

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

February 3, 2022

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 failure of the Massachusetts Department of Correction (DOC) to provide a meaningful or timely response to my recent public records request, submitted in writing on November 16, 2021 (the “Nov. 16 PRR”).¹ The Nov. 16 PRR, a copy of which is attached as **Exhibit A**, comprises a public records request (“PRR”) pursuant to M.G.L. c. 66, § 10.²

On November 17, 2021, the DOC’s Director of Communications, Kate Silvia,³ acknowledged receipt of the Nov. 16 PRR by email. Her email, a copy of which is attached as **Exhibit B**, consisted of only three words: “Received. Thank you.”

Hearing nothing further from the DOC for more than two months, I contacted Ms. Silvia again by email on January 26, 2022. *See* **Exhibit C**. In this email, I pointed out that the DOC’s response was, at that time, overdue by 38 business days. *Ibid.* I also asked for an “update as to the DOC’s anticipated date for production of documents” or, if the DOC intended to deny my request, I asked that Ms. Silvia “please provide a detailed explanation of the legal basis for any [such] refusal to respond.” *Ibid.* Ms. Silvia responded that same day, saying merely, “I will follow up with the facility.” *Ibid.*

In addition, every two weeks since November 16, 2021, I’ve sent brief reminder emails to the DOC via the Muckrock.com website. As such, the DOC has received five additional email prompts concerning the Nov. 16 PRR (on December 1, December 16, December 31, January 17, and February 1). *See* **Exhibit D**. These emails ask when a response will be provided, adding “let me know if further clarification is needed.” No response from the DOC has been forthcoming.

The deadline for the DOC to produce responsive documents and/or provide a substantive written response to the Nov. 16 PRR was Wednesday, December 1, 2021. *See* 950 CMR 32.06(2)(b) (subject agency “shall provide a written response ... no later than the tenth business day” following receipt of a PRR). If the recipient agency intends to withhold all or part of the requested documents, it must provide specific, detailed information concerning such denial, in writing, as set forth in the governing statute and related regulations. *See* M.G.L. c. 66, §§ 10(b); 950 CMR 32.06(3)(c).

¹ For purposes of calculating deadlines, the formal receipt date was Wednesday, November 17, 2021, as this was “the first business day following the date of receipt.” *See* 950 CMR 32.03(3).

² The Nov. 16 PRR was submitted both by email and 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 February 2, 2022). 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.*

³ Ms. Silvia also serves as the DOC’s primary Records Access Officer (RAO). *See* 950 CMR 32.04; 32.05(1)

Ms. Silvia's brief emails failed to provide *any* of the requisite information. See Exhs. B, C. The DOC did not seek additional time to respond, nor did it ask for clarification, narrowing, or revising of any part of the Nov. 16 PRR. Moreover, the DOC has not (i) claimed that any document or category of documents responsive to the Nov. 16 PRR is beyond its possession, custody, or control; (ii) lodged any objections concerning the scope, content, or burdensomeness of any part of the Nov. 16 PRR; or (iii) asserted that all or any part of the Nov. 16 PRR is exempt from production under applicable state law. See M.G.L. c. 4, §7(26); 950 CMR 32.06(2)-(3).

Our public records law requires a meaningful response from the recipient state agency within ten business days following receipt of a PRR. See M.G.L. c. 66, §§ 10(b). Other than the two brief emails noted above, the DOC has simply ignored the Nov. 16 PRR, failing to comply with even the most basic aspects of its statutory obligations under our state public records law. The DOC has thus waived its right (i) to assert any basis for withholding (or further delaying the production of) the requested public records; or (ii) to assess any fees in connection with responding to the Nov. 16 PRR. See 950 CMR 32.07(2)(b) (if assessing fees, subject agency must first provide "a written, itemized, good faith estimate" of such fees within ten business days of receipt of any PRR).

I am therefore asking the Supervisor of Public Records to direct the DOC to (i) produce all documents and other information responsive to the Nov. 16 PRR; and (ii) in responding to the Nov. 16 PRR, otherwise fully comply with all provisions of the governing law, M.G.L. c. 66, § 10, and related regulations. Should you have any questions concerning the Nov. 16 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

Ms. Kate Silvia, Primary RAO
MA Department of Corrections
50 Maple Street
Milford, MA 01757
(508) 422-3436; kate.silvia@state.ma.us

November 16, 2021

Re: Second Public Records Request

Dear Ms. Silvia:

This letter is a public records request under M.G.L. c. 66, § 10 (the “PR Law”) concerning those public records¹ as described below within the possession, custody, or control of the Massachusetts Department of Corrections (DOC), defined to include without limit (i) all DOC officers, employees, agents, or representatives, as well as (ii) any third parties or independent contractors that do business with, or provide services to or on behalf of, DOC.

Please provide the following public records:

1. All public records concerning the creation, drafting, selection, application, distribution, and dissemination of any requirements, rules, regulations, restrictions, dress codes, or other constraints considered by MCI-Norfolk or other DOC personnel to be applicable to video calls² between non-legal video visitors and inmates at MCI-Norfolk.
2. All public records containing communications between MCI-Norfolk or other DOC personnel and all non-legal video visitors approved by MCI-Norfolk and/or Securus Technologies, Inc. (“Securus”) to place video calls with MCI-Norfolk inmates, including all such communications setting forth any requirements, rules, regulations, restrictions, dress codes, or other constraints considered by MCI-Norfolk or other DOC personnel to be applicable to such video calls.
3. All public records sufficient to show whether, when, by whom, and how non-legal video visitors with a scheduled video call involving an MCI-Norfolk inmate were provided with advance notification of any requirements, rules, regulations, restrictions, dress codes, or other constraints considered by MCI-Norfolk or other DOC personnel to be applicable to such video calls.
4. In cases of video calls between non-legal video visitors and MCI-Norfolk inmates in which a violation(s) is alleged to have been committed by the non-legal video visitor, all public records concerning or sufficient to show the following:
 - a. For each such video call, the requirement, rule, regulation, restriction, dress code requirement, or other constraint alleged to have been violated.

¹ The PR Law broadly defines “public records” to include “all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee” of any Massachusetts governmental entity.

² The terms “video call” and “video visit” are used interchangeably in this letter. Both terms refer to telephone calls that include a video feed between inmates and non-legal visitors.

- b. For each such video call, all communications with the subject non-legal video visitor, the subject inmate, and/or any third party concerning the alleged violation(s).
5. To the extent any non-legal video visitor is alleged to have committed a violation(s) during a video call with an MCI-Norfolk inmate and information concerning such alleged violation was disclosed by MCI-Norfolk or any other DOC personnel to any third party, public records sufficient to show:
 - a. All policies, processes, or procedures governing the release of such information to third parties, including when and in what circumstances such disclosures are permitted or required; when and in what circumstances such disclosures are limited or prohibited, if any; whether and to what extent the decision to disclose such information to third parties is subject to advance review by legal or other counsel; and whether and to what extent the MCI-Norfolk or DOC employee(s) or official(s) responsible for such disclosure may be subject to discipline, reprimand, or any other form of employee sanction for improperly or illegally disclosing such information to third parties.
 - b. The legal, statutory, or other basis for disclosing such information to third parties, with citation to all relevant statutes, regulations, DOC memoranda, or other enabling or authorizing documents you believe provide legal authority for, and/or mandate, such disclosures.
 - c. With respect to each such video call, the identity of the third party or parties to whom such disclosure was made, including without limit the relation of such third party or parties to the subject non-legal video visitor.
 - d. With respect to each such video call, (i) the purpose or goal of disclosing such information to such third party or parties and how such disclosures promote the DOC's mission/vision of "providing [inmate] care" and/or effecting "positive behavioral change" among inmates (*see MA DOC Program Description Booklet*, October 2020); (ii) how such disclosures facilitate inmate visits or "reflect the importance of maintaining [inmate] contact with family and the community" (*see* 103 CMR 483.01); and (iii) how such disclosures are consistent with the requirement that all DOC staff "shall treat visitors with dignity and respect" (*see* 103 CMR 483.01).
 - e. With respect to each such video call, the name and title of the MCI-Norfolk or DOC employee(s) or official(s) who (i) determined a violation(s) had occurred, and (ii) authorized or caused disclosure of such alleged violation(s) to the third party or parties.
6. All public records detailing all lawsuits, grievances, and/or other arbitrated or mediated conflicts commenced on or after January 1, 2018 to the present in which DOC and/or MCI-Norfolk (or any agent thereof) was a defendant or respondent and in which the opposing party or parties asserted claims including, without limit, (i) tortious interference with business or contractual relations (or any state or federal analog thereto), and (ii) intentional infliction of emotional distress (or any state or federal analog thereto).
7. With respect to each dispute, conflict, or lawsuit identified in response to **Request 6**, above, public records sufficient to show how each such dispute was handled and/or resolved, including without limit the parties involved; the nature and facts of the complaint; the date on which the complaint was filed or otherwise commenced and in what forum; the date on which the dispute was resolved and the manner of such resolution (*e.g.*, judgment following trial; summary judgment; directed verdict; settlement; etc.); the amount paid, if any, to settle the dispute and to whom such monies were paid;

the total amount in legal fees and costs incurred by DOC or MCI-Norfolk (or any agent thereof) in connection with the dispute; and whether and to what extent any DOC or MCI-Norfolk employee(s) or official(s) was disciplined, reprimanded, or otherwise subject to any form of employee sanction, including termination, in connection with the facts alleged in the dispute, conflict, or lawsuit.

8. All public records concerning the policies, processes, or procedures governing either contemporaneous or after-the-fact review by MCI-Norfolk or other DOC personnel of recorded video visit calls between non-legal video visitors and MCI-Norfolk inmates, including without limit:
 - a. The name and title of all DOC or MCI-Norfolk employee(s) or official(s) required or permitted to review such video calls.
 - b. Whether such DOC or MCI-Norfolk employee(s) or official(s) is required to review all such video calls or, if not all, which video calls are selected for review and for what reason (e.g., random selection, every fifth or tenth or twentieth video call, selection based on the identity of the video visitor or the subject inmate, etc.).
 - c. The number of such video calls selected for review and such number stated as a percentage of the total number of video calls made involving non-legal video visitors and MCI-Norfolk inmates.

Unless otherwise specifically stated, the above requests should include public records from the initiation of non-legal video calls in or around early January 2021 to the present. Further clarification of any of the above requests can be provided upon request.

I also request that any fees incurred in connection with responding to this letter be waived as this request is in the public interest, as suggested but not stipulated by the recommendations of the Massachusetts Supervisor of Public Records. In addition, as stated by the Massachusetts Secretary of the Commonwealth, “all agencies and municipalities are strongly urged to waive the fees associated with access to public records”.³ The requested documents will be made available to the general public free of charge as part of the public information service at [MuckRock.com](https://muckrock.com), processed by a representative of the news media/press, and is made in the process of news gathering and not for commercial usage.

Moreover, on March 11, 2021, I served a public records request on the DOC (the “March 11 PRR”). Among other inquiries, the March 11 PRR contained all the above inquiries; however, in its partial, incomplete, and improper responses to the March 11 PRR, the DOC simply ignored the above (and thus the requests are being resubmitted here). Nonetheless, I was charged – and paid – a \$900 fee in connection with the March 11 PRR. To charge additional fees now in connection with a subset of the same requests contained in the March 11 PRR (and which the DOC willfully ignored) would be improper, at best, and a violation of state laws and regulations, at worst.

If you withhold some portions of the requested documents on the grounds that they are exempt from disclosure, please specify which exemptions apply and release any portions of the records for which you do not claim an exemption. Please provide the requested records in electronic format to the maximum extent possible. To the extent you contend any of the requested records are not public records or are otherwise exempt from disclosure in response to this request please take steps to ensure that such

³ Galvin, William F. (Secretary of the Commonwealth), *A Guide to the Massachusetts Public Records Law* (updated March 2020) at 41 (accessed 11/16/21 at <https://www.sec.state.ma.us/pre/preinformation.htm>).

records are preserved, and are not modified, deleted, or destroyed, pending review of your contention and the resolution of any resulting dispute.

With respect to the form of production, responsive electronic records should be provided electronically in their native file format, to the maximum extent possible. Paper records may be scanned and provided in static-image format (PDF). Please provide copies of entire correspondence in relevant searches, including all documents or attachments that were included or forwarded. Records should include but not be limited to electronic correspondence transmitted via computer, laptop, mobile phone and/or other electronic devices, and should include but not be limited to any emails in which an employee or other official or agent was the direct recipient, CC recipient, BCC recipient, and/or listserv recipient. All images in any email should be downloaded and viewable before being copied. Please note that custodians of public records must comply with a public records request within ten (10) days of receipt thereof. If you cannot comply with my request within the mandated time frame, you are statutorily required to provide an explanation in writing. Thank you for your anticipated assistance with this matter. Please do not hesitate to contact me if you have any questions or need further clarification concerning any part of this request.

Sincerely,

/s/ M. Claire Masinton

M. Claire Masinton
Newton, MA 02458
(617) 257-9560
Mcm4801@outlook.com

EXHIBIT B

From: Silvia, Kate (DOC)
Sent: Wednesday, November 17, 2021 4:40 PM
To: M Claire Masinton
Subject: RE: November 16, 2021 Public Records Request

Received. Thank you.

From: M Claire Masinton <mcm4801@outlook.com>
Sent: Tuesday, November 16, 2021 1:10 PM
To: Silvia, Kate (DOC) <Kate.Silvia@doc.state.ma.us>
Subject: November 16, 2021 Public Records Request

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Please see the attached public records request to the Massachusetts Department of Correction, which has also been submitted to you via the public records request platform, [MuckRock.com](https://muckrock.com). Thank you.

M. Claire Masinton
(617) 257-9560

EXHIBIT C

From: Silvia, Kate (DOC)
Sent: Wednesday, January 26, 2022 12:35 PM
To: M Claire Masinton
Subject: RE: Status of November 16, 2021 Public Records Request?

Good Afternoon,
I will follow up with the facility.
Best,

Kate Silvia
Director of Communications
Massachusetts Department of Correction
50 Maple St.
Milford, MA. 01757
p. 508-422-3436

From: M Claire Masinton <mcm4801@outlook.com>
Sent: Wednesday, January 26, 2022 12:31 PM
To: Silvia, Kate (DOC) <Kate.Silvia@doc.state.ma.us>
Subject: Status of November 16, 2021 Public Records Request?

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Ms. Silvia: I have not heard anything further from you (or any other DOC representative) concerning my November 16, 2021 public records request (see below). As you know, upon receipt of a public records request, the subject agency must produce the requested documents and/or provide a written response within 10 business days of receipt of the request. Any such written response must provide certain detailed information, as set forth in M.G.L c. 66, section 10(b)(i)-(ix).

As of today's date, the DOC's response is overdue by 38 business days (the 10-day deadline fell on Wednesday, December 1, 2021).

I am always willing to be flexible with respect to timing, but I have had no indication from you on this or any other point regarding my request. Can you please update me as to the DOC's anticipated date for production of documents responsive to my request? And if the DOC intends to withhold some or all of the documents requested, please provide a detailed explanation of the legal basis for any such refusal to respond. Thank you.

M. Claire Masinton
(617) 257-9560

From: Silvia, Kate (DOC) <kate.silvia@state.ma.us>
Sent: Wednesday, November 17, 2021 4:40:12 PM
To: M Claire Masinton <mcm4801@outlook.com>
Subject: RE: November 16, 2021 Public Records Request

Received. Thank you.

From: M Claire Masinton <mcm4801@outlook.com>
Sent: Tuesday, November 16, 2021 1:10 PM
To: Silvia, Kate (DOC) <Kate.Silvia@doc.state.ma.us>
Subject: November 16, 2021 Public Records Request

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M. Claire Masinton
(617) 257-9560

[News](#) [Projects](#) [Requests](#) [Assignments](#) [...](#)**EXHIBIT D**

Your zip archive is being processed. It will be emailed to you when it is ready.

MA DOC Processes and Procedures - Video Visits During Pandemic

Share



[M. Claire Masinton](#) filed this request with the [Department of Correction](#) of [Massachusetts](#).

Submitted

Nov. 16, 2021

STATUS

[Edit](#)

Awaiting Acknowledgement

EMBARGO

[Edit](#)

This request has no embargo.

PROJECTS

[Edit](#)

No projects.

TAGS

[Edit](#)

ma doc ma doc; massachusetts department of correction

[Clone](#)[Download as Zip](#)[Get Help](#)

6 Communications

1 File

0 Notes

Sharing

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From: M. Claire Masinton

11/17/2021

From: Muckrock Staff

12/01/2021

Subject: RE: Massachusetts Public Records Law Request: MA DOC Processes and Procedures - Video Visits During Pandemic

Email

To Whom It May Concern:

I wanted to follow up on the following Massachusetts Public Records Law request, copied below, and originally submitted on Nov. 17, 2021. Please let me know when I can expect to receive a response.

Thanks for your help, and let me know if further clarification is needed.



From: Muckrock Staff

12/16/2021

Subject: RE: Massachusetts Public Records Law Request: MA DOC Processes and Procedures - Video Visits Durin... [Email](#)

To Whom It May Concern:

I wanted to follow up on the following Massachusetts Public Records Law request, copied below, and originally submitted on Nov. 17, 2021. Please let me know when I can expect to receive a response.

Thanks for your help, and let me know if further clarification is needed.

From: Muckrock Staff

12/31/2021

Subject: RE: Massachusetts Public Records Law Request: MA DOC Processes and Procedures - Video Visits Durin... [Email](#)

To Whom It May Concern:

I wanted to follow up on the following Massachusetts Public Records Law request, copied below, and originally submitted on Nov. 17, 2021. Please let me know when I can expect to receive a response.

Thanks for your help, and let me know if further clarification is needed.

From: Muckrock Staff

01/17/2022

Subject: RE: Massachusetts Public Records Law Request: MA DOC Processes and Procedures - Video Visits Durin... [Email](#)

To Whom It May Concern:

I wanted to follow up on the following Massachusetts Public Records Law request, copied below, and originally submitted on Nov. 17, 2021. Please let me know when I can expect to receive a response.

Thanks for your help, and let me know if further clarification is needed.

[News](#) [Projects](#) [Requests](#) [Assignments](#) [...](#)**From: Muckrock Staff****02/01/2022****Subject: RE: Massachusetts Public Records Law Request: MA DOC Processes and Procedures - Video Visits During Pandemic****Email**

To Whom It May Concern:

I wanted to follow up on the following Massachusetts Public Records Law request, copied below, and originally submitted on Nov. 17, 2021. Please let me know when I can expect to receive a response.

Thanks for your help, and let me know if further clarification is needed.

We'll automatically follow-up with the agency in 1 week, 5 days.

[Disable](#)[Follow Up](#)[Appeal](#)[Get Help](#)