

Via Email to pre@sec.state.ma.us
Supervisor of Public Records
Division of Public Records
Office of the Secretary of the Commonwealth
One Ashburton Place, Room 1719
Boston, Massachusetts 02108

September 14, 2021

To Whom It May Concern:

I write to lodge a second appeal concerning certain public records I requested in writing from the Massachusetts Department of Correction (the “DOC”), which request was 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**.

In response to the March 11 PRR, on March 24, the DOC demanded payment of \$900 in order to “process this production”. Although I protested the amount, I nonetheless promptly paid this fee.² Thereafter, the DOC stopped responding to my inquiries, necessitating submission of an initial appeal to the Supervisor of Records (SPR) on May 28. *See* **SPR21-1364**. This initial appeal sought an order from the SPR directing the DOC to respond within ten days to the March 11 PRR. On June 15, Supervisor Rebecca Murray granted the requested relief, as follows:

I find [the DOC] has not met its burden in responding to the request in accordance with G. L. c. 66, § 10(b)(vi). Consequently, I find the [DOC] must provide an estimated date as to when it intends to complete the search and provide the outstanding records. See G. L. c. 66, § 10(a) (records must be provided without unreasonable delay). ... Accordingly, the [DOC] is ordered to provide Ms. Masinton with a response to the request, provided in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) business days.

A true and correct copy of Supervisor Murray’s decision is attached hereto as **Exhibit B**. In response to the SPR’s unequivocal order, on June 25, the DOC produced 325 pages of responsive documents in electronic format (the “Production”). In sum, the DOC essentially ignored the March 11 PRR until it had no choice but to respond, which was 64 business days after the statutory 10-day deadline of March 25. *See* G.L. c. 66, §10(a).

However, upon close review of the Production, I discovered numerous omissions and deficiencies, which are the subject of the present appeal. To attempt to resolve these issues without resort to a further appeal, on June 30, I emailed the DOC’s Director of Communications, Kate Silvia, as follows:

I am in receipt of the documents produced on June 25, 2021 in response to my March 11, 2021 Public Records Request to the MA Department of Correction (the "March 11 PRR") and pursuant

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 September 7, 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 The DOC confirmed receipt of my check for \$900 on April 2, while my bank showed the check as cashed on April 7.

to the MA Supervisor of Records' June 15, 2021 order granting my appeal and directing the DOC to produce responsive documents within 10 business days (see attached June 15 Letter from Supervisor of Records Rebecca S. Murray, Case No. SPR21/1364). However, the June 25th production appears to be incomplete, as the DOC failed to respond to several distinct requests contained in the March 11 PRR. Is it the case that the DOC intends to produce responsive documents on a rolling basis? If so, when can I expect a further production(s) from the DOC? Alternatively, is it the DOC's position that its production is now complete? Your June 25th cover letter was silent on the issue, neither asserting any exemptions from the MA Public Records Law nor noting any documents or categories of documents the DOC intended to withhold (or the alleged basis therefor). At the same time, several sections of the March 11 PRR appear to have been ignored. Before proceeding further with the Supervisor of Records or in Superior Court, I first want to confirm DOC's position (one way or the other) with respect to the documents it produced on June 25th.

See 6/30/21 Email from M. Claire Masinton to the MA Department of Correction (Central Office) (MA Department of Correction and MCI-Norfolk Policies and Practices Concerning Non-Legal Video Calls with Inmates Public Records Request at Muckrock.com, accessed 9/14/21 at <https://www.muckrock.com/foi/massachusetts-1/ma-department-of-correction-and-mci-norfolk-policies-and-practices-concerning-non-legal-video-calls-with-inmates-109538/#comm-1115248>).

As of today's date, I have heard no response from the DOC. Accordingly, I am prosecuting the present appeal and will address each of the various omissions and deficiencies in the Production below.

1. Failure to Respond to Numerous Requests

First, in its written response to the March 11 PRR, the DOC did not identify any documents it intended to withhold, nor did it specify any request for which it claimed to have no responsive documents. *See 6/25/21 Letter from Kate Silvia* (attached hereto as **Exhibit C**). Yet at best, the Production responded to no more than 4 of the 15 requests (or 27%) contained in the March 11 PRR.

Specifically, the DOC neither produced responsive documents, nor claimed to not have any, with respect to Requests 1 through 7 and 12 through 15. It appears the DOC simply ignored those requests it did not wish to answer. And, having remained silent for more than six months concerning these unanswered requests, the DOC has waived its right to now claim any exemption as a basis for withholding. As for any requests for which the DOC in fact has no responsive documents, it must affirmatively state as much in writing.³

In essentially denying 11 of the 15 Requests, the DOC provided no details concerning any of the records requested, did not explain how it had searched for records or what records it located, and did not specify which records were subject to which exemptions or why. Similarly, concerning these 11 requests, the DOC does not link any record to any particular exemption, nor does it explain why any exemption would support the withholding of any particular record. By failing to provide such details, the DOC has failed to meet its burden to justify its extraordinary withholding.

³ It must also be noted that concerning some of these requests, for the DOC to claim it has no responsive documents would strain credulity. As just one example, Request 2 seeks documentation of all contracts or other agreements between the DOC and any third party, including Securus Technologies, Inc. ("Securus"), concerning the provision of audio and/or video calls at MCI-Norfolk. It is public knowledge that Securus provides telephone and video call services at MCI-Norfolk and other DOC facilities – which means the DOC and Securus have some form of written agreement governing this arrangement.

The Public Records law is meant to provide the public transparency in the activities of government agencies. There is no question that understanding the way the DOC promulgates, implements, and applies rules affecting the lives of the prisoners in its care – and which rules can lead to the loss of visitation privileges, among other things – is in the public interest. And absent transparency, the DOC will be free to continue making whatever rules it pleases, willy-nilly and after the fact, without providing the underlying documentation that would permit true understanding and accountability. The DOC lacks any basis for withholding the requested information and should be ordered to promptly produce all responsive documents or, if applicable, affirmatively state that it has no responsive information.⁴

The DOC, as the party appearing to claim exemptions to producing documents under the Public Records law, carries the burden of showing that the records sought are exempt from production. *See* G.L. ch. 66, §10A(d)(1)(iv). It has failed to meet that burden and must produce the records requested.

2. Unexplained and Unwarranted Redactions

The DOC also redacted various portions of the Production pursuant to certain exemptions to the Public Records Law (G.L. c. 66, §10). First, it redacted prisoner names, claiming that such information is “by necessary implication exempted from disclosure by statute” (G.L. c. 4, §7(26)(a)) – namely, by state law governing the dissemination of criminal offender record information (CORI). *See* **Exh. C** at 1-2. For the same stated reason, the DOC also redacted the subject video (visit) recordings themselves. *Id.* at 3. Finally, the DOC noted “these documents also contain personal data which has been redacted”, which personal data includes the names of, and other personally identifying information concerning, video visitors to MCI-Norfolk. *Id.* at 2-3.

However, without explanation, the DOC appears to have improperly redacted other parts of the Production as well. One example can be found at pages 179 through 181 of the Production, attached hereto as **Exhibit D**.⁵ On page 179, we see a February 11, 2021, email from Michelle Cicchetti, MCI-Norfolk’s Deputy Superintendent of Operations, to Kurt Demoura, MCI-Norfolk’s Director of Security, concerning a potential visitor whose approval request “we just denied because she was a former [DOC] employee.. now she is all upset and calling/writing all over.. lol.” On the following page, 180, halfway down the page we see the exact same email, further down an email chain, but with “because she was a former employee” and “lol” redacted. Clearly, the redactions on page 180 were improper and reflect an attempt on the DOC’s part to hide the fact that they were mocking a potential visitor. These redactions have no legal basis and instead were part of a conscious cover-up by the DOC.

In addition, the DOC appears to have (i) improperly and without legal grounds redacted the (apparent) names and email addresses of Securus employees who were in contact with the DOC concerning the rollout of video visits at MCI-Norfolk, which information plainly comprises a public

⁴ In some instances, the absence of responsive documents is itself a key fact. For example, if the DOC failed to inform video visitors or prisoners of any rules governing video calls (which calls were introduced in January in response to the pandemic), then the imposition of sanctions for violations of same is, at best, indefensible and, at worst, a violation of DOC regulations. As such, DOC must affirmatively state whether it has no responsive documents. *See, e.g., Exh. A* at 1-2 (Requests 5-7).

⁵ References to specific pages from the Production discussed in this letter (with improper redactions and/or excluded attachments, contained in **Exh. D** through **Exh. G**) are not meant to be exhaustive. Other examples appear in the Production, all of which should be corrected and properly produced by the DOC.

record (*see* Production pages 190, 193, 204-07, attached hereto as **Exhibit E**);⁶ and (ii) purposely not redacted my name, address, phone number, driver’s license number, photo, and other personally identifying information in a transparent attempt to “dox” me, for having had the audacity to make a public records request in the first place (*see* Production pages 85-86, representing the improper disclosure of my personal information, as compared to pages 261-62, which are examples of proper redactions of my personal information) (attached hereto as **Exhibit F**).⁷

The DOC should be directed to explain the basis for each and every redaction contained in the Production – and to redact or fully disclose those portions of the Production for which it has no legal grounds to either redact or not redact the subject information. As set forth by the Secretary of the Commonwealth:

If the agency or municipality does not intend to produce records ... the agency or municipality must provide a written response to the requestor within 10 business days of receiving the request. ... The written response may be provided in person or sent via first class or electronic mail, and must include the following, to the extent applicable:

(iv) identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based ...

See A Guide to the Massachusetts Public Records Law (updated March 2020) at 7 (accessed 9/13/21 at <https://www.sec.state.ma.us/pre/prereq/reqidx.htm>) (underline added).

3. Failure to Produce Referenced Attachments to Emails

Finally, several parts of the Production contain internal DOC emails, several of which reference “the attached” or attachments. However, none of the alluded-to attachments were produced. *See, e.g.*, Production pages 91-92, 110, 255, 293 (attached hereto as **Exhibit G**). The DOC provides no explanation or legal basis or authority for withholding these attachments.

The DOC should be directed to produce any referenced – but unproduced – attachments responsive to the March 11 PRR, including without limit the attachments referenced in the emails noted above.

⁶ To the extent the DOC is relying on the privacy exemption to withhold the names of Securix employees, such reliance is misplaced. The privacy exemption is not meant to protect names and addresses of public employees – or by extension, contracted public employees. *See Hastings & Sons Publ. Co.*, 374 Mass. at 817-818 (holding that municipal police officers’ names and addresses are not protected by exemption (c)); *Pottle v. Sch. Comm. of Braintree*, 395 Mass. 861, 866 (1985) (reversing the lower court and requiring that the names and addresses of employees be released, and noting that public employees, by virtue of their public employment, have diminished expectations of privacy). In addition, the materials sought are not likely to contain information about DOC or Securix staff of a highly personal nature, such as marital status, legitimacy of children, identity of fathers of children, medical condition, welfare payments, alcohol consumption, family fights, and reputation. *Georgiou v. Comm’r of the Dep’t of Indus. Accidents*, 67 Mass. App. Ct. 428, 433 (2006).

⁷ This is further supported by the fact that in certain parts of the Production, my personally identifying information – which clearly comprises “personal information”, as set forth by the DOC itself (*see* **Exh. C** at 2) – is in fact properly redacted. *See, e.g.*, **Exh. E** (pages 261-62 compared to pages 85-86 of the Production). Moreover, the DOC was well aware of my intent to publicly share any produced documents via the online platform Muckrock.com, which I discussed on pages 4-5 of the March 11 PRR. *See* **Exh. A** at 4-5.

4. Conclusion

It is difficult to view the DOC's conduct in response to the March 11 PRR as anything short of bad faith. The DOC is not well-positioned to obfuscate, delay, and harass in response to public records requests. As noted by prominent local journalist Mark Arsenault, in a recent *Boston Globe Spotlight Team* piece describing the brutal abuse of prisoners and illegal "shakedown" conducted by DOC officials at Souza-Baranowski Correctional Center (SBCC) on January 22, 2020:

Most of what happened next, after the operation began, is all but impossible to know, hidden behind the thick cloak of secrecy that routinely blocks scrutiny of prison life here — and almost all efforts at accountability in the state correction department. Were scores of prisoners brutalized during the shakedown, as they say? Were excesses tolerated, even encouraged by Souza authorities? Were official accounts of what happened sanitized or, as seems clear in some cases, baldly falsified?

There are few openings to try to break through to the truth, but there was one — in Cell 15. The Spotlight Team, after months of investigation, was able to compile an account of what happened there ...

What emerges is a chilling picture, bristling with hard questions about the proper limits of prison administration, about a wave of alleged assaults and abuses, about regulations unenforced, and about the rights of those confined to prison — questions seldom examined in a state where, despite its progressive profile, public access is handcuffed and secrecy rewarded.

See The Taking of Cell 15: A Look at Secrecy, Assaults, and Accountability Inside Massachusetts' Maximum Security Facility (Arsenault, M.; Rocheleau, M.; Wen, P.), Boston Globe, 8/14/21 (accessed 9/14/21 at https://apps.bostonglobe.com/metro/investigations/spotlight/2021/08/departement-of-corrections-investigation/?s_campaign=bostonglobe:mobileapp&pathAuthJWT=eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJ1c2V5SWQiOiI1MjA5NzA1IiwiaXN0aFRva2VuIjoiaZDZjNzZiZTEtMDczOS00OGVILTk1NWUtYjlmNjFmZW5kY2M4In0.tPdp8V4hKk0TkFoogw7iBT2CHnIgP4wMKAxMi271qYs&s_campaign=bostonglobe:mobileapp&theme=light) (underline added).

The DOC's response to the March 11 PRR is unacceptable, as it openly flouts numerous provisions of the Public Records Law (G.L. c. 66, §10) and its accompanying regulations (950 CMR 32.00 *et seq.*). After having delayed now 119 business days – in open defiance of a law that requires a response within 10 business days – the DOC should be ordered to do the following, within 10 business days:

- i. Produce all documents responsive to the March 11 PRR, including (a) documents responsive to requests 1-7 and 12-15; and (b) documents representing attachments to emails or other attachments responsive to the March 11 PRR.
- ii. Where applicable, affirmatively state that it has no responsive information, noting specifically the relevant request involved.
- iii. Un-redact all improperly redacted portions of the Production and redact all improperly disclosed portions and, with respect to all redacted portions, "identify any records, categories of records or portions of records that [the DOC] intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based".
- iv. Concerning any subsequently produced documents, only redact those portions for which the DOC has the legal grounds therefor and, with respect to all such redacted portions, "identify any records, categories of records or portions of records that [the DOC] intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based".

I am requesting that the SPR grant my appeal and direct the DOC as set forth above. 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