

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

SCOTT HOVSEPIAN, JEANNE CARROLL, and  
DONALD CAISEY,

Plaintiffs,

v.

MASSACHUSETTS PEACE OFFICER  
STANDARDS AND TRAINING COMMISSION,

Defendant.

Civil Action No. \_\_\_\_\_

**EMERGENCY MOTION FOR SHORT ORDER OF NOTICE  
AND LIMITED EXPEDITED DISCOVERY**

Plaintiffs, Scott Hovsepian, Jeanne Carroll, and Donald Caisey, respectfully move for

- (1) a Short Order of Notice permitting them to today, April 27, 2022, give notice to Defendant of a hearing, in accord with Mass. Gen. L. ch. 30A, § 23(f), on May 16, 2022, on Plaintiffs' Complaint Pursuant to Mass. Gen. L. Ch. 30A, § 23(f) for Violation of Open Meeting Law; and
- (2) an Order for targeted expedited discovery for purposes of said hearing.

In support of this motion, Plaintiffs state:

**Summary of Grounds**

1. This is an action pursuant to § 23(f) of the Open Meeting Law, Mass. Gen. L. ch. 30A, § 18, et seq.

2. Section 23(f) requires expedited proceedings. It provides, in relevant part:

**In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause**

consistent with the rights of the parties; provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. (Emphasis added.)

3. Plaintiffs' request for a short order of notice is based on the statutory requirement for speedy hearing and determination.

4. Plaintiffs' request for targeted expedited discovery is intended to ensure, or at least increase the likelihood, that the hearing required by § 23 is meaningful.

5. Specifically, Plaintiffs seek narrow categories of documents that Plaintiffs believe will corroborate or support their claim that Defendant has violated the Open Meeting Law.

### **Detailed Grounds**

#### **Parties**

6. Plaintiffs are peace officers and the Presidents of three law enforcement unions.

7. Defendant, the Massachusetts Peace Officer Standards and Training Commission ("POST Commission" or the "Commission"), was established pursuant to the criminal justice reform legislation signed into law in the closing hours of 2020.

8. The Commission is charged with creating a mandatory certification process for peace officers – certification being a new condition to employment as a peace officer – as well as processes for decertification, suspension of certification, and reprimand.

#### **Gravamen of Plaintiffs' Claim; Examples of Violations**

9. Plaintiffs bring this action because the Commission has been conducting much of its critical work in secret, in violation of the Open Meeting Law, Gen. L. ch. 30A, §18, et seq.

10. The Commission has established subcommittees (called "sub-sets" or "working groups") of Commission members that have secretly communicated, met, deliberated, and

generated work product related to, among other things, qualifications and certification of, and complaints against, law enforcement personnel.

11. For example, upon information and belief, one of these subcommittees developed – through meetings that were not public and through non-public communications – questionnaires to be administered to new and existing peace officers, purportedly to assess their moral fitness to act as peace officers. The questionnaires were presented to the full Commission, which essentially rubber-stamped them. There was little to no public input into or involvement in the generation of the questionnaires, and the parties that are the targets of the questionnaires, and that have the most at stake – the peace officers who would be forced to answer them – had essentially no say in the creation process or in their form and content.

12. The questionnaires thus and unfortunately are extraordinarily invasive, unfair, inapt, and, one might say, Orwellian. The questions peace officers would be required to answer, under oath, and under threat of loss of career, include:

*Are you current in all tax payments? This includes federal and state taxes as well as property and excise taxes.*

Unsurprisingly, what bearing currency on taxes has on moral fitness has not been explained.

*In the last five years, have you ever sent or displayed a public communication on social media that you believe could be perceived as biased against anyone based on their actual or perceived race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status, or socioeconomic or professional level, provided you were at least 18 years old at the time? If yes, please provide each such public communication, and details. For these purposes, “communications” include, without limitation, posts, comments, and messages; and “public” communications are those that were made available to three or more people other than you.*

This question is remarkably vague and ambiguous, massively overbroad, and utterly irrational. It reaches back to a time long before the legislation at issue was in effect, contains undefined terms and jargon, irrationally expects an answering peace officer to speculate as to perceptions of others,

particularly the perceptions of a new reformist agency with plenary authority to effectively terminate peace officers for perceived bias, and sweeps within its reach communications that could be legitimate, First Amendment-protected posts on serious topics of the day. Would, for instance, posting “Tax the Rich” on social media be regarded as bias against socioeconomic or professional status? Moral fitness requires, according to the Commission subcommittee, the surrender of First Amendment rights.

*Do you currently belong, or have you ever belonged, to any organization that, at the time you belonged, unlawfully discriminated (including by limiting membership) on the basis of actual or perceived race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status, age or socioeconomic or professional level?*

This question, too, is startlingly overbroad, invasive, and inapt. Some perceive the Boy Scouts of America, the Catholic church, and certain orthodox or conservative religious denominations and sects to be discriminatory. Must a peace officer who happens to be a Scout leader or a Catholic reveal this in response because it comprises membership in such a discriminatory organization – and put his or her job at risk? More to the point, how on earth does membership in such organizations indicate a lack of moral fitness to act as a peace officer?

*Thinking broadly, do you have any knowledge or information, in addition to that specifically addressed in the preceding questions, which may be relevant, directly or indirectly, to your eligibility or fitness to be recertified as a law enforcement officer with this law enforcement agency? This would include, but is not limited to, knowledge or information concerning your character, temperament, habits, employment, education, criminal records, traffic violations, residence, or otherwise.*

A more dangerous trap for the unwary is hard to conceive. “Thinking broadly”? “[M]ay be relevant”? “[D]irectly or indirectly”? “Otherwise”? What do these vague and ambiguous terms mean, and must a police officer guess at meaning, and put her or his job at risk? And what do traffic violations, habits, and residence have to do with moral fitness to act as a peace officer?

13. The questionnaire is bad enough. It makes things much worse – and illegal – that a good deal of the work on this offensive questionnaire was done in secret – and in violation of the Open Meeting Law.

14. As another troubling example, upon information and belief, a subcommittee – again, without compliance with the Open Meeting Law – has been tasked with the critical preliminary work on a critical regulatory instrument – the “Requirements and Plan for Recertification of Certain Law Enforcement Officers,” which, as its title suggests, sets forth the proposed procedure and criteria to govern how existing law enforcement officers are recertified – and allowed to keep their jobs.

#### **The Commission’s Obstructionism and Violations**

15. Since mid-January, the Massachusetts Coalition of Police (“MassCOP”), the largest law enforcement union in the Commonwealth, has been seeking, via the Public Records Law, records on the activities of the subcommittees that are at issue in this action.

16. The POST Commission has produced not a single record in response. Rather, it has been completely uncooperative, shielding the improper secrecy of the subcommittees’ activities by keeping their records out of the public eye.

17. MassCOP requested that the POST Commission provide a single category of documents:

Any and all agendas, minutes, audio/video recordings, attendance lists, emails and/or correspondence, relating to sub-committee or working group meetings involving attendance by any commissioner since inception of the POST Commission.

18. The POST Commission responded, asserting that it could and would not produce records, claiming, remarkably, it did not understand the request and thought it was too broad.

19. MassCOP filed with the Supervisor of Records a detailed appeal of the POST Commission's refusal to provide records.

20. MassCOP's appeal precipitated a further response by the Commission, by its outside counsel, who revealed that there had been extensive meetings of subcommittees related to the drafting and approval of guidelines or regulations.

21. But not a single record was provided or promised. On the contrary, it was asserted that there were no agendas or the like for the subcommittees – and thus suggested that there were no responsive records.

22. This was a dodge. MassCOP had asked for much more than agendas and the like.

23. MassCOP complained about the dodge to the Supervisor of Records, who directed the Commission to reveal “whether it possesses additional records, particularly ‘attendance lists, emails and/or correspondence’ relating to the meetings [of the subcommittees].” She ordered the Commission to provide MassCOP “with a response to the request, provided in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) business days.”

24. Continuing the stall, the POST Commission ignored the Supervisor's 10-day deadline, prompting MassCOP to write the Supervisor again, on March 14, to complain.

25. The POST Commission finally provided a response, a letter from its outside counsel, on April 1, 2022.

26. The April 1 response removed all doubt that the POST Commission has been operating in violation of the Open Meeting Law.

27. The POST Commission admitted that it had established “five sub-sets of the Commission that have undertaken substantive projects.”

28. It said that three of the so-called sub-sets had completed their projects and that the other two are working on standards for recertification of law enforcement officers and the regulations on complaints, internal investigations, and adjudicatory proceedings.

29. The POST Commission thus admitted that it has been operating through subcommittees that have been tasked with work on the most critical subjects the Commission is charged with handling – and the most critical to police officers.

30. The POST Commission refused to provide any records relating to the two active subcommittees. It offered records as to the other subcommittees, but still **not a single document has been provided.**

**31. MassCOP has been seeking records from the Commission for more than three months, and not one piece of paper – not one *public record* – has been provided.**

32. In early April, MassCOP wrote counsel for the POST Commission, complaining that the Commission, via the so-called “sub-sets,” had violated and was continuing to violate the Open Meeting Law.

33. MassCOP demanded that the POST Commission cease and desist from violating the Open Meeting Law.

34. The Commission responded on April 12, 2002, essentially thumbing its nose at MassCOP.

35. The Commission has violated the Open Meeting Law by conducting critical, substantive business through subcommittees that do not comply with the law’s notice, openness, and record-keeping requirements. *District Attorney for N. Dist. v. Sch. Comm. of Wayland*, 455 Mass. 561, 563 (2009); Mass. Gen. L. ch. 30A, §§ 18, 20 22; *Attorney General Open Meeting Law Determination OML 2021-95* (Concord Transportation Advisory Committee subject to Open

Meeting Law); OML 2018-131 (working group established by Harvard School Building Committee subject to Open Meeting Law); OML 2017-36 (task force subject to Open Meeting Law); *Nigro v. Conservation Commission of Canton*, 7 Mass. App. 433 (1984) (subcommittee required to comply with Open Meeting Law).

36. Plaintiffs therefore have brought this action, seeking relief under the Open Meeting Law.

37. Section 23 of the Open Meeting Law gives the Court broad powers in respect to relief for violations of the law, and specifically permits the Court to

- (1) compel immediate and future compliance with the open meeting law;
- (2) compel attendance at a training session authorized by the attorney general;
- (3) nullify in whole or in part any action taken at the meeting;
- (4) impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation;
- (5) reinstate an employee without loss of compensation, seniority, tenure or other benefits;
- (6) compel that minutes, records or other materials be made public; or
- (7) prescribe other appropriate action.

Mass. Gen. L. ch. 30A, § 23.

#### **Relief Requested by this Motion**

38. By this motion, Plaintiffs seek and respectfully request (a) a short order of notice, and (b) an order for limited expedited discovery.

39. The basis for the request for the short order of notice is that the Open Meeting Law expressly requires the speediest possible determination of Plaintiffs' claims. Mass. Gen. L. ch. 30A, § 23(f).

40. As to expedited discovery, Plaintiffs ask that the Court direct the POST Commission to produce to Plaintiffs, ten days before the hearing, all documents concerning activity by Commission subcommittees (or "sub-sets") relating to the questionnaires referenced above and concerning the above-referenced "Requirements and Plan for Recertification of Certain



Law Enforcement Officers,” including but not limited to (i) communications of any type between or among subcommittee (or “sub-set”) members or to or from the subcommittee(s) as such; (ii) notes taken during or minutes of subcommittee (or “sub-set”) meetings (as defined in the Open Meeting Law); (iii) documents generated by the subcommittee(s) (or “sub-set(s)”), including drafts of questionnaires, plans, or regulations; and (iv) documents considered by the subcommittee(s) (or “sub-set(s)”) in the course of their work on the questionnaires or “Requirements and Plan for Recertification of Certain Law Enforcement Officers.” The requested order would not be unduly burdensome because only two categories of documents are at issue, the Commission essentially has had months to consider the issue, and the number of documents should be relatively limited (unless the subcommittees’ activities have been very extensive – and thus in flagrant violation of the Open Meeting Law). The documents are sought because they are likely to bear on, and be evidence for/at the upcoming hearing on, Plaintiffs’ claim that the Commission has violated the Open Meeting Law.

WHEREFORE, Plaintiffs respectfully request:

- (1) a Short Order of Notice permitting them to today, April 27, 2022, give notice to Defendant of a hearing, in accord with Mass. Gen. L. ch. 30A, § 23(f), on May 16, 2022, on Plaintiffs’ Complaint Pursuant to Mass. Gen. L. Ch. 30A, § 23(f) for Violation of Open Meeting Law; and
- (2) an Order requiring the POST Commission to produce to Plaintiffs, ten days before the hearing, i.e., by May 6, 2022, all documents concerning activity by Commission subcommittees (or “sub-sets”) relating to the questionnaires referenced above and concerning the above-referenced “Requirements and Plan for Recertification of Certain Law Enforcement Officers,” including but not limited to (i) communications of any type between or among subcommittee (or “sub-set”) members or to or from the subcommittee(s) as such; (ii) notes taken during subcommittee (or “sub-set”) meetings (as defined in the Open Meeting Law); (iii) documents generated by the subcommittee(s) (or “sub-set(s)”), including drafts of questionnaires, plans, or regulations; and (iv) documents considered by the subcommittee(s) (or “sub-set(s)”) in the course of their work on the questionnaires or “Requirements and Plan for Recertification of Certain Law Enforcement Officers.”

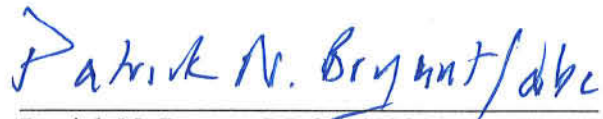
April 27, 2022

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