

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 1885CV1526A

GATEHOUSE MEDIA, LLC

vs.

CITY OF WORCESTER

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR  
PERMANENT INJUNCTION, ENTRY OF JUDGMENT, AND AWARD OF PUNITIVE  
DAMAGES**

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The plaintiff, Gatehouse Media, LLC (plaintiff or Gatehouse), having received to its satisfaction copies of all of the public records that are the subject of this litigation, moves for the following additional relief under G. L. c. 66, § 10A: (1) an order permanently enjoining the defendant, the city of Worcester (city), from asserting the incorrect claims of exemption that led to this litigation and from otherwise violating the Massachusetts Public Records Law, G. L. c. 66, § 10 (public records law) in response to future requests from Gatehouse; (2) entry of judgment; and (3) an award of punitive damages in the amount of \$95,000. The defendant filed an opposition to the motion and the court held a hearing on the matter on December 20, 2021. For the reasons discussed below, the plaintiff's motion is **ALLOWED** in part and **DENIED** in part.

**PROCEDURAL HISTORY**

This matter has been fully litigated. After a multi-day trial, the court issued in June 2021 its findings of fact, conclusions of law, and order (June 2021 decision), as well as a related

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protective order. The court assumes the reader's familiarity with these materials and the factual background of the case, reserving further discussion of relevant facts as needed below.

## DISCUSSION

### I. Punitive Damages

For the reasons discussed in the court's June 2021 decision, the court has determined that the city improperly withheld certain materials under the public records law, and under count one of the complaint, judgment will enter in favor of the plaintiff accordingly. As a result, so long as the plaintiff "has demonstrated that [the city], in withholding or failing to timely furnish the requested record or any portion of the record . . . did not act in good faith," this court "may assess punitive damages" against the city "in an amount not less than \$1,000 nor more than \$5,000, to be deposited into the Public Records Assistance Fund established in section 35DDD of chapter 10." G. L. c. 66, § 10A(d)(4). Because the court finds that the city did not act in good faith when withholding materials under exemption (d) and the first clause of exemption (c), the city is liable for \$5,000 in punitive damages under the statute.

First, the plain language of exemption (d) does not allow for the interpretation offered by the city. Exemption (d) does not allow a party to withhold requested documents because they are related to ongoing litigation and/or their release could impact that litigation, as the city argued in its second and third responses. Rather, it excludes as public records "inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency." G. L. c. 4, § 7, Twenty-sixth (d). To the extent the city attempted to support its interpretation of exemption (d) with cases where exemption (d) applied in more nuanced circumstances amid litigation, the court finds that the city merely cherry-picked certain language from those cases, taking it out of context. In fact, the city appears to have ignored language in *DaRosa v. New Bedford*, 471 Mass.

446, 451 n.8 (2015), noting that the Legislature rejected a proposed exemption (k) that was similar to the meaning of exemption (d) espoused by the city.

In addition, the two Supervisor of Records Letter-Determinations the city cited in support of its interpretation were merely instances where the Supervisor of Records declined to opine on records requests when the records were the subject of dispute in active litigation in accordance with 950 Code Mass. Regs. § 32.08(2)(b)(1). There was no mention of exemption (d) in those determinations, and thus they did not support the city's interpretation. While the court appreciates that counsel may at times advance novel legal arguments to zealously represent a client, counsel may not misrepresent to the court what cases and other materials stand for.

Second, the city acted improperly in invoking the first clause of exemption (c), regarding personnel files, to withhold dispositions found in the investigation files produced with redactions. It stated this position in its November 1, 2018 letter, and reiterated it in the log it produced in August 2020, despite its purported change in policy that occurred during the summer of 2020. While the city asserts that any issue related to it claiming exemption (c) is moot now that it has changed its practice, the court cannot ignore that it originally took that position in spite of the fact that the city was one of the parties to, and thus aware of, *Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester*, 58 Mass. App. Ct. 1, 2-3 (2003). In that case, the Appeals Court held that materials in a "Worcester police department internal affairs file . . . compiled during an investigation of a citizen complaint," were public records. That court stated explicitly that "[i]t would be odd, indeed, to shield from the light of public scrutiny as 'personnel [file] or information' the workings and *determinations* of a process whose quintessential purpose is to inspire public confidence" (emphasis added). *Id.* at 8-9.

Where in 2003 the Appeals Court made clear that the determinations made during the investigation of a citizen's complaint were public records (except as to any disciplinary action) not protected by the first clause of exemption (c), the city cannot justify its withholding of those materials on that basis more than a decade later in this case. In addition, as this court already noted in its June 2021 decision, the city also may not justify its conduct by relying on a subsequent lower court decision where the judge, in reviewing at an early stage the city's application of exemption (c) in the context of a motion for a preliminary injunction, stated in a footnote that it merely *appeared* that the newspaper would not be successful in seeking *unredacted* disclosure of the complaint dispositions against the officer. See *Worcester Telegram & Gazette Corp. v. Gemme*, WOCA08-02742E, Doc. 12, at 8 n.4, 13 (Mass. Super. Jan. 13, 2010) (McDonald, J.).

Because the city had no legal justification for invoking exemptions (c) and (d) based on the circumstances set forth above, punitive damages are appropriate here. The city will be ordered to pay \$5,000 into the Public Records Assistance Fund pursuant to G. L. c. 66, §10A.

## II. Permanent Injunction

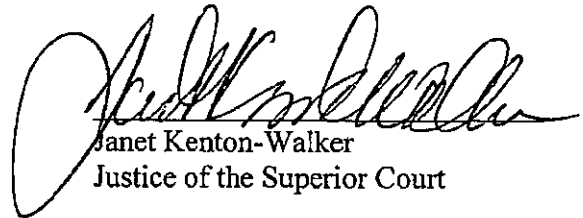
General Laws c. 66, § 10A(d)(1)(i) makes clear that this court has "jurisdiction to enjoin agency or municipal action." However, the plaintiff has represented that no dispute remains as to the documents themselves, as the city complied with the June 2021 decision and the plaintiff has no need to contest any remaining redactions. There is no need to enjoin the city to produce further records or take further action in this case.

In addition, although the city was found to have violated the public records statute, and in such a way that punitive damages are appropriate, there is no indication that the city will continue to claim improperly the exemptions discussed in detail in the court's June 2021

decision. If the city were to take such ill-advised action in the future, in direct contravention of the legal determinations made in this case,<sup>1</sup> it would risk being embroiled in another public records lawsuit, with the possibility that more significant punitive damages might be awarded. Simply put, the court expects the city to follow the law now and in the future.

**ORDER**

For the foregoing reasons, it is **ORDERED** that the plaintiff's motion is **DENIED in part** as to the injunctive relief sought, and **ALLOWED in part** to the extent that the plaintiff shall pay \$5,000 in punitive damages to the Public Records Assistance Fund established by G. L. c. 10, § 35DDD. Judgment shall enter accordingly.

  
Janet Kenton-Walker  
Justice of the Superior Court

DATED: January 26, 2022

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<sup>1</sup> It is unclear if the city intends to appeal this court's determination, as the city filed a notice of appeal on July 1, 2021.