

7.

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

BRISTOL, SS.

DOCKET NO. 2573CV00357

BOSTON GLOBE MEDIA
PARTNERS, LLC,

Plaintiff,

v.

NEW BEDFORD POLICE
DEPARTMENT AND CITY
OF NEW BEDFORD,

Defendants.

BRISTOL SUPERIOR COURT
FILED

JUN 26 2025

JENNIFER A. SULLIVAN, ESQ.
CLERK/MAGISTRATE

**DEFENDANTS' ANSWER TO PLAINTIFF'S
COMPLAINT TO ENFORCE THE PUBLIC RECORDS LAW**

NOW COME, the Defendants, New Bedford Police Department and City of New Bedford, and deny each and every allegation of the Plaintiff's Complaint unless specifically admitted, and answer as follows:

PARTIES

1. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 1.
2. The Defendants admit that the City of New Bedford is a municipality with a principal place of business at 133 William Street, New Bedford, Massachusetts.
3. The Defendants admit New Bedford Police Department ("NBPD") is a department within the City of New Bedford and is the City of New Bedford's law enforcement agency with its principal place of business at 871 Rockdale Avenue, New Bedford, Massachusetts. Defendants

deny that the NBPD, as a Massachusetts municipal police department, is a separate legal entity subject to suit in Superior Court litigation. Instead, it is treated as an arm of the municipality it serves. *See Fruzzetti v. Commonwealth*, 100 Mass. App. Ct. 1129, 184 N.E.3d 815 (Table), 2022 WL 868803 (Unpublished Op.) (town's police department is not a separate entity subject to suit but is an arm of the town.).

JURISDICTION AND VENUE

4. The Defendants admit this Court has jurisdiction over this action pursuant to G.L.c. 66, § 10A(d).
5. The Defendants admit venue is proper in Bristol County pursuant to G.L.c. 66, § 10A(c).

THE MASSACHUSETTS PUBLIC RECORDS LAW

6. The Defendants admit the allegation in paragraph 6 sets forth an excerpt of the Massachusetts General Laws that speaks for itself, and that no further response is required.
7. The Defendants admit the allegation in paragraph 7 sets forth an excerpt of the Massachusetts General Laws that speaks for itself, and that no further response is required.
8. The Defendants admit the allegation in paragraph 8 sets forth an excerpt of the Massachusetts General Laws that speaks for itself, and that no further response is required.

9. The Defendants admit the allegation in paragraph 9 sets forth an excerpt of the Massachusetts General Laws that speaks for itself, and that no further response is required.
10. The Defendants admit the allegation in paragraph 10 sets forth an excerpt of the Massachusetts General Laws that speaks for itself, and that no further response is required.
11. The Defendants admit the allegation in paragraph 11 sets forth an excerpt of the Massachusetts General Laws that speaks for itself, and that no further response is required.

ENFORCEMENT ACTIONS UNDER THE PUBLIC RECORDS LAW

12. The Defendants admit the allegation in paragraph 12 sets forth an excerpt of the Massachusetts General Laws that speaks for itself, and that no further response is required.
13. The Defendants admit the allegation in paragraph 13 sets forth an excerpt of the Massachusetts General Laws that speaks for itself, and that no further response is required.
14. The Defendants admit the allegation in paragraph 14 sets forth an excerpt of the Massachusetts General Laws that speaks for itself, and that no further response is required.

THE NBPD REQUEST

15. The Defendants admit the allegations in paragraph 15 contain an excerpt from the public records request placed by Globe Reporter Dugan Arnett ("Mr. Arnett") with NBPD on August 4, 2023, a copy of which is attached to the Plaintiff's Complaint as Exhibit A.
16. The Defendants admit the allegations in paragraph 16 in so far as Attorney Nicholas DeMarco ("Attorney DeMarco"), who was then an Associate City Solicitor for the City of New Bedford, responded to Mr. Arnett's request on August 18, 2023, on behalf of the NBPD, a copy of which is attached to the Plaintiff's Complaint as Exhibit B.
17. The Defendants admit the allegations in paragraph 17 in so far as the August 18, 2023, response cited the anticipated grounds for statutory segregation and redaction, including but not limited to, those cited in the excerpt contained in paragraph 17, as shown in Exhibit B.
18. The Defendants admit the allegations in paragraph 18, as shown in Exhibit B.
19. The Defendants admit the allegations in paragraph 19 in so far as Defendants produced records as part of the August 18, 2023, response which were identified as responsive to Mr. Arnett's requests, a copy of which is attached as Exhibit C to Plaintiff's Complaint, and deny the remainder of the allegations in paragraph 19 of Plaintiff's Complaint.
20. The Defendants admit the allegations in paragraph 20 in so far as Defendants produced a responsive record (General Order No. 5-02) that included a blank "New Bedford Police Department Confidential Informant Guidelines" ("CI Form 1B") and a blank "Confidential Funds Voucher" ("CI Form 1C") as part of the August 18, 2023, response

which was responsive to Mr. Arnett's requests, as shown in Exhibit C, and deny the remainder of the allegations in paragraph 20 of Plaintiff's Complaint.

21. The Defendants admit the allegations in paragraph 21 in so far as the August 18, 2023, production did not include completed CI Form 1Bs or completed CI Form 1Cs, and deny the remainder of the allegations in paragraph 21 of Plaintiff's Complaint.

22. The Defendants admit the allegations in paragraph 22 in so far as the good-faith fee estimate for the anticipated remaining employee work necessary to fulfill the multiple components of Plaintiff's request, totaled \$3,750 (\$25/hour for 150 hours), and deny the remainder of the allegations in paragraph 22 of Plaintiff's Complaint.

23. The Defendants admit the allegations in paragraph 23 in so far as Mr. Arnett emailed Attorney DeMarco on August 31, 2023, asking if Attorney DeMarco would work with Mr. Arnett to find a way to produce the records in a way that wasn't "extremely labor intensive or onerous," and potentially narrow his request, posing several questions, a copy of which is attached to Plaintiff's Complaint as Exhibit D, and deny the remainder of the allegations in paragraph 23 of Plaintiff's Complaint.

24. The Defendants admit the allegations in paragraph 24 in so far as Mr. Arnett emailed Attorney DeMarco on September 7, 2023, following up on Mr. Arnett's August 31, 2023, email, asking for ways to narrow his request, as shown in Exhibit D, and deny the remainder of the allegations in paragraph 24 of Plaintiff's Complaint.

25. The Defendants admit the allegations in paragraph 25 in so far as counsel for the Globe emailed Attorney DeMarco on September 12, 2023, following up on Mr. Arnett's emails

requesting a suggestion on ways to narrow the request, as shown in Exhibit D, and deny the remainder of the allegations in paragraph 25 of Plaintiff's Complaint.

26. The Defendants admit the allegations in paragraph 26 in so far as Attorney DeMarco responded to counsel for the Globe on September 15, 2023, to provide further explanation for the basis of the fee estimate and provided ways to modify or narrow the request to reduce the anticipated time and cost of production, as shown in Exhibit D.
27. The Defendants admit the allegations in paragraph 27 in so far as counsel for the Globe responded to Attorney DeMarco on November 8, 2023, with a narrowed request for: (1) Category 3 ("The most recent Undesirable/Deactivated confidential informant file") and, (2) Category 6 ("All annual audits, from 2015 through present date, of the Confidential Funds Account"), which were already produced to the Globe on August 18, 2023, as shown in Exhibits C and D, and deny the remainder of the allegations in paragraph 27 of Plaintiff's Complaint.
28. The Defendants admit the allegations in paragraph 28 in so far as the November 27, 2023, response explained (1) the responsive records to the undesirable/deactivated file request were being withheld pursuant to Exemption (f), and (2) provided the requested audits, which had already been produced to the Globe on August 18, 2023, which is attached to Plaintiff's Complaint as Exhibits C and E, and deny the remainder of the allegations in paragraph 28 of Plaintiff's Complaint.
29. The Defendants admit the allegations in paragraph 29 in so far as counsel for the Globe emailed Attorney DeMarco on February 7, 2024, asking for reconsideration of the

applied withholdings, a copy of which is attached to Plaintiff's Complaint as Exhibit E, and deny the remainder of the allegations in paragraph 29 of Plaintiff's Complaint.

30. The Defendants admit the allegations in paragraph 30 set forth an excerpt from counsel for the Globe's February 7, 2024, email, as shown in Exhibit E, and deny the remainder of allegations in paragraph 30 of Plaintiff's Complaint.

31. The Defendants admit the allegations in paragraph 31 in so far as counsel for the Globe explained where he believed the information he interpreted to be further segregable could be located, as shown in Exhibit E, and deny the remainder of the allegations in paragraph 31 of Plaintiff's Complaint.

32. The Defendants admit the allegations in paragraph 32, in so far as records were produced to the Plaintiff on August 19, 2024, after several collaborative telephone calls with counsel for the Globe, one record being a list specifically created as requested by counsel for the Globe, a copy of which is attached to Plaintiff's Complaint as Exhibit F, and deny the remainder of allegations in paragraph 32 of Plaintiff's Complaint.

33. The Defendants admit the allegations in paragraph 33 in so far as the August 19, 2024, response explained redactions were applied pursuant to Exemptions (c) and (f) of the Massachusetts Public Records law, as shown in Exhibit F, and deny the remainder of allegations in paragraph 33 of Plaintiff's Complaint.

34. The Defendants admit the allegations in paragraph 34 in so far as counsel for the Globe emailed Attorney Winters on August 23, 2024, posing additional questions, asking for reconsideration of the applied redactions, and requesting additional

information/broadening the scope of the narrowed request which included a request for record creation, a copy of which is attached to Plaintiff's Complaint as Exhibit G, and deny the remainder of allegations in paragraph 34 of Plaintiff's Complaint.

35. The Defendants admit the allegations in paragraph 35 in so far as Attorney Winters emailed counsel for the Globe on September 3, 2024, reasserting the grounds and reasoning for the applied redactions and explained his understanding that NBPD was working on getting a list together in response to counsel for the Globe's broadened request (regarding non-deactivated informants), as shown in Exhibit G, and deny the remainder of allegations in paragraph 35 of Plaintiff's Complaint.
36. The Defendants admit the allegations in paragraph 36 in so far as counsel for the Globe responded on September 4, 2024, an excerpt of which is included in paragraph 36, and shown in Exhibit G, and deny the remainder of allegations in paragraph 36 of Plaintiff's Complaint.
37. The Defendants admit the allegations in paragraph 37, in so far as counsel for the Globe and Attorney Winters conferenced via telephone on September 6, 2024, but is without sufficient evidence to admit or deny the remainder and call upon Plaintiff to prove same.
38. The Defendants admit the allegations in paragraph 38 in so far as counsel for the Globe shared annotations on records previously produced by NBPD on August 19, 2024, to help describe the additional details the Globe would like unredacted and created, as shown in Exhibit G, and deny the remainder of the allegations in paragraph 38 of Plaintiff's Complaint.

39. The Defendants admit the allegations in paragraph 39 in so far as the annotations requested additional details regarding (1) amounts paid to informants on fund vouchers, and (2) anonymized identification numbers to correlate payments with anonymized informant numbers, as shown in Exhibit G, and deny the remainder of allegations in paragraph 39 of Plaintiff's Complaint.
40. The Defendants admit the allegations in paragraph 40 in so far as Attorney Winters responded to counsel for the Globe via email on September 12, 2024, an excerpt of which is set forth in paragraph 40, explaining Attorney Winter's understanding that NBPD were willing to un-redact the payment amounts on the forms already provided and provide the monthly totals for all payments made and asked for counsel for the Globe to provide a date range to narrow the scope, a copy of which is attached to Plaintiff's Complaint as Exhibit H, and deny the remainder of allegations in paragraph 40 of Plaintiff's Complaint.
41. The Defendants deny the allegations contained in paragraph 41.
42. The Defendants deny the allegations contained in paragraph 42.
43. The Defendants deny the allegations contained in paragraph 43.
44. The Defendants deny the allegations contained in paragraph 44.

COUNT I

45. The Defendants repeat and reallege incorporate by reference their responses to the allegations contained in paragraphs 1-44 above.

46. The Defendants deny the allegations contained in paragraph 46.
47. The Defendants admit the allegation in paragraph 47 sets forth an excerpt of the Massachusetts General Laws that speaks for itself, and that no further response is required.
48. The Defendants admit the allegation in paragraph 48 sets forth an excerpt of the Massachusetts General Laws that speaks for itself, and that no further response is required.
49. The Defendants admit the allegation in paragraph 49 sets forth an excerpt of the Massachusetts General Laws that speaks for itself, and that no further response is required.
50. The Defendants admit so much of the allegations of paragraph 50 in so far as the Superior Court has available all remedies at law or in equity in an enforcement action under Public Records Law, *id.* § 10A(c), including the authority to enter injunctive relief, *id.* § 10A(d)(1)(i), but deny that such relief should be utilized in the instant case.
51. The Defendants admit the allegations of paragraph 51 in so far as the Superior Court has the authority to award attorney fees and costs, to order the agency to waive fees, and, in cases where the Court finds the agency did not act in good faith, to award punitive damages, but deny that such remedies are appropriate or applicable in the instant case.
52. The Defendants admit the allegations in paragraph 52 in so far as a presumption exists, but (i) deny that such a presumption should apply in this case and/or, (ii) in the alternative assert the presumption is rebutted because:

- i. the Plaintiff failed to appeal to the Supervisor in order to seek any determination as to whether the agency or municipality did not violate this chapter;
- ii. the agency or municipality reasonably relied upon published opinions of an appellate court of the Commonwealth based on substantially similar facts;
- iii. the agency or municipality reasonably relied upon published opinions by the attorney general based on substantially similar facts;
- iv. the request was designed or intended to harass or intimate; or
- v. the request was not in the public interest and made for a commercial purpose unrelated to disseminating information to the public about actual or alleged government activity.

G.L.c. 66, § 10A(d)(2)(i)-(v).

53. The Defendants deny that Plaintiff is entitled to an order directing Defendants to (a) comply with the Globe's August 4, 2023, request and produce forthwith to the Globe public records responsive to Categories 1, 2, 3, and 7 of the NBPB request; (b) waive any fee assessed for producing the requested documents; and (c) pay the Globe's reasonable attorney's fees and costs.

WHEREFORE, Defendants respectfully pray that the Court:

1. Dismiss Plaintiff's Claim.
2. Enter judgment in Defendants favor on Count I of the Complaint.
3. Find that Defendants complied with Massachusetts Public Records Law.
4. Deny Plaintiff's request for an order directing NBPB and the City to (a) further produce forthwith to the Globe records responsive to Categories 1, 2, 3, and 7 of the NBPB request; (b) waive any fee assessed for producing the requested records; and (c) pay the Globe's reasonable attorney's fees and costs.

5. Remand the case back to the parties so they can continue to engage in a cooperative interactive process in regard to the Globe's August 4, 2023, public records request and the requests that followed, in consideration of the importance of the case-by-case analysis required under Massachusetts Public Records Law in determining whether further disclosures are required or would undermine statutory protections, common law protections, and the exemptions to the Massachusetts Public Records Law.
6. Grant such other relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

If Plaintiff had appealed to the Supervisor of Records, a finding could have been made that Defendants did not violate the public records law. Plaintiff's failure to file with the Supervisor of Records before filing the instant Complaint was a failure to mitigate damages.

SECOND DEFENSE

Defendants reasonably relied upon published opinions of an appellate court of the Commonwealth and/or the Attorney General based on substantially similar facts.

THIRD DEFENSE

The initial request and the requests that followed were designed or intended to harass or intimidate.

FOURTH DEFENSE

The initial request and the requests that followed were not in the public interest and were made for a commercial purpose unrelated to disseminating information to the public about government activity.

FIFTH DEFENSE

The requested records, or portions thereof, are exempt from disclosure under state and federal law, including, but not limited to the provisions of Massachusetts General Law Chapter 4, Section 7, clause twenty-sixth, paragraphs (a) through (v) as may be determined by a review of the records, as narrowed after an interactive process of cooperation by the parties, including segregation of portions exempt and redaction of information through a context-specific approach to ensure that exemptions are applied appropriately and that the public's right to access records is balanced against legitimate confidentiality, privacy/safety and policy concerns involving the records or portions thereof which may be lawfully withheld. This includes invoking not only the specific exemptions under the public records law, such as Exemptions (f) and (c) but, other applicable legal privileges, for example, the common law informant's privilege.

SIXTH DEFENSE

The Defendants complied with the statutory requirements and regulatory authority promulgated thereunder for responding to public records requests, including but not limited to, providing timely written responses, identifying the reasons for withholding records, setting forth the anticipated good-faith estimate of fee(s) for producing records, assisting the requestor in narrowing the scope of their request, where doing so would reduce costs, collaborated with the requestor, and even created a record for the requestor, where there is no legal obligation to do so under Massachusetts Public Records Law. G.L.c. 66, § 10. Such actions mitigate any claimed liability for recovery of reasonable attorney's fees and costs.

SEVENTH DEFENSE

The Defendants were justified in their actions in the applied redactions/withholdings and appropriately balanced public access and the legitimate need for the preservation of

confidentiality, privacy/safety and policy as judged on a case-by-case basis, as required by Massachusetts Public Records Law, mitigating any claimed liability for recovery of reasonable attorney's fees and costs.

EIGHTH DEFENSE

The Defendants have spent well over two hours assisting the requestor with their original request and the requests that followed, searching for, segregating, redacting, compiling, and producing records, and working with the requestor to narrow the scope of their request at no charge, such actions mitigate liability for any claimed recovery of reasonable attorney's fees and costs.

NINTH DEFENSE

Plaintiff has failed to exhaust administrative remedies.

TENTH DEFENSE

Plaintiff's actions constitute waiver of any claim of relief and is barred by the doctrine of estoppel.

ELEVENTH DEFENSE

Plaintiff's have failed to state a claim upon which relief can be granted.

Respectfully submitted,

**Defendants, New Bedford Police Department
and City of New Bedford,**

By their Attorneys,

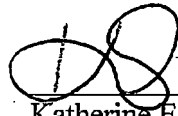
/s/Eric A. Jaikes

Eric A. Jaikes, City Solicitor
BBO#: 543709

DATED: June 26, 2025

CITY OF NEW BEDFORD
Office of the City Solicitor
133 Williams Street, Room 203
New Bedford, MA 02740
EJaikes@newbedford-ma.gov

DATED: June 26, 2025



Katherine E. Schuko, Associate City Solicitor
BBO #: 714019
CITY OF NEW BEDFORD
Office of the City Solicitor
133 William Street, Room 203
New Bedford, MA 02740
Tel: (508) 979-1460
katherine.schuko@newbedford-ma.gov

CERTIFICATE OF SERVICE

I, Katherine E. Schuko, counsel for the Defendants, New Bedford Police Department and City of New Bedford, hereby certify that I have this day served the foregoing DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT TO ENFORCE THE PUBLIC RECORDS LAW upon the Plaintiff by mailing a copy, postage prepaid, to the attorneys of record for the Plaintiff, Jonathan M. Albano, Esquire and Samuel D. Thomas, Esquire, Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110-1726, and via email to:

samuel.thomas@morganlewis.com and jonathan.albano@morganlewis.com



Katherine E. Schuko
Associate City Solicitor

DATED: June 26, 2025