

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT

LAWYERS' COMMITTEE FOR CIVIL
RIGHTS AND ECONOMIC JUSTICE,

Plaintiff,

v.

THOMAS HODGSON, in his official
capacity as Sheriff of Bristol County; and the
BRISTOL COUNTY SHERIFF'S OFFICE,

Defendants.

Civil Action No.:

17-1371 A

MICHAEL JOSEPH LINDA
CLERK / MAGISTRATE
2017 MAY -4 A 9:07
SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This action is brought pursuant to General Laws Chapter 66, Sections 10A(c) to enforce the requirements of the Massachusetts Public Records Law. The mission of the plaintiff, the Lawyers' Committee for Civil Rights and Economic Justice ("Lawyers' Committee"), is to safeguard the civil, social and economic liberties of the residents of Massachusetts. The Lawyers' Committee is therefore particularly concerned that the laws of the United States are applied fairly and without racial bias. In furtherance of its mission, the Lawyers' Committee submitted a public records request to Thomas Hodgson, Sheriff of Bristol County, and the Bristol County Sheriff's Office (together "Defendants") on January 17, 2017 (the "January 17, 2017 Request") regarding Defendants' participation in immigration enforcement partnership initiatives with the U.S. Immigration and Customs Enforcement ("ICE"). Defendants were required to produce documents within 10 days. Instead, in total disregard of the Public Records Law, Defendants have ignored the Lawyers' Committee's request for over three months.

2. The records sought by the Lawyers' Committee concern a matter of significant public importance: Defendants' participation in ICE's "Section 287(g) program," which was launched in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act, and allows state and local law enforcement entities to enforce federal immigration laws. Participation in the program is voluntary and highly controversial, with critics maintaining that enmeshing local law enforcement in federal immigration enforcement is an unwise use of taxpayer funds, weakens public safety, and can lead to racial profiling.

3. The Obama Administration suspended the Section 287(g) program indefinitely in June 2012. The program was revived and strengthened in January 2017 by the new administration, and Defendants quickly announced their participation. Defendants themselves recognize the intense public interest in this issue, holding a press conference and issuing a press release when they announced their decision to participate in the program.

4. Against this backdrop, the Lawyers' Committee made the January 17, 2017 Request.

PARTIES

5. Plaintiff Lawyers' Committee is a non-profit, non-partisan organization formed at the request of President John F. Kennedy to marshal the resources of the legal community to address racial and national origin discrimination throughout Massachusetts. The Lawyers' Committee is organized pursuant to G.L. c. 180 and has its principal place of business at 61 Batterymarch St., 5th Floor, Boston, Massachusetts 02110.

6. Defendant Thomas Hodgson is the Sheriff of Bristol County. He is sued in his official capacity only. His usual place of employment is 400 Faunce Corner Rd., North Dartmouth, MA 02747.

7. Defendant Bristol County Sheriff's Office is an agency or other entity acting under the auspices of the Commonwealth of Massachusetts, with headquarters at 400 Faunce Corner Rd., North Dartmouth, Massachusetts 02747.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this proceeding pursuant to G.L. c. 66, § 10A; G.L. c. 212, § 4; and G.L. c. 231A, §1.

9. Venue is properly in this Court pursuant to G.L. c. 66, § 10A(c), which provides that “[a]ny action under this subsection shall be filed in Suffolk superior court with respect to agencies.” G.L. c. 66, § 10A(c).

10. Defendants come under the statute’s definition of “agency,” which includes “any entity, other than a municipality, that is identified in [G.L. c. 4, § 7, cl. 26].” G.L. c. 66, § 6A(a). In turn, G.L. c. 4 § 7, cl. 26 identifies as subject to the Public Records Law “any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth” G. L. c. 4, § 7, cl. 26. After the abolishment of county government, the functions, duties, and responsibilities of the counties, including those of the sheriff’s office, were transferred to the Commonwealth. G.L. c. 34B, § 4.

11. Pursuant to G.L. c. 66, § 10A(c), a requester of public records is not required to petition the supervisor of records prior to bringing a civil action to enforce the requirements of the Public Records Law.

FACTUAL ALLEGATIONS

12. Defendants are the custodians of public records for purposes of G.L. c. 66, § 10.

13. In mid-January 2017, Defendants publicly announced that they had decided to participate in the 287(g) program and that they planned to assign 8 to 12 Bristol County corrections officers to the program.

14. On January 17, 2017 the Lawyers’ Committee delivered via first class mail and e-mail the January 17, 2017 Request to Defendants, seeking production of documents related to Defendants’ participation in the 287(g) program. A copy of the January 17, 2017 Request is attached as Exhibit 1.

15. The 287(g) program allows the Department of Homeland Security (“DHS”) and ICE to enter into formal written agreements (Memoranda of Agreement or MOAs) with state or local police departments and deputize select law enforcement officers to perform the functions of federal immigration agents.

16. The functions performed by such deputized select law enforcement officers include interviewing individuals to ascertain their immigration status, making immigration-related arrests, issuing Notices to Appear (the official charging document that initiates the removal process), and transferring noncitizens into ICE custody.

17. Jurisdictions choose whether or not to participate in the 287(g) program.

18. Critics of the 287(g) program contend that the program is not a wise use of local taxpayer funds, and that local law enforcement involvement in federal immigration enforcement renders communities less safe, because it creates mistrust of law enforcement in immigrant communities and makes people less likely to report crimes or step forward as witnesses.

19. Participation in the 287(g) program can lead to civil rights abuses, and indeed overly zealous sheriffs in other jurisdictions that have participated in the 287(g) program have been found to engage in racial profiling, resulting in the federal government’s termination of 287(g) agreements. *See Arizona Capitol Times*, June 25, 2012, *Homeland Security Revokes 287g Immigration Check Agreements In Arizona* (Department of Homeland Security terminates 287(g) agreement with Maricopa County Sheriff Joe Arpaio’s Office following Department of Justice finding of racial profiling), *available at* <http://azcapitoltimes.com/news/2012/06/25/homeland-security-revokes-287g-immigration-check-agreements-in-arizona/>

20. The public records sought by the Lawyers’ Committee will shed light on these issues and others, as they relate to Defendants’ participation in the 287(g) program.

21. Defendant Hodgson’s public comments about immigration enforcement make clear that he also views these issues as being of intense public concern, and reinforce that it is in the public interest for taxpayers to have access to records regarding his office’s implementation of the 287(g) program.

22. For example, Defendant Hodgson has offered to send Bristol County inmates to help build a U.S.-Mexico border wall. And, before members of the House Judiciary Committee, Defendant Hodgson publicly called for the arrest of public officials who support “sanctuary city” pledges that limit local authorities from enforcing federal immigration law.

23. The January 17, 2017 Request sought production of the following records made or received by Defendants:

- All public records referencing or relating to any 287(g) program that the Bristol County Sheriff’s Office has entered into, including but not limited to any Memoranda of Understanding, any Memoranda of Agreement and/or any other records and information reflecting any collaboration, coordination and/or partnership with U.S. Immigration and Customs Enforcement.
- All public records indicating or reflecting the amount of money paid, or expenses incurred, by the Bristol County Sheriff’s Office related to any 287(g) program, including but not limited to the costs incurred to train staff for their duties under said program and the personnel costs incurred for staff to execute duties under said program.
- All public records referencing or relating to any individuals who have been investigated, apprehended, detained, interrogated, and/or subjected to any other law enforcement activity by the Bristol County Sheriff’s Office as a result of any 287(g) program or as a result of any collaboration, coordination and/or partnership with U.S. Immigration and Customs Enforcement.
- All public records referencing or relating to immigration detention and/or immigration enforcement since January 1, 2015, including immigration enforcement (and raids) in schools, businesses, and/or community centers.
- All public records indicating or reflecting the amount of money paid, or expenses incurred, by the Bristol County Sheriff’s Office related to immigration detention and immigration enforcement, including, but not limited to hiring, training, and/or equipment since January 1, 2015.

24. On January 27, 2017, Lorraine J. Rousseau, Esq., responded to the January 17 request on behalf of Defendants by acknowledging receipt and advising that review of the request would take approximately 7 to 10 business days to complete. Attorney Rousseau added that, upon completion of the review, she would provide a further response informing the Lawyers’ Committee of the records that are responsive to its request as well as those exempt from disclosure. A copy of Attorney Rousseau’s response is attached as Exhibit 2.

25. Defendants did not fulfill their promise to review the request in 7 to 10 days and provide a further response. In fact, this was the last communication the Lawyers' Committee received from Defendants.

26. On February 27, 2017, having received no further response from Attorney Rousseau or Defendants, the Lawyers' Committee sent another letter to Defendants in which it renewed its request for the items identified in the January 17, 2017 Request. A copy of the February 27 letter is attached as Exhibit 3, and states in part:

We have been more than accommodating, waiting more than twice the timeframe that you indicated in your confirmation letter. We are no longer willing to accommodate any additional delays. With haste, we expect production of the records.

27. Defendants did not respond to the Lawyers' Committee's February 27, 2017 letter.

28. The Lawyers' Committee has received no further response from Defendants with respect to the January 17, 2017 request.

REQUIREMENTS OF THE PUBLIC RECORDS LAW

29. Under the Massachusetts Public Records Law, "[a] records access officer . . . shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record . . . not later than 10 business days following the receipt of the request." G.L. c. 66, § 10(a).

30. "If the agency . . . does not intent to permit inspection or furnish a copy of a requested record, or the magnitude or difficulty of the request . . . unduly burdens the other responsibilities of the agency . . . the agency . . . shall inform the requestor in writing not later than 10 business days after the initial receipt of the request for public records." G.L. c. 66, § 10(b).

31. A response in writing pursuant to G.L. c. 66, § 10(b) must:

- "confirm receipt of the request;"

- “identify any public records . . . sought that are not within the possession of the agency” and “identify the agency . . . that may be in possession” of them;
- “identify any records . . . that the agency . . . intends to withhold, and provide the specific reasons for such withholding;”
- “identify any public records . . . the agency . . . intends to produce, and provide a detailed statement describing why the . . . request . . . requires additional time;”
- “identify a reasonable timeframe in which the agency . . . shall produce the public records sought,” not to exceed 15 business days;
- “include an itemized good faith estimate of any fees that may be charged;” and
- “inform[] the requestor of the right of appeal.”

32. If an agency is unable to complete a request within the extended time period provided by G.L. c. 66, § 10(b), it may “petition the supervisor of records for an extension of time . . . not to exceed 20 business days.” G.L. c. 66, § 10(c). The agency must notify the requester of any such petition. *Id.*

33. Pursuant to G.L. c. 66 §10A(c), the Superior Court reviewing an action brought to enforce the requirements of the Public Records Law, such as the present action, “shall have available all remedies at law or in equity.”

COUNT I – VIOLATION OF MASSACHUSETTS PUBLIC RECORDS LAW ORDER OF COMPLIANCE

34. The Lawyers’ Committee repeats and realleges each and every allegation of Paragraph 1 through 28 above as if fully set forth herein.

35. Defendants did not produce any records within 10 business days following the Lawyers’ Committee’s January 17, 2017 request, thus failing to comply with the requirements of G.L. c. 66, § 10(a).

36. Defendants' mere confirmation of receipt the January 17, 2017 Request 10 days after the request was made does not demonstrate compliance with G.L. c. 66, §10(a) or (b).

37. Other than confirm receipt, Defendants failed to comply with the requirements of G.L. c. 66, §10(b). Defendants did not indicate their intent not to fully comply with the January 17, 2017 request, and did not provide the further information required by G.L. c. 66, §10(b), including information about the location of the records sought that may be in the custody of other agencies, the identity of records it intends to withhold and produce, a reasonable schedule for production of what will be produced, a good faith estimate of fees, or a notification of the right to appeal.

38. On information and belief, Defendants did not petition the supervisor of records for an extension of time, pursuant to G.L. c. 66, §10(c). Even if Defendants did petition the supervisor of records, they did not notify the Lawyers' Committee of that petition, in violation of G.L. c. 66, §10(c).

WHEREFORE, the Lawyers' Committee requests that the Court enter judgment in its favor and against Defendants as follows:

1. Ordering Defendants to produce the requested records;
2. Declaring that Defendants violated G.L. c. 66, § 10;
3. Ordering the remedies provided for in G.L. c. 66 §10A(d), including costs and attorneys' fees; and
4. Ordering such other and further relief as the Court deems necessary, just, and appropriate under the circumstances.

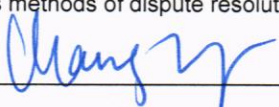
Dated: May 4, 2017

By its attorneys,



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CIVIL ACTION COVER SHEET	DOCKET NUMBER 17-1371 A	Trial Court of Massachusetts The Superior Court
PLAINTIFF(S): <u>Lawyers' Committee for Civil Rights and Economic Justice</u>	COUNTY <u>Suffolk</u>	
ADDRESS: <u>61 Battery March St., 5th floor, Boston, MA 02747</u>	DEFENDANT(S): <u>Thomas Hodgson and the Bristol County Sheriff's Office</u>	
ATTORNEY: <u>David A. Kluff and Chang Yu</u>	ADDRESS: <u>400 Faunce Corner Road, North Dartmouth, MA 02747</u>	
ADDRESS: <u>Foley Hoag LLP</u> <u>155 Seaport Boulevard, Boston, MA 02210</u>		
BBO: <u>#658970 (Kluff); #691912 (Yu)</u>		
TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)		
CODE NO. <u>AE1</u>	TYPE OF ACTION (specify) <u>Enforcement of Public Records Law</u>	TRACK <u>A</u>
		HAS A JURY CLAIM BEEN MADE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
*If "Other" please describe: _____		
STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A		
The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.		
TORT CLAIMS (attach additional sheets as necessary)		
A. Documented medical expenses to date:		\$ _____
1. Total hospital expenses		\$ _____
2. Total doctor expenses		\$ _____
3. Total chiropractic expenses		\$ _____
4. Total physical therapy expenses		\$ _____
5. Total other expenses (describe below)		\$ _____
	Subtotal (A):	\$ _____
B. Documented lost wages and compensation to date		\$ _____
C. Documented property damages to dated		\$ _____
D. Reasonably anticipated future medical and hospital expenses		\$ _____
E. Reasonably anticipated lost wages		\$ _____
F. Other documented items of damages (describe below)		\$ _____
G. Briefly describe plaintiff's injury, including the nature and extent of injury:		TOTAL (A-F): \$ _____
CONTRACT CLAIMS (attach additional sheets as necessary)		
Provide a detailed description of claims(s):		TOTAL: \$ _____
Signature of Attorney/Pro Se Plaintiff: X		Date: _____
RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.		
CERTIFICATION PURSUANT TO SJC RULE 1:18		
I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.		
Signature of Attorney of Record: X		Date: May 4, 2017

SUFFOLK SUPERIOR COURT
CIVIL DIVISION
2017 MAY -4 A 9 07
MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE