

# Exhibit 1



"The Only Union for Police Officers and 911 Dispatchers"

Scott A. Hovsepian, President  
sah@masscop.org

John E. Nelson, First Vice-President  
jen@masscop.org

Robert W. Murphy, Secretary/Treasurer  
rwm@masscop.org  
(508) 581-9336  
fax (508) 581-9564

January 14, 2022

Massachusetts Peace Officer Standards and Training Commission  
ATTN: Executive Director Enrique Zuniga

SENT VIA EMAIL: enrique.zuniga@state.ma.us

Re: Massachusetts Public Records Request

Dear Executive Director Zuniga:

This is a request under the Massachusetts Public Records Law (M. G. L. Chapter 66, Section 10). I am requesting that I be provided a copy of the following records:

**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. Please include above requested material for any meeting involving attendance of commissioners where discussion of POST matters occurred, no matter what title or term was used for said proceeding.**

I recognize that you may charge reasonable costs for copies, as well as for personnel time needed to comply with this request.

The Public Records Law requires you to provide me with a written response within 10 business days. If you cannot comply with my request, you are statutorily required to provide an explanation in writing.

NOTE: This request was sent via email due to no physical address being available for the Commission.

Sincerely,

A handwritten signature in blue ink, appearing to read "John E. Nelson", is written over a horizontal line.

John E. Nelson, Vice President  
Massachusetts Coalition of Police

# Exhibit 2



**CHAIR**

Margaret R. Hinkle

**COMMISSIONERS**

Hanya H. Bluestone  
Lawrence Calderone  
Clementina Chéry  
Larry Ellison  
Marsha V. Kazarosian  
Charlene Luma  
Kimberly West  
Michael Wynn

**EXECUTIVE  
DIRECTOR**

Enrique Zuniga

# PEACE OFFICER STANDARDS AND TRAINING COMMISSION

February 1, 2022

By Electronic Mail

John E. Nelson  
Vice President  
Massachusetts Coalition of Police  
jen@masscop.org

Dear Mr. Nelson,

The Peace Officer Standards and Training Commission (“Commission”) received your public records request of January 16, 2022. In that request, you stated as follows:

I am requesting that I be provided a copy of the following records:

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. Please include above requested material for any meeting involving attendance of commissioners where discussion of POST matters occurred, no matter what title or term was used for said proceeding.

Pursuant to M.G.L. c. 66, § 10(b) and 950 C.M.R. 32.06(2), the Commission hereby responds to your request as follows.

The Commission cannot produce documents at this time, and it invites you to clarify and narrow the scope of your request for multiple reasons.

To begin, the request does not “include a reasonable description of the requested record[s] . . . so that the records can be identified and located promptly.” 950 C.M.R. 32.06(1)(b). In particular, while the first sentence limits the scope of the request to documents related to certain “sub-committee or working group meetings,” the second sentence suggests that the range extends far more broadly. Also, terms such as “agendas” and “attendance lists” are undefined and ambiguous.

As a result, it is not only difficult for the Commission to honor such a request, but not possible for it to fully itemize the records that it intends to withhold and produce. Moreover, the request's ambiguity may well prevent the Commission from understanding, and prevent you from obtaining, the information in which you are most interested.

Next, while the Commission does not possess certain records, such as audio/visual recordings or working-group minutes of the types requested, it will likely prove unduly burdensome for the Commission, and not very fruitful for you, for the Commission to cull through the full range of records to which your request, broadly construed, might extend.

This is partly because many arguably responsive documents would not be subject to production and would thus be withheld. In particular, the Commission intends to withhold any documents that do not constitute public records because they are: "specifically or by necessary implication exempted from disclosure by statute," M.G.L. c. 4, § 7, cl. 26(a), including but not limited to any "records relating to a preliminary inquiry or initial staff review used to determine whether to initiate an inquiry" that "shall be confidential" under M.G.L. c. 6E, § 8(c)(2); "related solely to internal personnel rules and practices of the government unit," provided that "the extent that proper performance of necessary governmental functions requires such withholding," M.G.L. c. 4, § 7, cl. 26(b); "personnel and medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy," provided that they are not "related to a law enforcement misconduct investigation," M.G.L. c. 4, § 7, cl. 26(c); "inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency," provided they are not "reasonably completed factual studies or reports on which the development of such policy positions has been or may be based," M.G.L. c. 4, § 7, cl. 26(d); "notebooks and other materials prepared by an employee of the commonwealth which are personal to him [or her] and not maintained as part of the files of the governmental unit," M.G.L. c. 4, § 7, cl. 26(e); "investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest," M.G.L. c. 4, § 7, cl. 26(f); "proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases[,] and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person," M.G.L. c. 4, § 7, cl. 26(h); home addresses, home telephone numbers, and personal email addresses of public employees and their family members, to the extent they are rendered nonpublic under M.G.L. c. 4, § 7, cl. 26(o)-(p), M.G.L. c. 66, § 10B, or another source of authority; or otherwise made nonpublic by law. The Commission further intends to withhold any documents protected by the attorney-client privilege, see Suffolk Constr. Co. v. Division of Capital Asset Mgmt., 449 Mass. 444 (2007), and the common-interest doctrine, see Hanover Ins. Co. v. Rapo & Jepsen Ins. Servs., Inc., 449 Mass. 609, 610, 612-20 (2007).

In light of the time and effort that would be required to segregate such records, the undertaking would unreasonably divert Commission personnel from their other important and time-sensitive public duties. The impact would be particularly pronounced, as the Commission is not yet fully

staffed and its personnel are continuing to build the agency from the ground up. At the same time, such effort would likely require attention to be given to documents other than those in which you are most interested, and there would probably be few documents left for production. Thus, the cost would seem to outweigh the benefits from any perspective.

Note that you have a right of administrative appeal to the Supervisor of Public Records under M.G.L. c. 66, § 10A(a) and 950 C.M.R. 32.08(1) and a right to seek judicial review of an unfavorable decision by commencing a civil action in the Massachusetts Superior Court under M.G.L. c. 66, § 10A(c).

Nothing contained herein should be construed as a waiver of any rights, privileges, protections, immunities, exemptions, claims, or defenses that may be available to the Commission, all of which are expressly preserved.

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. J.', is written over the typed name 'General Counsel'.

General Counsel

cc: Enrique A. Zuniga, Executive Director

# Exhibit 3





*"The Only Union for Police Officers and 911 Dispatchers"*

Scott A. Hovsepian, President  
sah@masscop.org

John E. Nelson, First Vice-President  
jen@masscop.org

Robert W. Murphy, Secretary/Treasurer  
rwm@masscop.org  
(508) 581-9336  
fax (508) 581-9564

February 8, 2022

**BY EMAIL**

Rebecca S. Murray  
Supervisor of Records  
Division of Public Records  
Office of the Secretary of the Commonwealth  
One Ashburton Place, Room 1719  
Boston, MA 02108  
[pre@sec.state.ma.us](mailto:pre@sec.state.ma.us)

**RE: Appeal of Denial of Public Records Request to Peace Officer Standards and Training Commission**

Dear Supervisor Murray:

This is a petition, pursuant to G.L. c. 66, § 10, appealing the response of the Massachusetts Peace Officer Standards and Training Commission ("POST Commission" or "Commission") to a request for public records.

On behalf of the Massachusetts Coalition of Police ("MassCOP"), I emailed a public records request ("Request") to the POST Commission on January 14, 2022. (As you may know, the POST Commission, which has been in existence less than one year, is in the process of creating a mandatory certification process for police officers, as well as processes for decertification, suspension of certification, or reprimand in the event of certain misconduct.) The Request sought only one category of records. A copy of the Request is Exhibit A to this letter.

The POST Commission responded to the Request by letter dated (and received) February 1, 2022 (the "Response"). It declined to provide any records. A copy of the Response is Exhibit B to this letter.

On MassCOP's behalf, I respectfully request that you (1) determine that, in declining to provide records, the POST Commission violated Mass. Gen. L. ch. 66, § 10, and the regulations thereunder; and (2) provide timely and appropriate relief, including an order that the POST Commission provide the requested records to MassCOP within 10 days of your determination and order.

**The Request**

MassCOP asked the POST Commission to provide:



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.

To focus and clarify, the Request went on to ask the Commission to “include above requested material for any meeting involving attendance of commissioners where discussion of POST matters occurred, no matter what title or term was used for said proceeding.” The requested records are, in other words, and quite simply (1) common types of documents, (2) relating to meetings (of any type) of POST Commission sub-committees or working groups, (3) at which discussion of POST matters occurred.

### **The Invalid Response**

The POST Commission began its Response by asserting that it “cannot produce documents at this time,” and inviting MassCOP “to clarify and narrow the scope of [MassCOP’s] request for multiple reasons.” As near as we can tell, what the Commission meant by this ambiguous statement is that it cannot provide (or is unwilling to provide) records because – it says – MassCOP’s request is unclear and too broad. (Why it did not come right out and say this is not clear. Also puzzling is how it can argue overbreadth at the same time it claims not to understand the request.) The Commission is incorrect. As noted, MassCOP asked only for (1) common types of records (e.g., agendas), (2) relating to meetings (of any type) of POST Commission sub-committees or working groups, (3) at which discussion of POST matters occurred. The Request is clear and targeted; it indisputably contains a “reasonable description of the requested record[s],” and thus complies with 950 CMR 32.06(1)(b). Moreover, assuming the Request is unclear, which it is not, the Commission’s response does not comply with 950 CMR 32.06(2)(g).

It is not surprising, then, that the “multiple reasons” for clarification and/or narrowing that the POST Commission proceeded to assert are wrong.

According to the Commission, the Request in two respects did not reasonably describe the records sought. First, while the first sentence of the Request seeks records relating to “sub-committee or working group meetings,” the second, according to the Commission, broadened the request to cover more than records on such meetings. That is not what the second sentence – “Please include above requested material for any meeting involving attendance of commissioners where discussion of POST matters occurred, no matter what title or term was used for said proceeding” – did at all. It clarified that the Request covered only records on meetings attended by a commissioner(s) at which POST matters were discussed, but also ensured that records not be withheld based on an unwarranted narrowing of the definition of the term “meeting.” While not altogether clear, the POST Commission’s objection seems to be that the request covers records on informal meetings. If so, the objection is invalid (and troubling). That records on informal meetings of a sub-committee or working group are requested does not make the Request overly broad, even assuming overbreadth is a valid objection, which it is not in this context. Again, only documents relating to working group and subcommittee meetings attended by commissioners and relating to POST matters are requested.



Second, the Commission said – remarkably – that one of the reasons it did not know what records are sought is that the terms “agendas” and “attendance lists” are “undefined and ambiguous.” These terms – one of which, “agenda,” the POST Commission uses frequently – are anything but undefined and ambiguous. Other than to note that this objection suggests a lack of good faith, MassCOP will refrain from further comment.

Based on the flawed premise that the Request did not describe the records sought, the POST Commission then asserted, in entirely conclusory fashion, that it could not honor the Request, or itemize the records it intends to “withhold and produce,” or (perhaps) understand the information in which MassCOP is most interested. Since the premise – the alleged lack of definition – is erroneous, these assertions were invalid.

Based on the same flawed premise, the Commission then said that, even though certain records do not exist (e.g., audio/video recordings), searching for the records MassCOP has requested would be unduly burdensome. Again, since the premise is erroneous, the conclusion is invalid. Further, the Commission spoke out of both sides of its mouth: It argued both that it did not know what MassCOP has requested **and** that it would be burdensome to locate and produce what MassCOP has requested. It can’t be both. In fact, it is neither.

The Commission then argued that review would be difficult because “arguably responsive documents” would be withheld under roughly ten different exemptions to the definition of public records. It did not and cannot – because it presumably has retrieved no records – provide any proof that any of the exemptions actually applies. It has invoked the exceptions in theory, without regard to actual applicability. (For example, it references clause 26(e)’s exception for investigatory materials compiled by law enforcement or other investigatory officials the disclosure of which would prejudice effective law enforcement. The Commission has not identified any such records in response to the Request, and, in fact, the Request does not call for such records: There is no chance that any Commission subcommittee or working-group would have any such materials.) This it may not do. As you recently wrote:

The Public Record Law strongly favors disclosure by creating a presumption that all governmental records are public records. G.L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). “Public records” is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G.L.c.4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G.L.c.66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exception, but must also state why the exception applies to the withheld or redacted portion of the responsive record.

Determination in SPR21/3385, Letter of Rebecca S. Murray to Alisa M. Chapman, RAO of Massachusetts College of Art, Jan. 12, 2022. The statutory exemptions do not work as the Commission seems to think they do. The Commission was required to identify records first, and then invoke, if applicable, the exemptions – not invoke first. And it has the burden of demonstrating that an exemption applies. The Commission has not come close to meeting its burden in relation to any exemptions.

The Commission then objects that responding to MassCOP's request would unreasonably divert Commission personnel from "other important and time-sensitive public duties." We are not aware of any provision of the Public Records Law or the regulations thereunder or of any decision applying or construing them that permits a public agency to refuse to comply on the basis that it has other important things to do.

Similarly, the Commission suggests that the cost of complying "would seem to outweigh the benefits" of complying. The Commission cannot simultaneously assert that it does not know what MassCOP has asked for and that the costs of complying with MassCOP's request outweigh the benefits: If it does not know what it must provide, it does not know what it would cost to provide it. Further, the Commission is in no position to assess the benefits to MassCOP of the Commission's compliance with the Request, and we are unaware of anything that permits the Commission to withhold based on its assessment of how much compliance would benefit MassCOP, or based on a cost/benefit analysis.

#### **Conclusion/Relief Requested**

The POST Commission thumbed its nose at MassCOP's Request, violating the Public Records Law. MassCOP respectfully requests that you find the POST Commission in violation of the Public Records Law and order the Commission to provide the records MassCOP has requested.

Sincerely,



John E. Nelson, Vice President  
Massachusetts Coalition of Police



EXHIBIT A



*"The Only Union for Police Officers and 911 Dispatchers"*

Scott A. Hovsepian, President  
sah@masscop.org

John E. Nelson, First Vice-President  
jen@masscop.org

Robert W. Murphy, Secretary/Treasurer  
rwm@masscop.org  
(508) 581-9336  
fax (508) 581-9564

January 14, 2022

Massachusetts Peace Officer Standards and Training Commission  
ATTN: Executive Director Enrique Zuniga

SENT VIA EMAIL: [enrique.zuniga@state.ma.us](mailto:enrique.zuniga@state.ma.us)

Re: Massachusetts Public Records Request

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NOTE: This request was sent via email due to no physical address being available for the Commission.

Sincerely,

John E. Nelson, Vice President  
Massachusetts Coalition of Police

EXHIBIT B



CHAIR

Margaret R. Hinkle

COMMISSIONERS

Hanya H. Bluestone  
Lawrence Calderone  
Clementina Chéry  
Larry Ellison  
Marsha V. Kazarosian  
Charlene Luma  
Kimberly West  
Michael Wynn

EXECUTIVE  
DIRECTOR

Enrique Zuniga

## PEACE OFFICER STANDARDS AND TRAINING COMMISSION

February 1, 2022

By Electronic Mail

John E. Nelson  
Vice President  
Massachusetts Coalition of Police  
jen@masscop.org

Dear Mr. Nelson,

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As a result, it is not only difficult for the Commission to honor such a request, but not possible for it to fully itemize the records that it intends to withhold and produce. Moreover, the request's ambiguity may well prevent the Commission from understanding, and prevent you from obtaining, the information in which you are most interested.

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In light of the time and effort that would be required to segregate such records, the undertaking would unreasonably divert Commission personnel from their other important and time-sensitive public duties. The impact would be particularly pronounced, as the Commission is not yet fully



staffed and its personnel are continuing to build the agency from the ground up. At the same time, such effort would likely require attention to be given to documents other than those in which you are most interested, and there would probably be few documents left for production. Thus, the cost would seem to outweigh the benefits from any perspective.

Note that you have a right of administrative appeal to the Supervisor of Public Records under M.G.L. c. 66, § 10A(a) and 950 C.M.R. 32.08(1) and a right to seek judicial review of an unfavorable decision by commencing a civil action in the Massachusetts Superior Court under M.G.L. c. 66, § 10A(c).

Nothing contained herein should be construed as a waiver of any rights, privileges, protections, immunities, exemptions, claims, or defenses that may be available to the Commission, all of which are expressly preserved.

Thank you.

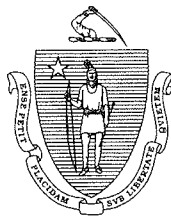
Sincerely,

A handwritten signature in blue ink, appearing to read "M.E. [unclear]", is written over the word "Sincerely,".

General Counsel

cc: Enrique A. Zuniga, Executive Director

# Exhibit 4



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
*Supervisor of Records*

February 8, 2022

**SPR22/0312**

John E. Nelson  
Massachusetts Coalition of Police  
VIA EMAIL

Dear Mr. John E. Nelson:

I have received your letter appealing the response of the Massachusetts Peace Officer Standards and Training Commission to your request for records.

I have directed a member of my staff, Manza Arthur, Esq., to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray  
Supervisor of Records

cc: Director Enrique A. Zuniga

# Exhibit 5

# ANDERSON KREIGER

**LON POVICH**

[lpovich@andersonkreiger.com](mailto:lpovich@andersonkreiger.com)

T: 617.621.6548

F: 617.621.6648

February 17, 2022

**BY EMAIL**

John E. Nelson, Vice President

Massachusetts Coalition of Police

[jen@masscop.org](mailto:jen@masscop.org)

Dear Mr. Nelson

This letter is in further response to your Public Records Act Request of January 14, 2022, in which you requested the following:

**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. Please include above requested material for any meeting involving attendance of commissioners where discussion of POST matters occurred, no matter what title or term was used for said proceeding.**

Without waiving any objections to the production of documents set out in the POST Commission's letter of February 1, 2022, and notwithstanding the well-established principle, which we intend to follow, that the Public Records Act does not require an agency to create any documents to respond to a request, the POST Commission responds as follows:

We interpret your request to inquire as to the attendance at meetings of sub-sets of the POST Commission that undertook particular substantive projects for the Commission, and not to include small groups of Commissioners who have met on a few occasions with individuals and groups (such as yours) interested in the work of the Commission or with other state agencies or outside attorneys as part of the standing up of the operations Commission. We also exclude from your request any of the committees established to date as part of the hiring process for Commission senior staff or related to procurement or to other Commission administrative matters. In any event, none of those meetings has ever been attended by more than three Commissioners, which is well below the POST Commission's quorum of seven.

February 17, 2022

Page 2

To date there have been five sets of meetings relating to the Commission's drafting and approval of guidelines or regulations. Similarly, none of those meetings has ever been attended by more than the three Commissioners assigned to work on such projects.

First, there were meetings of three Commissioners (Bluestone, Luma, and Wynn) in the spring of 2021 to collect research and prepare a draft of the guidelines for age-appropriate de-escalation tactics for minor children called for in Section 119 of Chapter 253 of the Acts of 2020, and approved by the Commission on June 30, 2021. There are no agendas, minutes, recordings, and the like relating to those meetings.

In addition, Commissioners Bluestone, Luma, and Wynn met with the full Commission, on June 2, 16, 23, and 20, 2021 to discuss, and seek approval of, these guidelines, as reflected in the minutes of the Commission available on the POSTC website.

The second drafting task assigned to the Commission, jointly with the MPTC, was the issuance of regulations regarding the Use of Force by Law Enforcement Officers. See Mass. Gen. Laws. c. 6E, §15(d). Three Commissioners (Kazarosian, West, and Wynn) prepared a draft for review by the Commission of Use of Force Regulations and met with the MPTC to prepare an agreed-to draft that was approved by the Commission and the MPTC. Similarly, there are no agendas, minutes, recordings, and the like relating to the meetings of the three Commissioners or the joint meetings with the MPTC.

The Commission discussed, and eventually approved, the Use of Force Regulations on July 7, 12, 14, and 26, 2021, as reflected in the minutes of the Commission available on the POSTC website.

Third, there have been two sets of meetings between certain MPTC personnel and certain Commission personnel relating to two categories of certification of Law Enforcement Officers. The first concerned certification standards for Law Enforcement Officers who graduated from a police academy after December 1, 2021, and the second concerned the standards for recertification of Law Enforcement Officers (with last names beginning with the letters A-H) who need to be recertified prior to July 1, 2022.

The POST Commission was represented at the meetings relating to the post-December 1 graduates by Commissioner West. There are no agendas, minutes, recordings, and the like relating to those meetings.

The POST Commission reviewed draft standards for the post-December 1 graduates at its meeting on November 22, 2021, and approved those standards on December 14, 2021, as reflected in the minutes of the Commission available on the POSTC website.



February 17, 2022  
Page 3

Fourth, the POST Commission is represented at ongoing meetings relating to the recertification of Law Enforcement Officers by Commissioners Bluestone, West, and Wynn. Not all three of the Commissioners have attended every meeting of that group, and the work of this group continues.

Fifth, Anderson & Kreiger took the lead on drafting regulations that were approved by the Commission on January 14, 2022. In the context of that project, the law firm took input from Chair Hinkle and Commissioners Kazarosian and Wynn at a single meeting and from Chair Hinkle on other occasions. There are no agendas, minutes, recordings, and the like relating to those meetings.

I hope this information provides you the substance of the information that was sought by your Public Records Act request and that further proceedings are not necessary.

Sincerely,

*/S/ Lon F. Povich*

Lon F. Povich

cc: Supervisor of Public Records  
Randall Ravitz, General Counsel, POST Commission

# Exhibit 6



*"The Only Union for Police Officers and 911 Dispatchers"*

Scott A. Hovsepian, President  
sah@masscop.org

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Robert W. Murphy, Secretary/Treasurer  
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(508) 581-9336  
fax (508) 581-9564

February 21, 2022

**BY EMAIL**

Ms. Manza Arthur, Esq.  
Assistant Director  
Public Records Division  
Office of the Secretary of the Commonwealth  
One Ashburton Place, Room 1719  
Boston, MA 02108  
[pre@sec.state.ma.us](mailto:pre@sec.state.ma.us)

**RE: SPR22/0312 – Appeal of Denial of Public Records Request to Peace Officer Standards and Training Commission – Rebuttal to POST Commission Supplemental Non-Response**

Dear Ms. Arthur:

As you know, on February 7, 2022, I submitted on behalf of the Massachusetts Coalition of Police ("MassCOP") a petition, pursuant to G.L. c. 66, § 10 ("Petition"), appealing the response of the Massachusetts Peace Officer Standards and Training Commission ("POST Commission" or "Commission") to a request for public records. The Petition noted that on January 14, 2022, I had emailed a very short public records request ("Request") to the POST Commission, seeking,

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. Please include above requested material for any meeting involving attendance of commissioners where discussion of POST matters occurred, no matter what title or term was used for said proceeding.

The Petition complained that the POST Commission had provided no documents in response, and instead had asserted (a) that it was unable (or unwilling) to respond because the Request was unclear (including in, for example, its use of the term "agenda") and too broad, and (b) that "arguably responsive documents" would be withheld under roughly ten different exemptions to the definition of public records.<sup>1</sup>

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<sup>1</sup> The Commission has yet to explain how it could simultaneously claim that it did not understand the Request (because it purportedly is vague and ambiguous) and that the Request is overly broad. Nor has it explained how, having denied an understanding of what is sought, it could contend that multiple exemptions from the definition of public records apply. Fortunately, its outside counsel seems to have abandoned these contentions. But he has raised others, and still no records have been produced.

On February 17, 2022, I received by email a letter from Lon Povich of Anderson & Kreiger LLP that purports to be a “further response” to MassCOP’s Request. I believe that Mr. Povich wrote me because his firm is outside counsel to the POST Commission, but he does not explain why or how he has become involved. The “Supervisor of Public Records” is listed as a recipient of a copy of the letter, so you may have seen it. If not, please let me know and I will forward a copy to you.

Mr. Povich provides important information concerning the operations of the POST Commission and heightens (perhaps unintentionally) a MassCOP concern about extra-public-meeting activities. But he neither provided nor promised a single record; rather, he closed the letter by indicating that he hoped, based on the information he had provided, that further proceedings would not be necessary. It is clear that if left to its own devices, the POST Commission would provide no records in response to the Request. This is unacceptable. Responsive records almost certainly exist.

Mr. Povich reveals that so-called “sub-sets” of the Commission have undertaken multiple “substantive projects for the Commission.” He explains that there have been the following five sets of meetings corresponding to the work of the “sub-sets” on these substantive projects:

- Meetings relating to guidelines for age-appropriate de-escalation tactics for minor children
- Meetings relating to regulations regarding the use of force by law enforcement officers
- Two sets of meetings relating to certification of two categories of law enforcement officers (recent graduates and others)
- Ongoing meetings relating to recertification of law enforcement officers
- At least one meeting (and other communications) concerning regulations approved by the Commission on January 14, 2022

Mr. Povich asserts that with respect to most of these meetings, no “agendas, minutes, recordings, and the like” exist. (This is quite surprising, but we take him at his word.) But it is not clear whether there are “agendas, minutes, recordings, and the like” for some of the meetings. If there are “agendas, minutes, recordings, [or] the like” relating to any of the meetings, they should be provided immediately.

More important, when identifying the records that do not exist, Mr. Povich pointedly and repeatedly refers to “agendas, minutes, recordings, and the like.” This is an attempt to narrow MassCOP’s Request – and to avoid providing any records – by redefining the types of records that MassCOP has requested. MassCOP did not request just “agendas, minutes, recordings, and the like.” It also requested “attendance lists, emails and/or correspondence” relating to the now-admitted meetings. Mr. Povich has not denied that such records exist, and it is inconceivable



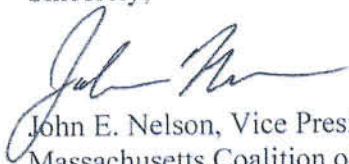
Ms. Manza Arthur, Esq.  
February 21, 2022  
Page 3

that – given the number of meetings and the important, complex, and substantive issues that were their subject – there are no attendance lists, emails, or other correspondence relating to the meetings. For example, so-called “sub-sets” that met must have communicated concerning the logistics of their meetings and, more important, concerning the substance and anticipated and actual product of their meetings, including, for example, circulating drafts and explanatory, analytical, and/or reference materials.

In summary, the POST Commission should be directed to produce all records relating to the meetings of (or involving) sub-sets of the POST Commission that are described in Mr. Povich’s letter.

Please do not hesitate to contact me with any questions or requests. Thank you for your assistance.

Sincerely,

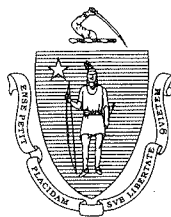


John E. Nelson, Vice President  
Massachusetts Coalition of Police

cc: Lon Povich, Esq. (email)

# Exhibit 7





**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
*Supervisor of Records*

February 23, 2022  
**SPR22/0312**

Lon Povich, Esq.  
Anderson & Kreiger LLP  
50 Milk Street, 21<sup>st</sup> Floor  
Boston, MA 02109

Dear Attorney Povich:

I have received the petition of John Nelson of the *Massachusetts Coalition of Police* appealing the response of the Massachusetts Peace Officer Standards and Training Commission (Commission) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On January 14, 2022, Mr. Nelson requested:

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. Please include above requested material for any meeting involving attendance of commissioners where discussion of POST matters occurred, no matter what title or term was used for said proceeding.

The Commission provided an initial response on February 1, 2022. Unsatisfied with the Commission's response, Mr. Nelson petitioned this office and this appeal, SPR22/0312, was opened as a result. While this appeal was pending, the Commission provided a supplemental response on February 17, 2022.

***The Public Records Law***

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency or municipality of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

### ***The Commission's February 17<sup>th</sup> response***

In its February 17, 2022 response, the Commission explained, “[t]o date there have been five sets of meetings relating to the Commission’s drafting and approval of guidelines or regulations. Similarly, none of those meetings has ever been attended by more than the three Commissioners assigned to work on such projects.” The Commission clarified that there were certain meetings held in the Spring of 2021 but “[t]here are no agendas, minutes, recordings, and the like relating to those meetings.” The Commission further stated that for meetings held in June, July, November and December of 2021, minutes are “. . . available on the POSTC website.”

In a February 21, 2022 letter, Mr. Nelson states:

[The Commission] reveals that so-called “sub-sets” of the Commission have undertaken multiple “substantive projects for the Commission.” [It] explains that there have been the following five sets of meetings corresponding to the work of the “sub-sets” on these substantive projects: . . .

[The Commission] asserts that with respect to most of these meetings, no “agendas, minutes, recordings, and the like” exist. . . . But it is not clear whether there are “agendas, minutes, recordings, and the like” for some of the meetings. If there are “agendas, minutes, recordings, [or] the like” relating to any of the meetings, they should be provided immediately.

Based on the foregoing, I find the Commission must clarify whether it possesses additional records, aside from meeting minutes, that are responsive to Mr. Nelson’s request. The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii).

Mr. Nelson further states:

More important, when identifying the records that do not exist, [the Commission] pointedly and repeatedly refers to “agendas, minutes, recordings, and the like.”

This is an attempt to narrow MassCOP's Request- and to avoid providing any records- by redefining the types of records that MassCOP has requested. MassCOP did not request just "agendas, minutes, recordings, and the like." It also requested "attendance lists, emails and/or correspondence" relating to the now admitted meetings. [The Commission] has not denied that such records exist, and it is inconceivable that – given the number of meetings and the important, complex, and substantive issues that were their subject - there are no attendance lists, emails, or other correspondence relating to the meetings. . . .

In light of the above, I find the Commission must clarify whether it possesses additional records, particularly, "attendance lists, emails and/or correspondence" relating to the meetings. See G. L. c. 66, § 10(b)(iv) (written response must "identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based . . ."). The Commission must clarify these matters.

### ***Conclusion***

Accordingly, the Commission is ordered to provide Mr. Nelson 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. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us).

Sincerely,



Rebecca S. Murray  
Supervisor of Records

cc: John Nelson  
Enrique Zuniga, Executive Director

# Exhibit 8



*"The Only Union for Police Officers and 911 Dispatchers"*

Scott A. Hovsepian, President  
sah@masscop.org

John E. Nelson, First Vice-President  
jen@masscop.org

Robert W. Murphy, Secretary/Treasurer  
rwm@masscop.org  
(508) 581-9336  
fax (508) 581-9564

March 14, 2022

BY EMAIL

Ms. Rebecca S. Murray  
Supervisor of Records  
Public Records Division  
Office of the Secretary of the Commonwealth  
One Ashburton Place, Room 1719  
Boston, MA 02108  
[Pre@sec.state.ma.us](mailto:Pre@sec.state.ma.us)


**RE: SPR22/0312 – Production of Records Order to Peace Officer Standards and Training Commission – Lack of Response**

Dear Ms. Murray,

We had received your order dated February 23, 2022, compelling the Peace Officer Standards and Training Commission to respond to our request for records. To comply with your order, they were to respond within ten (10) business days, the deadline of which should have been March 10, 2022. To date, we have received no response from the agency or a representative thereof.

Thank you in advance for your anticipated consideration of this matter. If you have any questions, or if I can assist in any way, please do not hesitate to contact me.

Sincerely,

  
John E. Nelson, Vice President  
Massachusetts Coalition of Police

# Exhibit 9



# ANDERSON KREIGER

LON. F. POVICH  
[lpovich@andersonkreiger.com](mailto:lpovich@andersonkreiger.com)  
T: 617-621-6548  
F: 617-621-6648

April 1, 2022

**VIA EMAIL**

John Nelson  
Massachusetts Coalition of Police  
P.O. Box 768  
Millbury, MA 01527  
[jen@masscop.org](mailto:jen@masscop.org)

***Re: Public Records Request to the Peace Officer Standards and Training Commission***

Dear Mr. Nelson:

I am writing in further response to your public records request to the Peace Officer Standards and Training Commission (“POST” or the “Commission”) dated January 14, 2022, and the Secretary of State’s decision at SPR22/0312 dated February 23, 2022. I write in my capacity as outside counsel for the Commission, at the request of Chair Margaret Hinkle and Executive Director Enrique Zuniga.

You requested “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.”

As I previously explained in my letter dated February 17, 2022, the Commission interprets your request to inquire as to the attendance at meetings of sub-sets of the Commission that undertook particular substantive projects for the Commission, and not to include small groups of Commissioners who have met with interested citizens and citizen groups, state agencies or outside attorneys as part of the standing up of the Commission, or for the purpose of hiring Commission staff or other administrative matters.

To date, there have been five sub-sets of the Commission that have undertaken substantive projects. Three sub-sets – those relating to the development of guidelines for age-appropriate de-escalation tactics for minor children, the issuance of regulations regarding the use of force by law enforcement officers, and the articulation of certification standards for law enforcement officers graduating from police academies after December 1, 2021 – have completed their projects. The remaining two sub-sets – those relating to the recertification of law enforcement officers and the

promulgation of regulations governing complaints, internal investigations and adjudicatory proceedings – remain active as their projects are ongoing.

After a diligent search, the Commission states there are no agendas, minutes, audio/visual recordings or attendance lists concerning any of those sub-sets. There are, however, emails and documents relating to the scheduling of those meetings, as well as the substance of what was discussed at those meetings.

With respect to the two active sub-sets described above, the Commission is withholding all responsive records concerning those sub-sets pursuant to G.L. c. 4, § 7, twenty-sixth (d), the deliberative process exemption. As explained above, deliberation regarding the recertification of law enforcement officers and the promulgation of regulations governing complaints, internal investigations and adjudicatory proceedings remain ongoing. In fact, the Commission, at its most recent public meeting on March 16, 2022, devoted much of its meeting to discussing the standards for recertification and the process of recertifying law enforcement officers. And as you are likely aware, the Commission recently conducted a public hearing on March 23, 2022 to receive public comments on the regulations regarding complaints, internal investigations and adjudicatory proceedings concerning law enforcement officers. The Commission anticipates spending the coming weeks and months refining the proposed regulations, and will likely discuss those revisions at upcoming public meetings. Therefore, the Commission is unable to disclose any records concerning those sub-set meetings because premature disclosure would hamper the Commission's ability to thoroughly develop its relevant policy positions.

With respect to the three sub-sets that have completed their projects, as described above and in prior correspondence, the Commission will search for any responsive records relating to and concerning those sub-sets and provide documents that are subject to disclosure. However, that process will require searching the entire e-mail inboxes of nine Commissioners to locate any potentially responsive documents. We anticipate that any documents located may contain information protected by the Attorney-Client Privilege and each document will have to be reviewed to determine whether it can be produced in its entirety, provided in a redacted form, or withheld in its entirety.

This process – from compiling to reviewing to redacting – will undoubtedly be time consuming. The Commission anticipates that it will require 28 hours to search for responsive documents. Assuming each Commissioner returns approximately 240 potentially responsive documents and that documents can be reviewed at the rate of 60 documents per hour, it will take another 36 hours to determine whether such documents are responsive and privileged. Assuming the review yields 20 privileged documents for every 60 documents reviewed, and privileged documents can be redacted at the rate of 20 documents per hour, it will require another 36 hours to redact documents prior to production. In total, the Commission anticipates that it will take a total of 100 hours to complete your records request. This estimate may very well be low, and the project could potentially require significantly more time.

John Nelson  
April 1, 2022  
Page 3

Given the considerable resources your records request requires, the Commission intends to charge fees for the time associated with complying with your records request. Pursuant to G.L. c. 66, § 10(e) and 950 CMR 32.07(1), the Commission is entitled to charge you \$25/hour for time spent searching for, compiling, segregating, redacting and reproducing any responsive records, less than first four hours to time spent. Thus, the Commission anticipates that complying with your records request will cost at least \$2,400.00. In the event that the actual cost exceeds the estimate, you will be asked to pay the additional amount before records are produced to you. If the actual cost is below the estimate, you will be reimbursed for the difference between the amount paid on the estimate and the actual cost.

If you would like to proceed with your records request given the fee estimate, please confirm that with me and we will begin collecting, reviewing, and redacting documents for production. If you are no longer interested in proceeding with your records request, please also let me know so we may finally close this request.

If you are not satisfied with this response, you have the right to appeal and seek redress through the Supervisor of Public Records (<https://www.sec.state.ma.us/pre/preapp/appidx.htm>), or by filing an action in Suffolk Superior Court. That said, I would hope that you would reach out to me first to resolve any matter.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Lon F. Povich

# Exhibit 10



**David B. Chaffin**

101 Arch Street, Suite 1930 | Boston, MA 02110-1103  
Direct 617.748.5215 | Fax 617.748.5240  
chaffind@whiteandwilliams.com | whiteandwilliams.com

April 6, 2022

**BY EMAIL**

Lon F. Povich  
Anderson & Kreiger LLP  
50 Milk Street, 21<sup>st</sup> Floor  
Boston, MA 02109

**RE: Demand to Cease and Desist Violations of Open Meeting Law**

Dear Mr. Povich:

We represent the Massachusetts Coalition of Police (“MassCOP”).

MassCOP has shared with us, among other things, its public records request to the Massachusetts Peace Officer Standards and Training Commission (“POST Commission”) and related correspondence, including Mr. Ravitz’s letter of February 1, 2022, and your letters of February 17, 2022, and April 1, 2022.

Based on your April 1 letter, it is now clear that the POST Commission has established “sub-sets” (also called “working groups”) of the Commission’s membership who have undertaken or currently are involved in multiple substantive projects for the Commission. In your letter, you say that “there have been five [such] sub-sets.” You indicate that there are “emails and documents relating to the scheduling of the meetings [of the “sub-sets”], as well as the substance of what was discussed at those meetings.” Three of the “sub-sets,” you say, worked on guidelines for de-escalation tactics, use-of-force regulations, and certification standards. These three “sub-sets,” you say, have completed their work. The other two currently are working on officer recertification and regulations concerning complaints, investigations, and adjudicatory proceedings.

You say that records relating to the two “sub-sets” whose work is in process would be withheld from MassCOP based on the “deliberative process exemption,” citing Mass. Gen. L. ch. 4 § 7, twenty sixth paragraph, sub-paragraph (d), and thus claiming that the records are “intra-agency memoranda or letters relating to policy positions being developed by the agency.” Mr. Ravitz’s and your correspondence, as well as comments made at POST Commission meetings, including the meeting on April 4, confirm that the work of the “sub-sets” has included deliberating concerning and preparing drafts of regulations, guidelines, and standards in

furtherance of the POST Commission's statutory charge. POST Commission "sub-sets" undoubtedly have communicated and continue to communicate among themselves about, and have met and continue to meet concerning, the projects they were and have been assigned.

In other words, the "sub-sets," or working groups, have deliberated and continue to deliberate concerning the projects. The projects on which the "sub-sets" have worked are clearly matters that are within the POST Commission's jurisdiction.

Under the Open Meeting Law, Mass. Gen. L. ch. 30A, §§ 18-25 (the "OML"), all meetings of a public body must be open to the public. The terms "meeting" and "public body" are broadly defined by the OML and the regulations and case law thereunder. A "meeting" is any "deliberation by a public body with respect to any matter within the body's jurisdiction," including any "oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction." A "quorum" is "a simple majority of the members of the public body." A "public body" is "a multiple-member board, commission, committee or subcommittee within the executive or legislative branch." Mass. Gen. L. ch. 30A, § 18.

The OML requires that all "public bodies" provide public notice of their "meetings." The notice must include the date, time, and place of the meeting; a list of topics to be discussed at the meeting, and indication of the date and time of the posting of the notice. It requires, moreover, that public bodies permit the public to attend their meetings (save for properly-convened executive sessions) and permit members of the public to record open sessions of their meeting. It requires, moreover, that public bodies create and maintain detailed and accurate minutes of all meetings. Minutes and all documents used in connection with public meetings are public records. Mass. Gen. L. ch. 30A, §§ 20, 22.

The POST Commission "sub-sets" have violated and continue to violate the OML. They have had, and continue to have, "meetings," as defined by the OML (i.e., actual meetings and communications). Public notice of the physical (or virtual) meetings of the "sub-sets" and of the communications that qualify as "meetings" was never provided. The meetings have not been open to the public. The oral and email (and perhaps other) communications among and involving members of the "sub-sets," which, again, are "meetings" under the statutory definition, have not been open to the public. Records relating to the activities of the "sub-sets" have not been open to the public, and, indeed, you assert that some of these records will not be produced based on the deliberative process exemption. (Clearly, if sub-sets are generating documents subject to the deliberative process exemption, they are engaged in deliberations as the term is defined by the OML.)

Further, the sub-sets have not, according to you and Mr. Ravitz, kept minutes of their meetings. And, despite the OML's directive that documents used in connection with meetings are public records, it was not until last week that you agreed to produce some – and only some – of the sub-sets' records.



Lon F. Povich  
April 6, 2022  
Page 3

Based on your letter of February 17, we expect you may contend that the OML is inapplicable to the activities of the “sub-sets” because none of them comprised or comprise a quorum of the POST Commission. This contention would be incorrect. The OML applies to the activities of all public bodies, including “subcommittees,” which are defined to “include any multiple-member body created to advise or make recommendations to a public body.” Mass. Gen. L. ch. 30A, § 18; *see also* 940 CMR 29.02 (definition of public body). The “sub-sets” indisputably were (and are) multiple-member bodies, and based on your and Mr. Ravitz’s own descriptions of their activities, and statements made during POST Commission public meetings, the “sub-sets” were established to advise and make recommendations to the full Commission, and have done so. Thus, the “sub-sets” fall squarely within the statutory definition of “subcommittee,” and, as such, were and are required to comply with the OML. OML determinations by the Attorney General, including one in which your firm was involved, confirm this conclusion. *See, e.g.*, OML 2021-95 (Concord Transportation Advisory Committee subject to OML); OML 2018-131 (working group established by Harvard School Building Committee subject to OML); OML 2017-36 (task force subject to OML). So does the case law. *See, e.g.*, *Nigro v. Conservation Commission of Canton*, 47 Mass. App. 433 (1984) (subcommittee required to comply with OML); *Kilcoyne v. Wayland Landfill Review Panel*, 2004 Mass. Super. LEXIS 490 (Mass. Super. Ct. 2004), *aff’d on different grounds*, 73 Mass. App. Ct. 1104 (2008) (unpublished) (similar).

The OML is designed to ensure transparency in the operations of government. It is difficult, if not impossible, to conceive of subjects as to which transparency is more critical than the subjects with which the POST Commission is dealing. That the POST Commission has flouted the OML via the so-called “sub-sets” is wrong. It has to stop.

MassCOP hereby demands that the POST Commission cease and desist from violating the OML. Please confirm within seven calendar days that either (1) the so-called “sub-sets” have been shut down permanently, or (2) the so-called “sub-sets,” from this date forward, will strictly adhere to the OML and the regulations thereunder.

Very truly yours,

WHITE AND WILLIAMS LLP



David B. Chaffin

DBC/kw  
cc: John E. Nelson

# Exhibit 11

# ANDERSON KREIGER

LON POVICH  
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April 12, 2022

David B. Chaffin  
101 Arch Street, Suite 1930  
Boston, MA 02110-1103

**Re: Response to Demand to Cease and Desist Violations of Open Meeting Law**

Dear Mr. Chaffin:

I have received your letter concerning the Peace Officer Standards and Training Commission. We are confident that at all times the Commission has fully complied with the requirements of the Open Meeting Law (Mass. Gen. L. ch. 30A, §§ 18-25) and will continue to do so. Thank you for bringing the concerns of your client to our attention.

Sincerely



Lon Povich