it to (i) comply with all requirements of the governing public records laws and regulations as they concern the March 11 PRR; and (ii) produce all documents and other information responsive to the March 11 PRR within no more than ten (10) calendar days of the date of such proposed order.

Should you have any questions concerning the March 11 PRR. or concerning any of the above-stated facts and circumstances, please do not hesitate to contact me at your earliest convenience.

Sincerely,

M. Claire Masinton

M. Claire Masinton
Newton, MA 02458
mcm4801@outlook.com

² To ascertain response deadlines for public records requests, "the computation of time shall begin with the first business day following the date of receipt of any request, regardless of physical form". 950 CMR 32.03(3). As such, Friday, March 12, 2021, is "day one" with respect to the March 11 PRR.

³ Indeed, other than seeking the \$900 payment and acknowledging receipt of same on April 2, the DOC has failed to respond in any fashion concerning the March 11 PRR (whether to seek additional time to respond, clarification or narrowing of any of the requests, or for any other reason).