

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of  
CITY OF BOSTON

and

BOSTON POLICE SUPERIOR  
OFFICERS FEDERATION

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Case No. MUP-13-3023

Date Issued: July 28, 2015

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Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Robert J. Boyle Jr., Esq. - Representing the City of Boston  
Jillian M. Ryan, Esq. - Representing the Boston Police  
Superior Officers Federation

HEARING OFFICER DECISION

Summary

1 The issue in this case is whether the City of Boston (City) violated Section  
2 10(a)(5) and, derivatively Section 10(a)(1) of Massachusetts General Laws, Chapter  
3 150E (the Law) by failing to provide in a timely manner requested information that was  
4 relevant and reasonably necessary to the Boston Police Superior Officers Federation  
5 (Federation) in its role as exclusive bargaining representative. I find that the City  
6 violated the Law in the manner alleged.

Statement of the Case

1           On July 31, 2013, the Federation filed a charge with the Department of Labor  
2 Relations (DLR), alleging that the City had engaged in prohibited practices within the  
3 meaning of Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law. On August  
4 20, 2013, the Federation amended its charge to include an allegation that the City  
5 violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. A DLR hearing  
6 officer conducted an investigation on September 16, 2013.<sup>1</sup> On October 7, 2013, the  
7 investigator issued a complaint alleging that the City violated Section 10(a)(5) and,  
8 derivatively, Section 10(a)(1) of the Law by failing to provide the Federation with  
9 requested information that was relevant and reasonably for the Federation to execute its  
10 duties as exclusive bargaining representative. The City filed an answer to the complaint  
11 on October 8, 2013.

12           I conducted a hearing on September 5, 2014.<sup>2</sup> Both parties had an opportunity  
13 to be heard, to examine witnesses and to introduce evidence. The parties submitted  
14 their post-hearing briefs on October 31, 2014. Upon review of the entire record,  
15 including my observation of the demeanor of the witnesses, I make the following  
16 findings of fact and render the following opinion.

Stipulated Facts

- 17  
18  
19           1. The City of Boston is a public employer within the meaning of Section 1 of the  
20 Law.  
21

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<sup>1</sup> At the investigation, the Federation orally withdrew the Section 10(a)(3) allegation.

<sup>2</sup> At the parties' first pre-hearing conference in February 2014, the City requested that I conduct an *in camera* review of the disputed information, a request that I declined at that time. The City subsequently renewed its request.

- 1       2. The Boston Police Superior Officers Federation (the Federation) is an employee  
2       organization within the meaning of Section 1 of the Law.
- 3
- 4       3. The Federation is the exclusive bargaining representative of non-detective  
5       sergeants, lieutenants and captains (superior officers) of the Boston Police  
6       Department.
- 7
- 8       4. The parties agreed to postpone the arbitration that was scheduled for May 19,  
9       2014.
- 10
- 11      5. On or around March 28, 2014, the [Police] Department allowed Federation  
12      president Jack Kervin and Attorney Leah Barrault to inspect Joint Exhibit 19 and  
13      were provided with the opportunity to listen to audiotapes of the IAD  
14      investigation.
- 15
- 16      6. As of the pre-hearing conference on July 25, 2014, the Federation agreed that  
17      the only remaining issue in the instant case is whether the [Police] Department  
18      granted the Federation access to the information that it sought in a timely  
19      manner.

Findings of Fact<sup>3</sup>

20   Events Prior to June 22, 2013

21           C is a lieutenant and a member of the Federation's bargaining unit, who began  
22   working for the Police Department in 1983. On April 30, 2011, the City placed C on paid  
23   administrative leave, while it investigated allegations of sexual harassment made  
24   against him by a civilian employee. On May 17, 2012, the City terminated C based  
25   upon that sexual harassment complaint. The Federation filed a grievance challenging  
26   C's placement on administrative leave and his termination and subsequently filed for  
27   arbitration. Thereafter, the parties proceeded to a four-day arbitration, which resulted in  
28   an April 16, 2013 arbitration award finding no just cause for C's discharge and ordering  
29   the City to reinstate him as a lieutenant and to compensate him for lost wages and  
30   benefits. The City did not appeal the arbitration award pursuant to M.G.L.c.150C. As

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<sup>3</sup> The DLR's jurisdiction in this matter is uncontested.

1 of June 22, 2013, the City had not returned C to active duty, although the Federation  
2 had requested that the City do so.

3 Events on or About June 22, 2013

4 On June 22, 2013, a female officer in the City's Police Department (Officer Doe  
5 or the Complainant) submitted a complaint<sup>4</sup> to her unit commander, alleging that she  
6 was the subject of sexual harassment by C. The Complainant noted that she had been  
7 told that there was a possibility that the City would assign C to her work site and that the  
8 possibility caused her "unwarranted stress." She then described an incident with C at  
9 an Area \*\*\*\* Christmas Party that had taken place a few years previously, where C  
10 allegedly made "lewd gestures and statements" in her presence. She ended the report  
11 by asking her unit commander to prevent C's assignment because she believed her  
12 "safety and well-being" were at risk. On June 27, 2013, Nicole Taub (Taub), senior staff  
13 attorney in the Police Department's Office of the Legal Advisor, sent an e-mail message  
14 to the Federation's attorney Leah Barrault (Barrault). Taub's June 27, 2013 email  
15 message stated in pertinent part:

16 I left you a voicemail earlier, but wanted to try and get this information to  
17 you as soon as possible. As you know, we have been processing [C] to  
18 return to work per the arbitration award; however, the Department has just  
19 received another sexual harassment complaint against him. It is my  
20 understanding that the Union has already been notified, but I wanted to  
21 make sure you were kept in the loop. As I am sure you can understand,  
22 the Department now needs to evaluate the circumstances before moving  
23 forward. Please let Lt. C know that Human Resources will be in touch with  
24 him about this.

25  
26 On June 28, 2013, the City reinstated C to his permanent Civil Service rank of  
27 Lieutenant and restored him to active duty effective June 29, 2013. On that same date,

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<sup>4</sup> The parties referred to Officer Doe's complaint as a Form 26, which is an administrative report written in a standardized format.

1 the Police Department in Personnel Order #2013-198 placed C on administrative leave  
2 (i.e. relieved him from duty with pay) effective June 29, 2013. Also, on June 28, 2013,  
3 the Federation filed a grievance (June 28, 2013 grievance) on behalf of C alleging that  
4 the City had violated Articles IV, VIII, XVI, XVIII and XIV of the parties' collective  
5 bargaining agreement and that as a remedy, the Police Department should return C to  
6 full duty and make him whole for any lost wages or benefits.

#### 7 Rule 114

8 Rule 114<sup>5</sup> is the Police Department's sexual harassment policy and contains both  
9 formal and informal complaint procedures for handling sexual harassment complaints.  
10 Pursuant to Rule 114, when an employee has been the subject of a prior complaint of  
11 sexual harassment within the last seven years, the Police Department must handle any  
12 new complaint pursuant to the formal complaint procedure, which necessitates a formal  
13 Internal Affairs Department (IAD) investigation. Rule 114, Section 4, Responsibilities  
14 also states in pertinent part:

15 Supervisory personnel are responsible for taking all necessary steps to  
16 prevent harassment and to promote and maintain a work environment free  
17 from harassment for employees and members of the general public.  
18 **Supervisory personnel will be held responsible for the conduct of an**  
19 **employee, which is known or should have been known to create or**  
20 **which could create harassment against an employee or member of**  
21 **the public, unless immediate and appropriate corrective action has**  
22 **been taken. [Emphasis in original].**  
23

24 In order to adhere to Rule 114, the IAD considers investigations into sexual harassment  
25 complaints as being high priority investigations.

#### 26 IAD's Investigation Begins

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<sup>5</sup> Rule 114 bears a date of January 26, 2007.

1           On or about July 2, 2013, IAD received a copy of the sexual harassment  
2 complaint.<sup>6</sup> Upon receipt of the complaint, the IAD began to compile an electronic IAD  
3 log,<sup>7</sup> which documented the complaint in the IAD's case management system. IAD is  
4 part of the Bureau of Professional Standards, which is headed by Superintendent Frank  
5 Mancini (Superintendent Mancini). Deputy Superintendent Jeffrey Walcott (Walcott) is  
6 in charge of the IAD, which consists of three lieutenant-detectives and nine sergeant-  
7 detectives. The IAD unit is divided up into three teams each consisting of a lieutenant-  
8 detective, who acts as the team leader, and three sergeant-detectives who act as the  
9 investigators. Each IAD investigator handles approximately thirty to fifty cases per year.

10           Also, on or about July 2, 2013, IAD assigned Sergeant Detective James Miller  
11 (Miller) to conduct the IAD investigation into the June 22, 2013 sexual harassment  
12 complaint.<sup>8</sup> Lieutenant Detective Paul Mahoney (Mahoney) supervised Miller. The  
13 Police Department's Rule 109, the Discipline Procedure, Amended, contains provisions

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<sup>6</sup> Officer Doe's unit commander could have forwarded the sexual harassment complaint directly to IAD or could have sent it up the chain of command, where it then was referred to IAD. The record here does not indicate the manner in which the sexual harassment complaint was sent to IAD.

<sup>7</sup> The IAD log contains basic information including: the name of the complainant, contact information for the complainant, a summary of the complaint, the name of the Investigator and the dates and times that the Investigator conducts interviews and the names of the individuals who are interviewed.

<sup>8</sup> IAD routinely contacts representatives or attorneys for three police unions to notify them about an upcoming IAD interviews with bargaining unit members, to answer questions about the nature of those interviews, and the nature of IAD complaints against bargaining unit members. However, Federation vice-president Sergeant Mark Parolin (Parolin) did not remember having any discussion with Miller about the pending sexual harassment complaint against C prior to August 2013. Also, Superintendent Mancini indicated that neither Miller nor Mahoney, who did not testify in the present case, had a specific recollection of speaking with Parolin about that matter.

1 concerning complaints against Police Department employees and investigation of those  
2 complaints, including IAD investigations. Rule 109<sup>9</sup> contains the following provisions:

Section 46-Monitoring of Complaint Control Forms

3  
4 The Office of Internal Investigations shall maintain a log of all Complaint  
5 Control forms issued to all districts and units. The log shall record the  
6 date each form was issued and the district or unit to which the form was  
7 issued. The log shall also record the date the form was used and the  
8 name and rank of the officer who completed the form....

9  
10 Access to the complaint file shall be authorized in writing by the Police  
11 Commissioner, the Superintendent of the Office of Internal Investigations  
12 or the Commanding Officer of the Special Investigations Unit.

Section 48-Confidentiality of Disciplinary Process<sup>10</sup>

15  
16 Prior to the completion of the investigation of a complaint, information  
17 concerning such an investigation shall not be released unless authorized  
18 by the Commissioner.

19  
20 However, the fact that a complaint was received and departmental  
21 investigation is under way may be disclosed unless the chief of the Office  
22 of Internal Investigations determines that for security reasons it should  
23 remain confidential.

Section 51-Interrogation of Members of the Department

24  
25  
26  
27 d) Whenever a member of the [D]epartment is ordered to submit a report  
28 or to an interrogation pursuant to this Rule, the member may be informed  
29 of the nature of the investigation, including the name of the complainant.  
30 The address of the complainants and/or witnesses need not be disclosed;  
31 however, sufficient information to reasonably apprise the member of the  
32 allegations should be provided. If the complaint is filed in writing, a copy  
33 may be furnished to said member(s). If it is known that the member or the  
34 department being interrogated is a witness only, he should be informed at  
35 the initial contact.

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<sup>9</sup> Rule 109 bears an origination date of April 12, 1983.

<sup>10</sup> When Superintendent Mancini receives requests for information about complaints, he refers them to the Police Department's Office of the Legal Advisor.

1 Superintendent Mancini indicated that at times IAD provided copies of sexual  
2 harassment complaints to the subjects of those complaints and that at other times IAD  
3 did not provide copies of the complaints to the subjects of those complaints. The City  
4 will not release complaints if it has concerns about evidence tampering or that  
5 witnesses may be influenced.

6 Parties' July 2013 Letters

7 On July 3, 2013, Parolin sent a memorandum to Superintendent Mancini that  
8 stated in pertinent part:

9 The Federation would like to know when a hearing will be set in the  
10 alleged complaint against Lt. [C]. As you know Lt. [C] has recently been  
11 reinstated after two years because of a false complaint. According to Rule  
12 114s5f states "complaints may be considered untimely if the actions  
13 occurred more than one year prior to the filing of the complaint."<sup>11</sup>  
14 Information received is that this alleged complaint is at least 3 to 4 years  
15 old, the alleged incident was off duty, and the complainant does not want  
16 to go forward. If a hearing is not held as soon as possible the Federation  
17 [BPSOF] will consider all legal actions against the Department and any  
18 and all persons involved in these false allegations.<sup>12</sup>

19 On July 22, 2013, Barrault sent a letter to then Police Commissioner Edward Davis  
20 (Police Commissioner Davis) and then Superintendent-in-Chief Daniel Linskey (Chief  
21 Linskey) stating in pertinent part:

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<sup>11</sup> The City disagreed with Parolin's interpretation of Rule 114, Section 5(f), and Superintendent Mancini indicated that IAD had investigated a sexual harassment complaint whose underlying events occurred more than thirty years ago. However, I need not reconcile the parties' different interpretations of Rule 114, Section 5(f) because the merits of the sexual harassment complaint against C are not before me to decide.

<sup>12</sup> Parolin indicated that on or about the time that he wrote his July 3, 2012 memorandum he had heard rumors that a sexual harassment complaint had been made against C but that the alleged conduct took place years earlier and that a verbal sexual harassment complaint had been made. Parolin claimed that he inferred that the sexual harassment complaint was three or four years old because C had not been on active duty in the Police Department for more than two years.

1 On April 16, 2013, a neutral arbitrator overturned the Department's  
2 termination of Lieutenant C and ordered his immediate reinstatement.  
3 After two months of shenanigans, i.e., the Department subjecting C to  
4 medical and psychological examinations to which he complied, and on the  
5 eve of his return to full duty, C was placed on administrative leave due to  
6 purported new "harassment allegations." The Federation has informally  
7 become aware that the new "harassment allegations" against C relate to a  
8 civilian employee complaint regarding off-duty conduct that is more than  
9 four years old and that the civilian employee is not the individual pursuing  
10 the matter forward at this time. On July 3, 2013, Federation Vice-  
11 President Mark Parolin wrote a letter to Superintendent Frank Mancini  
12 reminding him of Department Rule 114, Section 5, which states,  
13 "complaints may be considered untimely if the actions occurred more than  
14 one year prior to the filing of the complaint" and requesting that IAD take  
15 immediate action on these purported new "harassment allegations"  
16 against C where he currently sits on administrative leave, thereby denied  
17 the dignity of returning to work and the ability to earn overtime and detail  
18 pay. ... Nearly a month has passed and C has not seen nor has he been  
19 interviewed by IAD....

20  
21 The Federation and Lieutenant C demand immediate action on the new  
22 "harassment allegations" against the lieutenant including, but not limited  
23 to, access to the complaint.

24 In a July 25, 2012 letter, Taub responded to Barrault by stating in pertinent part:

25 I am writing in response to your letter dated July 22, 2013, regarding  
26 Lieutenant [C]. As noted in your letter, the Department was in the process  
27 of reinstating Lieutenant [C] pursuant to Arbitrator Altman's award;  
28 however, prior to his return to work, the Department received new  
29 allegations of misconduct from another employee. As I have previously  
30 indicated, the Department has an obligation to investigate any and all  
31 complaints of misconduct, including these allegations, and Lieutenant [C]  
32 is subject to the same protocols as all other employees of the Department  
33 regarding Internal Affairs Division investigations. Your assertion that the  
34 Department has made up the newly reported allegations against  
35 Lieutenant [C] is completely unfounded and quite frankly I find the theory  
36 implausible.

37 The investigation (IAD2013-0263) has been assigned to Sergeant James  
38 Miller, who is in the process of interviewing witnesses. It is my  
39 understanding that Sergeant Miller plans to interview Lieutenant [C] and I  
40 will ask that he provide you with a copy of the interview notice. In the  
41 interim Lieutenant [C] has been placed on administrative leave with pay  
42 and there has been no violation of his alleged due process rights. ...

1 On July 31, 2013, Barrault sent a letter to Deputy Superintendent Alfredo Andres and  
2 Stephen Sutliff, Esq. (Sutliff), the Director and Deputy Director respectively, of the  
3 Police Department's Office of Labor Relations, stating in pertinent part:

4 As you know, on June 29, 2015, the Department placed Lieutenant [C] on  
5 administrative leave because there are purportedly new sexual harassment  
6 claims against him. The Federation filed a grievance contesting the  
7 Department's placement of Lieutenant [C] on administrative leave as  
8 unreasonable and this grievance is currently at step three. Pursuant to  
9 G.L.c.150E, the Federation is requesting the below documentation, which is  
10 relevant and reasonably necessary for it to perform its duty as the  
11 employees' exclusive representative.

- 12
- 13 • Any and all documents relating to or referring to the current  
14 IAD investigation into Lieutenant C and new sexual  
15 harassment allegations. Such documents must include, but  
16 are not limited to, copy or access to the current alleged  
17 sexual harassment complaint for which the Department is  
18 relying upon in its placement of Lieutenant C on  
19 administrative leave.
- 20

21 If the Department has concerns about the disclosure of any of the above-  
22 referenced Documents, please state such concerns in writing and also  
23 state the alternative ways in which the Department can provide the  
24 Federation with its requested information.

25

26 The Department, at a bare minimum, is required to provide the Federation  
27 with information sufficient to verify the existence of an investigation and a  
28 description of the alleged misconduct to determine whether the imposition  
29 and nature of the administrative leave that impacts Lieutenant [C]'s  
30 overtime and detail opportunities was warranted and continues to be  
31 warranted. See In the Matter of Bristol County Sheriff's Office and  
32 Massachusetts Correction Officers Federation Union, MUP-1820 (2001).  
33 Moreover, the Department must provide the Federation with any  
34 investigation summary sheets containing the date the investigation  
35 opened, a detailed description of the alleged misconduct under  
36 investigation, and the date(s) investigators interviewed and/or took other  
37 actions on the investigation. Id. These documents can be sent directly to  
38 me and we can discuss appropriate redactions and safeguards in  
39 advance.

40 Also, on July 31, 2013, Barrault sent another letter to Taub, which stated in pertinent  
41 part:

1 I am in receipt of your letter dated July 25, 2013.

2  
3 Your letter does nothing to assuage the Federation's concerns regarding  
4 the Department's current deplorable treatment of Lieutenant C. On April  
5 16, 2013, the Arbitrator ordered the Department to reinstate Lieutenant C  
6 and to make him whole for lost wages and benefits. To date, the  
7 Department alleges that "there are new allegations of misconduct from  
8 another employee" so serious that Lieutenant C cannot work. You state  
9 that the Federation's concern about the existence of these allegations is  
10 "completely unfounded." Yet, to date, the Department has refused to  
11 speak to the Federation or Lieutenant [C] about such allegations. Until the  
12 Federation and Lieutenant [C] are shown a copy of the relevant complaint,  
13 the only plausible conclusion is that such does not exist given the timing of  
14 the Department's actions in placing Lieutenant [C] on administrative leave  
15 (the eve of his reinstatement date) and the fact that Lieutenant [C] has not  
16 physically worked at the Boston Police Department for almost three years.  
17 To this end, I have sent a (third) request to the Office of Labor Relations  
18 for information related to any investigation currently being conducted into  
19 Lieutenant [C] and "new allegations of misconduct from another  
20 employee." ...

21 August 5, 2013 IAD Interview

22 On August 5, 2013, Miller conducted and recorded an interview with C at the  
23 IAD's offices.<sup>13</sup> Mahoney, Barrault and Parolin were also present. Relevant portions of  
24 the interview as described in a transcript of the recording, which the parties introduced  
25 as Joint Exhibit 20, have been summarized below. Miller noted that the Complainant  
26 had reported that C had made inappropriate comments and directed lewd gestures  
27 towards her on two separate occasions. Miller then asked C if he knew an Officer Doe  
28 and identified her as the Complainant. C confirmed that he knew her casually and that  
29 he knew where she worked. Miller also inquired whether C had encountered Officer  
30 Doe at Wollaston Beach. C confirmed that he had encountered her there in 2009 or  
31 2010 while he was taking a walk on the beach for exercise and that he had a three-

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<sup>13</sup> Miller noted on the record that C was required to answer all questions asked of him honestly and truthfully and to the best of his knowledge, and that failure to do so could result in disciplinary action up to and including termination.

1 minute conversation with her. He denied that he had said anything to her that could be  
2 considered inappropriate. Miller then specifically asked C whether he told Officer Doe  
3 that she "filled out her sweater well," which C denied and further answered that he could  
4 not recall her wearing a sweater. When Miller asked about Officer Doe's demeanor,  
5 including whether or not she was upset, C said no, that she was friendly. Miller then  
6 asked C when he next saw Officer Doe, and C replied that he had not subsequently  
7 seen her.

8 Miller also inquired whether C had attended the Area \*\*\* Christmas Party in  
9 2009, and C confirmed that he had attended. Miller then asked whether C recalled if  
10 Officer Doe was present at the party, and C replied that he did not recall seeing her  
11 there. Miller queried whether C had directed any gestures towards Officer Doe, and C  
12 said he did not recall. When asked if he made gestures to anybody that evening, C  
13 responded that it was not his nature to make such gestures. Miller asked about whom  
14 else was at the party, and C provided a couple of names. Miller then questioned  
15 whether there were any civilian employees, interns or younger females at the party,  
16 and C identified one civilian employee but was unsure whether she attended the party  
17 in 2009 or another year. Miller also inquired whether C had consumed alcohol that  
18 evening, and C replied that he had. When Miller asked if C consumed an excessive  
19 amount, C replied that he had consumed a "cheerful amount." Miller questioned  
20 whether anyone told C that Officer Doe was upset because of something that C had  
21 said or done, or even whether Officer Doe's name had come up that evening, and C  
22 answered negatively. Miller also asked what time C left the party, which C did not  
23 recall, and confirmed that C did not observe Officer Doe leave the party, which he did

1 not. Finally, Miller asked C whether a particular male police officer was at the party,  
2 and C did not recall whether or not he was there. The recorded interview lasted  
3 approximately ten minutes along with a six minute break that Barrault requested in  
4 order to consult with C.

5 On August 14, 2013, Sutliff sent a letter to Barrault stating:

6 This letter responds to your July 31, 2013 letter requesting the documents  
7 relating to or referring to the current IAD investigation into Lieutenant C.  
8 Enclosed with this letter please find a summary sheet containing the date  
9 the investigation opened, a description of the alleged misconduct, and the  
10 dates investigators interviewed witnesses and other actions taken on the  
11 investigation.

12  
13 We believe this fulfills this Union's [Federation] information request.  
14 Please contact our office at --- if you have any questions.

15 Sutliff also attached a redacted version of the IAD log that contained the following  
16 summary off the sexual harassment complaint:<sup>14</sup>

17 The [C]omplainant stated th[at] Lieutenant C had made inappropriate  
18 comments and directed lewd gestures towards her on two separate  
19 occasions.

20 The IAD log redacted all names but C's, including the names of Officer Doe, Miller, and  
21 the witnesses, whom Miller and Mahoney interviewed.<sup>15</sup> The IAD log does contain the  
22 dates on which the investigator(s) interviewed the witnesses as well as details about  
23 scheduling those interviews,<sup>16</sup> the dates on which the investigator(s) requested certain

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<sup>14</sup> The IAD log indicates that it was opened on July 2, 2013 but that the Police Department assigned the sexual harassment complaint to IAD on June 28, 2013.

<sup>15</sup> Commissioner Davis and Chief Linskey decided to expedite the IAD investigation and Miller, with Mahoney's assistance, interviewed fourteen or fifteen witnesses in a five-week period.

<sup>16</sup> For instance, it is noted that a witness is on vacation until the end of July and the interview of the witness is rescheduled to August 1, 2013.

1 documentation, including a list of Area \*\*\* employees from 2009 and a list of interns  
2 assigned to Area \*\*\*\* in 2009.

3 On August 20, 2013, the Federation amended its charge of prohibited practice<sup>17</sup>  
4 in Case No. MUP-13-3023 to include an allegation that the City violated Section  
5 10(a)(5) of the Law by failing to provide requested information. The Federation in its  
6 amendment characterized the information that the City provided it on August 14, 2013  
7 as "unresponsive to the Federation's request and insufficient for the Federation to make  
8 any determination regarding the merits of its pending case."

9 IAD's Second Interview with C<sup>18</sup>

10 On August 26, 2013, Miller conducted and recorded a second interview with C at  
11 the IAD's offices. Mahoney, Parolin and Barrault were also present. Miller described  
12 the nature of the sexual harassment complaint in the same way that he had during the  
13 August 5, 2013 interview. Miller asked C to turn his attention back to the 2009 Area \*\*\*  
14 Christmas Party. Miller then asked C whether he knew a Ms. Poe,<sup>19</sup> and C confirmed  
15 that he did. Miller asked C whether Ms. Poe was at the 2009 Area \*\*\* Christmas Party,

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<sup>17</sup> On July 31, 2013, the Federation filed a prohibited practice charge in Case No. MUP-13-3202 alleging that the City had retaliated against C by failing to comply with the arbitrator's award in violation of Section 10(a)(3) of the Law. The Federation subsequently withdrew this allegation at the September 16, 2013 in-person investigation.

<sup>18</sup> The IAD frequently interviews an individual twice if new information surfaces between the first and second interviews or if Superintendent Mancini or Walcott reviews the file and believes that other questions need to be asked or that issues need to be clarified. C's second interview was the final interview that IAD conducted on the sexual harassment complaint.

<sup>19</sup> The City contended in its post-hearing that Officer Doe and Ms. Poe were the same individuals. Because I do not have sufficient facts to make that finding, I decline to do so.

1 and C replied that he did not recall whether she was there. Miller then asked C how he  
2 knew Ms. Poe, and C answered that she been an intern in a specialized unit in Area \*\*\*\*  
3 and then she left. Miller then asked whether C had commented to Ms. Poe that "if they  
4 were not at the party that night the things that he would do to her." C reiterated that he  
5 did not recall her being at the party and that it would be out of character for him to say  
6 that to somebody. Miller questioned whether C remembered dancing with Ms. Poe that  
7 evening, and C responded that he could not recall who he danced with that evening  
8 although he recalled dancing. Miller inquired whether C recalled dancing with a female  
9 and another female escorting her off the dance floor. C reiterated that he could recall  
10 dancing but that people were just coming and going on the dance floor. Finally, Miller  
11 asked C's opinion as to whether he was overly intoxicated that evening, and C  
12 responded negatively. The recorded interview lasted approximately four minutes.

### 13 C's Return to Active Duty

14 In the next ten days, Superintendent Mancini met with Commissioner Davis and  
15 Chief Linskey and informed them that none of the allegations against C were going to  
16 be sustained<sup>20</sup> and to discuss the possibility of his reinstatement. On September 6,  
17 2013, Commissioner Davis in Personnel Order # PO 13-274 reassigned C to an active-  
18 duty position effective September 7, 2013 and thus, ended C's placement on  
19 administrative leave with pay.

### 20 IAD's Processing of the Complaint After C Returned to Active Duty

21 Even after the Police Department returned C to active duty, the IAD case file  
22 remained open for reasons that Mancini characterized as the bureaucratic process.

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<sup>20</sup> Allegations are not sustained when there is not a preponderance of evidence that could show that the allegations that were complained of occurred.

1 Miller completed an investigatory report that was approximately thirty pages in length,  
2 which included listening to the witnesses' recorded interviews for a second time and  
3 summarizing those interviews. Mahoney as the team leader then read Miller's  
4 investigatory report and drafted his own report as well as made recommendations about  
5 whether the allegations against C should be sustained or not. Mahoney then turned  
6 over his report, Miller's report, and the entire case file to the Deputy Superintendent in  
7 charge of IAD. The Deputy Superintendent read the two investigation reports for a total  
8 of forty pages plus Mahoney's recommendations. Deputy Superintendent Walcott  
9 forwarded the case file to Superintendent Mancini, who read the reports and listened to  
10 the interviews of the witnesses. At some point, IAD sent the recordings of the  
11 witnesses' interviews to a court reporter, who compiled a stenographic transcript, which  
12 was placed in the IAD case file during the first week of March 2014. Superintendent  
13 Mancini then sent the case file to the Police Department's Legal Advisor, who read the  
14 materials in the case file and briefed the Police Commissioner on its contents at some  
15 point in March 2014. The Police Commissioner agreed with the recommendations and  
16 signed off on those recommendations. The case file was then returned to IAD where it  
17 was officially closed. On April 8, 2014, Deputy Superintendent Walcott issued a  
18 memorandum to C regarding Disposition of Complaint of Boston Police Department,  
19 Case # IAD2013-0263, Violation of Rule(s) 102, §3-Conduct Unbecoming, which stated:

20 In reference to the above-mentioned subject matter, please be advised  
21 that the Internal Investigations Unit has completed its inquiry. After a  
22 thorough investigation, the Internal Investigations Unit has determined that  
23 the complaint for Violation of Rule(s) 102, §3 be classified as Not  
24 Sustained.

25 Other Notable Events After September 7, 2013



1 conditions of employment of bargaining unit members is presumptively relevant and  
2 necessary to an employee organization to perform its statutory duties. City of Lynn, 27  
3 MLC 60, 61, MUP-2236, 2237 (December 1, 2000). The relevance of the requested  
4 information must be determined by the circumstances that existed at the time when the  
5 exclusive bargaining representative made the request. Id.

6 Relevant and Reasonably Necessary Information

7 Here, Federation counsel Barrault in her July 31, 2013 letter requested any and  
8 all documents relating to or referring to the then ongoing IAD investigation into  
9 bargaining unit member C, including access to the alleged sexual harassment complaint  
10 that the City relied upon when it placed C on administrative leave. The sole issue  
11 before me is whether the City timely provided the Federation with a copy of the sexual  
12 harassment complaint against C. The Federation previously had filed the June 28,  
13 2013 grievance on C's behalf, which protested his placement on administrative leave  
14 and his loss of opportunity to work overtime and paid details. The CERB repeatedly has  
15 recognized that a union is entitled to information that permits it to determine whether or  
16 not it should pursue a grievance. City of Boston, 29 MLC 165, 167, MUP-2483 (March  
17 6, 2003). Thus, the requested information is relevant to the Federation in its role as  
18 exclusive bargaining representative.

19 Even though the sexual harassment complaint might be relevant, the City asserts  
20 that it was not necessary for the Federation to have access to the sexual harassment  
21 complaint because the information contained therein was redundant. First, the City  
22 asserts that even though the Federation requested access to the sexual harassment  
23 complaint on July 22 and July 31, 2013, the Federation already possessed that

1 information as of July 3, 2013 when Parolin wrote his letter. Contrary to the City's  
2 claims, a plain reading of Parolin's July 3, 2013 letter does not demonstrate that the  
3 Federation possessed any actual knowledge about the sexual harassment complaint.  
4 Also, Parolin indicated at hearing that he wrote his memorandum based upon rumors  
5 that he had heard about a recently surfaced sexual harassment complaint against C  
6 and inferences that he made based upon those rumors. Additionally, the record  
7 contains no affirmative evidence that the City provided the Federation with any  
8 information about the substance of the sexual harassment complaint prior to August  
9 2013.

10 The City also argues that the Federation no longer needed the requested  
11 information after August 5, 2013 because it had received the information at the IAD  
12 interview on that date. In particular, Miller identified the Complainant, described the  
13 allegations as involving C's inappropriate comments and lewd gestures, and then  
14 referenced two separate incidents, a 2009 or 2010 verbal exchange at Wollaston Beach  
15 and the 2009 Christmas Party. At the end of the August 5, 2011 interview, Miller asked  
16 Parolin and Barrault, who were present as C's Federation representatives, whether they  
17 had any more questions and they did not, which the City contends is confirmation that  
18 the Federation did not require any additional information. However, merely alleging that  
19 the information sought is redundant is insufficient to conclude that the information is not  
20 relevant and reasonably necessary to the Federation in fulfilling its duties as bargaining  
21 agent. The Federation needed to have access to the sexual harassment complaint in  
22 order to reach its own conclusions, including determining whether the complaint

1 contained any potential exculpatory evidence. See City of Boston, 22 MLC 1698, 1707,  
2 MUP-9605 (April 26, 1996).

3       Once a union has established that the requested information is relevant and  
4 reasonably necessary to its duties as the exclusive representative, the burden shifts to  
5 the employer to establish that it has legitimate and substantial concerns about  
6 disclosure, and that it has made reasonable efforts to provide the union with as much of  
7 the requested information as possible, consistent with its expressed concerns. Board of  
8 Higher Education, 26 MLC at 93 (citing Boston School Committee, 13 MLC 1290, 1294-  
9 1295, MUP-5905 (November 2, 1986); Adrian Advertising a/k/a Advanced Advertising,  
10 13 MLC 1233, 1263, UP-2497 (November 6, 1986), aff'd sub nom., Despres v. Labor  
11 Relations Commission, 25 Mass. App. Ct. 430 (1988)). If an employer advances  
12 legitimate and substantial concerns about the disclosure of information to a union, the  
13 CERB will examine the facts contained in the record. Boston School Committee, 13  
14 MLC at 1295. The employer's concerns are then balanced against an employee  
15 organization's need for the information. Commonwealth of Massachusetts, Chief  
16 Administrative Justice of the Trial Court, 11 MLC 1440, 1443-1444, SUP-2746  
17 (February 21, 1985) (adopting the balancing test approach used by the United States  
18 Supreme Court in Detroit Edison Co. v. NLRB, 440 U.S. 301, 100 LRRM 2728 (1979)).  
19 Absent a showing of great likelihood of harm flowing from disclosure, however, the  
20 requirement that a bargaining representative be furnished with relevant information  
21 necessary to carry out its duties overcomes any claim of confidentiality. Greater  
22 Lawrence Sanitary District, 28 MLC 317, 318-319, MUP-2581 (April 19, 2002).

1 Here, the City argues that an employer's duty to provide a union with information  
2 upon request is interpreted consistent with exemptions to M.G.L. c.66, §10, the Public  
3 Records Law. Further, the City posits that because the IAD investigation into the sexual  
4 harassment complaint against C could have revealed possible criminal conduct, the  
5 investigatory materials exemption to the Public Records Law in M.G.L.c.4, §7. Twenty-  
6 sixth (f) was triggered. Specifically, M.G.L. c.4, §7, Twenty-sixth (f) states:

7 'Public records' shall mean all books, papers, maps, photographs,  
8 recorded tapes, financial statements, statistical tabulations, or other  
9 documentary materials or data, regardless of physical form or  
10 characteristics, made or received by any officer or employee of any  
11 agency, executive office, department, board commission, bureau, division  
12 or authority of the commonwealth, or of any political subdivision thereof, or  
13 of any authority established by the general court to serve a public  
14 purpose, unless such materials or data fall within the following exemptions  
15 in that they are:

16  
17 (f) investigatory materials necessarily compiled out of the public view by  
18 law enforcement or other investigatory officials the disclosure of which  
19 materials would probably so prejudice the possibility of effective law  
20 enforcement that such disclosure would not be in the public interest.

21  
22 If an employer raises statutory defenses to its failure to provide a union with requested  
23 relevant information, the CERB reviews the cited statutory provisions in light of the  
24 Employer's obligation under Chapter 150E. Resolution of statutory concerns raised by  
25 an employer may require harmonizing statutory schemes, each of which protects a  
26 significant public interest.

27 Even assuming that the Federation's requested information falls within the  
28 investigatory materials exemption, the designation of the information as not a public  
29 record does not determine the Federation's right to access that information. See Sheriff  
30 of Bristol County v. Labor Relations Commission, 62 Mass. App. Ct. 665, 670 (2004)  
31 (determining whether materials are public records or not does not resolve the question

1 of union's right of access). Although materials may be exempt from disclosure under  
2 the Public Records Law, the CERB has held that an employer's obligation under  
3 Chapter 150E can be fulfilled in a manner consistent with the purposes of the Public  
4 Records Law. Commonwealth of Massachusetts, 21 MLC 1499, 1505-1506, SUP-3459  
5 (December 14, 1994). Absent other legitimate and substantial concerns about  
6 disclosure, which I will consider below, the City's release of the information subject to  
7 certain safeguards concerning dissemination would have harmonized all applicable  
8 statutory schemes by enforcing the employer's obligation to bargain in good faith but  
9 protecting the public interest in effective law enforcement under the investigatory  
10 materials exemption. See Bristol County Sheriff's Office, 28 MLC 11, 122, MUP-1820  
11 (October 10, 2001), aff'd sub nom., Sheriff of Bristol County, 62 Mass. App. Ct. at 665  
12 (2004) (harmonizing Chapter 150E with the investigatory materials exemption by  
13 providing requested information to the union with safeguards).

14 Other Alleged Legitimate and Substantial Concerns

15 Having found that the investigatory material exemption does not preclude the  
16 Federation from receiving access to the sexual harassment complaint with certain  
17 safeguards in place, I turn now to the City's argument that it had other legitimate and  
18 substantial concerns about disclosing the sexual harassment complaint that outweighed  
19 the Federation's need for the information. At hearing, the City expressed concerns  
20 about: a) maintaining the confidentiality of the investigation, b) turning over the sexual  
21 harassment complaint to the Federation while the IAD case remained open, and c)  
22 providing unnecessary information because the City previously released similar  
23 information to the Federation in the redacted IAD log and summary sheet. For the

1 reasons discussed below, I decline to find that those reasons are sufficient to outweigh  
2 the Federation's need for the information as the exclusive bargaining representative.

3 Turning first to the City's concerns about the confidentiality of the investigation, it  
4 is undisputed that the City provided the Federation with the Complainant's name at the  
5 August 5, 2013 interview. See Boston School Committee, 13 MLC 1290, 1296, n.6  
6 1986) (employer's disclosure of disputed information in another manner could diminish  
7 its avowed interest in non-disclosure). Also, at times, the City gave copies of sexual  
8 harassment complaints to the subjects of those complaints, and at other times, the City  
9 did not provide the complaints. The City has not released complaints if it had concerns  
10 about evidence tampering or influencing witnesses. The record before me does not  
11 show that the City expressed any concerns that C might tamper with evidence or  
12 influence witnesses, or even if the City had expressed such concerns, that it had facts  
13 to support such concerns. The mere possibility of a chilling effect does not override an  
14 employee's organization right to information. Commonwealth of Massachusetts, 11 MLC  
15 at 1443-1444 (rather than merely articulating concerns about the disclosure of  
16 information, an employer must produce evidence in support of its contentions). Further,  
17 a release of the IAD complaint to the Federation with safeguards would have addressed  
18 any confidentiality concerns.

19 Next, the City argues that it had concerns about providing the Federation with a  
20 copy of the sexual harassment complaint while the IAD case remained pending. The  
21 City did not officially close the IAD case until April 8, 2014. The City points to Boston  
22 Police Superior Officers Federation, 414 Mass. 458, 461, n.5 (1983) in which the  
23 Supreme Judicial Court affirmed a Superior Court judge's order that enforced a

1 subpoena and drew distinctions between materials contained in open and closed IAD  
2 files. First, as the Federation correctly notes, it did not seek the entire IAD file but rather  
3 a single document in the file, i.e. a copy of the sexual harassment complaint. See  
4 Worcester County Jail and House of Correction, 28 MLC 189, 192 , MUP-1885  
5 (December 28, 2001) (finding that the disclosure of certain materials in an IAD file is not  
6 contingent on the open or closed status of the file where the union is not seeking the  
7 entire contents of the file). More importantly, as of September 6, 2013, the City had  
8 determined that none of the allegations against C were sustained and then  
9 Commissioner Davis had issued a Personnel Order returning C to active duty without  
10 restrictions. The City no longer was actively investigating the sexual harassment  
11 complaint. The IAD case remained open for what Superintendent Mancini  
12 characterized as bureaucratic reasons, which included the compilation of official reports  
13 and the receipt of stenographic transcripts of witnesses' testimony. Thus, the City no  
14 longer had legitimate concerns that allowing the Federation access to the sexual  
15 harassment complaint possibly could compromise the investigation because an active  
16 investigation was no longer taking place. Also, the City's argument is undercut by the  
17 fact that it allowed the Federation to inspect the sexual harassment complaint on March  
18 28, 2014, while the IAD case still remained open.

19 Third, the City argues that it provided the Federation with a redacted IAD log  
20 sheet and summary sheet and that those documents provided similar information as  
21 was present in the sexual harassment complaint. However, the Federation challenges  
22 the adequacy of the information because the log sheet does not indicate when Officer  
23 Doe filed the complaint, when C allegedly made the inappropriate comments and lewd

1 gestures, and did not provide a detailed description of the alleged inappropriate  
2 comments and lewd gestures. The date of the filing of the complaint and the dates  
3 when C allegedly engaged in the disputed conduct are significant because the  
4 Federation and the City dispute the meaning of Rule 114, Section 5(f) and whether  
5 sexual harassment complaints that involve actions that took place more than one year  
6 prior to the filing of a complaint are untimely. Also, the Federation continued to need a  
7 detailed description of the conduct that formed the basis of Officer Doe's complaint,  
8 because at the second IAD interview on August 26, 2013, Miller asked C whether he  
9 knew a Ms. Poe and danced with her at the 2009 Area \*\*\* Christmas Party. The sexual  
10 harassment complaint did not specifically reference an incident on the dance floor.

11 Finally, when an employer has concerns about the confidentiality of information  
12 requested by a union, it has an obligation to initiate a discussion to explore acceptable  
13 alternative ways to permit the union access to the necessary information. City of  
14 Boston, 22 MLC 1698, 1709 (1996). Here, the City initiated no such discussions, even  
15 in response to Barrault's July 31, 2013 letter. In that letter, Barrault asked the City to  
16 state in writing any concerns that the City might have about disclosure of the requested  
17 information and to suggest alternative ways of providing the Federation with the  
18 information. Instead, the City argues that because it requested the hearing officer to  
19 conduct an *in camera* review of the sexual harassment complaint when the parties  
20 appeared at the first pre-hearing conference in February 2013, the City had satisfied its  
21 obligation to initiate a discussion with the Federation. Even assuming that the City's  
22 request for an *in camera* review constitutes a discussion about alternative ways to  
23 provide the information rather than a component of the parties' litigation of the

1 prohibited practice charge, the City's request occurred more than six months after the  
2 Federation requested the information and does not satisfy the City's obligation to initiate  
3 a discussion about alternative ways to provide the information.<sup>21</sup>

#### 4 Failure to Provide Information in a Timely Manner

5 I next must consider whether the City failed to provide the requested information  
6 in a timely manner. The facts before me establish the following time line. On July 22  
7 and July 31, 2013, the Federation requested a copy of the sexual harassment  
8 complaint. On August 20, 2013, the Federation amended a prohibited practice charge  
9 that it previously filed in Case No. MUP-13-3023 to include the allegation that the City  
10 had failed to provide certain requested information, i.e. the sexual harassment  
11 complaint, that was relevant and reasonably necessary to the Federation in its role as  
12 exclusive bargaining representative in violation of Section 10(a)(5) of the Law. A DLR  
13 investigator conducted an in-person investigation on September 16, 2013 and issued a  
14 complaint on October 7, 2013. The City subsequently allowed Kervin and Barrault to  
15 review the sexual harassment complaint on March 28, 2014.

16 An employer may not unreasonably delay furnishing requested information that is  
17 relevant and reasonably necessary. Boston School Committee, 24 MLC 8, 11, MUP-  
18 1410, 1412 (August 26, 1997). In determining whether a delay in the production of  
19 information is unreasonable, the CERB considers a variety of factors including: 1)  
20 whether the delay diminishes the employee organization's ability to fulfill its role as the  
21 exclusive representative; Id.; 2) the extensive nature of the request, UMass Medical

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<sup>21</sup> I need not rule on the merits of the City's renewed request for an *in camera* review, because the City subsequently provided the Federation with access to the sexual harassment complaint, and the parties introduced the complaint with the Complainant's name redacted into evidence as Joint Exhibit #19.

1 Center, 26 MLC 149, 158, SUP-4392, 4400 (March 10, 2000); 3) the difficulty of  
2 gathering the information, Id.; 4) the period of time between the request and the receipt  
3 of the information, Higher Education Coordinating Council, 23 MLC at 269; and 5)  
4 whether the employee organization was forced to file a prohibited practice charge to  
5 retrieve the information. Board of Higher Education, 26 MLC at 93. Here, the City did  
6 not give the Federation access to the sexual harassment complaint until more than  
7 seven months after the Federation amended its prohibited practice charge in Case  
8 MUP-13-3023 to include the allegation that City failed to provide the information. See  
9 Boston School Committee, 24 MLC at 11 (compelling an exclusive bargaining  
10 representative to file charges to obtain relevant requested information does not  
11 effectuate the purposes of the Law or enhance the spirit of labor relations). Also, during  
12 the pendency of the dispute as to whether the Federation had the right to have access  
13 to the sexual harassment complaint, the parties postponed the arbitration of the June  
14 28, 2013 grievance that the Federation had filed on C's behalf, which was originally  
15 scheduled for May 19, 2014, and rescheduled it to November 7, 2014.

16 Further, the possibility that an employer might require additional time and  
17 personnel to respond to a complex information request is not an issue here because the  
18 sexual harassment complaint was a single document that Officer Doe submitted to the  
19 City on June 22, 2013. Compare UMass Medical Center, 26 MLC at 158 (finding delay  
20 in providing information reasonable because of the extensive nature of the request and  
21 the difficulty in calculating the information). The City instead contends that the  
22 Federation had no legitimate basis for seeking access to the complaint while the IAD  
23 case was open, a contention that I considered above and rejected. As of September 6,

1 2013, the Federation had the right to review the information and make its own  
2 assessment here whether or not the information would be useful in its role as bargaining  
3 representative. See City of Boston, 35 MLC 95, 102, MUP-04-4050 (December 10,  
4 2008) (raising the possibility that a union and an employer could review the same  
5 information and draw different conclusions as to the usefulness of the information).  
6 When the City failed to give the Federation access to the sexual harassment complaint  
7 in order to make the necessary assessment about the usefulness of the information  
8 contained therein, the City diminished the Federation's role as C's bargaining  
9 representative. Compare Board of Higher Education, 26 MLC at 93 (diminishing union's  
10 role as bargaining representative when union postponed an arbitration because it had  
11 not received requested information) with Massachusetts State Lottery Commission, 22  
12 MLC 1468, 1472, SUP-3666, 3667, 3676 (February 2, 1996) (during negotiations over a  
13 reorganization, one-day delay in providing information did not impact union as  
14 representative because union had made no proposals at two earlier bargaining sessions  
15 prior to the information request). Accordingly, on the facts before me, the City's delay in  
16 providing the Federation with the requested information was unreasonable.<sup>22</sup>

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<sup>22</sup> On September 2, 2014, the Federation filed a motion for summary judgment, and I deferred ruling on the Federation's motion at that time. The City filed its opposition to the motion for summary judgment on October 31, 2014. The Federation filed a motion to strike and/or submit a reply brief on November 10, 2014. On November 13, 2014, the City filed its opposition to the Motion to Strike and a Cross-Motion to Strike the Attachments that the Federation had submitted in support of its Motion for Summary Judgment. Because I have decided the case on the witnesses' testimony, documentary evidence and the stipulations that the parties introduced into the hearing record, I deny the Federation's motion for summary judgment and the parties' motions to strike. As I indicated to the parties at hearing, I have not considered documents that the Federation attached to its motion for summary judgment if the Federation did not separately introduce those documents as exhibits at hearing. Additionally, as the parties' post-hearing briefs are not evidence, I did not consider any alleged facts in those briefs that

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Conclusion

Based on the record and for the reasons stated above, I conclude that the City violated the Law by failing to timely provide the Federation with requested information that was relevant and reasonably necessary.

ORDER

WHEREFORE, based upon the foregoing, it is hereby ordered that the City shall:

- 1. Cease and desist from:
  - a) Failing and refusing to bargain collectively in good faith with the Federation by not providing the Federation access in a timely manner to requested information that is relevant and reasonably necessary to the Federation in its role as exclusive bargaining representative.
  - b) In any like or related manner, interfering with, restraining and coercing its employees in the exercise of their rights guaranteed under the Law.
- 2. Take the following action that will effectuate the purposes of the Law:
  - a) Provide requested information that is relevant and reasonably necessary to the Federation's role as exclusive bargaining representative in a timely manner.
  - b) Post immediately in all conspicuous places where members of the Federation's bargaining unit usually congregate, or where notices are usually posted, including electronically, if the City customarily communicates with these unit members via intranet or email and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees.

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were not contained in the hearing record or any documents attached to those briefs if the parties did not separately introduce them into the hearing record.

- 1 Notify the DLR in writing of steps taken to comply with this decision within
- 2 ten (10) days of receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS



MARGARET M. SULLIVAN  
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11, and 456 CMR 13.15, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within ten days, the decision shall become final and binding on the parties.



**POSTED BY ORDER OF A HEARING OFFICER OF  
THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS  
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS**

A Hearing Officer of the Massachusetts Department of Labor Relations (DLR) has held that the City of Boston (City) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E by not providing the Boston Police Superior Officers Federation (Federation) access in a timely manner to requested information that was relevant and reasonably necessary to the Federation in its role as exclusive bargaining representative.

Section 2 of Chapter 150E gives public employees the right to form, join or assist a union; to participate in proceedings at the DLR; to act together with other employees for the purpose of collective bargaining or other mutual aid or protection; and, to choose not to engage in any of these protected activities.

The City assures its employees that:

WE WILL NOT fail and refuse to bargain collectively in good faith with the Federation by not providing it access in a timely manner to relevant and reasonably necessary information that the Federation had requested in its role as exclusive bargaining representative.

WE WILL NOT in any like or similar manner interfere with, restrain or coerce employees in the exercise of their rights protected under the Law.

WE WILL take the following affirmative action that will effectuate the purpose of the Law:

1. Provide requested information in a timely manner that is relevant and reasonably necessary to the Federation in its role as exclusive bargaining representative.

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For the City of Boston

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Date

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED**

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, 19 Staniford Street, 1<sup>st</sup> Floor, Boston, MA 02114 (Telephone: (617) 626-7132).