

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURTS

SUFFOLK, SS.

SUFFOLK COUNTY SUPERIOR COURT  
DOCKET NO. 18-2896F

BRENT CARLTON and BRANDON COMBS  
PLAINTIFFS

vs.

MASSACHUSETTS OFFICE OF THE  
ATTORNEY GENERAL and MAURA HEALEY,  
in her official capacity as Attorney General of the  
Commonwealth of Massachusetts  
DEFENDANT

SUFFOLK SUPERIOR COURT  
CIVIL CLERK'S OFFICE  
2018 SEP 17 A 9:26  
MICHAEL JOSEPH DONOVAN  
CLERK / MAGISTRATE

COMPLAINT

The defendant, MAURA HEALEY, in her official capacity as Attorney General of the Commonwealth of Massachusetts, has failed to provide a valid substantive response to public records requests made by the plaintiffs. Defendant has improperly asserted privilege and/or exemption under G.L. c. 66 § 10 in an invalid and overbroad manner to avoid producing records properly the subject of the Massachusetts Public Records Law. Defendant's response and refusal to comply with the plaintiffs' public records requests constitutes a breach of its obligations as set forth in Massachusetts General Laws chapter 66, section 10.

PARTIES

1. The plaintiff, Brent Carlton ("Carlton"), is an individual residing in the Commonwealth of Massachusetts, with a primary address in Boston, MA.

2. The plaintiff, Brandon Combs (“Combs”), is an individual with a primary address in the State of California.

3. Defendant, Massachusetts Office of the Attorney General, is an executive agency of the Commonwealth of Massachusetts, and Maura Healey is the Attorney General of the Commonwealth of Massachusetts. As Attorney General, Defendant Healey is the executive and administrative officer in charge of supervising the Office of the Attorney General.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction pursuant to M.G.L. ch. 66, § 10(b).

5. This Court has personal jurisdiction over the Defendant because, inter alia, they acted under the color of laws, policies, customs, and/or practices of the Commonwealth of Massachusetts and/or within the geographic confines of the Suffolk County, Commonwealth of Massachusetts.

6. Venue is proper pursuant to M.G.L. ch. 66, § 10(b) and M.G.L. ch. 212, § 14 because at least one of the parties reside or can be found in Suffolk County.

### **MASSACHUSETTS PUBLIC RECORDS LAW**

7. Every record that is made or received by a government entity or employee is presumed to be a public record unless a specific statutory or common law exemption permits or requires it to be withheld in whole or in part. *See, e.g., William Francis Galvin, Secretary of the Commonwealth Division of Public Records, “A Guide to the Massachusetts Public Records Law,” at [www.sec.state.ma.us/pre/prepdf/guide.pdf](http://www.sec.state.ma.us/pre/prepdf/guide.pdf), p. 1.*

8. If a government agency’s Records Access Officer (“RAO”) claims an exemption and withholds a record, the RAO must prove with specificity why it should be

allowed to withhold the public record. The RAO has the burden of showing how the claimed exemption applies to the withheld record and why it should be withheld. *See id.*; *see also, M.G.L. ch. 66, § 10(c).*

9. In an agency's response to a public record request,

If the agency . . . does not intend to permit inspection or furnish a copy of a requested record . . . [its] written response shall be made and *shall* . . . 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, provided that nothing in the written response shall limit an agency's or municipality's ability to redact or withhold information in accordance with state or federal law. *M.G.L. c. 66 § 10(b)(iv)(emphasis added).*

10. M.G.L. ch. 66, § 10(a) requires in part that “[e]very person having custody of any public record, as defined in clause Twenty-sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit it, *or any segregable portion of a record* which is an independent public record, to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee. Every person for whom a search of public records is made shall, at the direction of the person having custody of such records, pay the actual expense of such search.” *Id. (emphasis added).*

11. To obtain a copy of a public record, the requester must make the request to the RAO for the state agency that the requester believes has the record.

#### FACTS

12. Defendant maintains a website that outlines the procedures for a requester to request public records from the Attorney General's Office. *See <http://bit.ly/mass-ag-pra>.*

13. On August 7, 2018, Plaintiff Combs, used the procedure set forth on Defendant's website to submit a public record request electronically to Defendant. *See Combs First Electronic Record Request attached as Exhibit 1.*

14. Combs's First Electronic Record Request was received and first viewed by the RAO on August 8, 2018.

15. On August 7, 2018, Plaintiff Combs sent an identical paper copy of its electronic request via FedEx overnight addressed to Defendant Healey and Defendant's RAO, which was received by the RAO on August 8, 2018. *See Combs Paper Record Request attached as Exhibit 2.*

16. On or about August 8, 2018, Plaintiff Carlton, used the procedure set forth on Defendant's website to submit a public record request electronically to Defendant. *See Carlton's First Electronic Record Request attached as Exhibit 3.*

17. On August 9, 2018, Plaintiff Carlton sent an identical paper copy of its electronic request via FedEx addressed to Defendant's RAO, which was received by the RAO on August 10, 2018. *See Carlton's Paper Record Request attached as Exhibit 4.*

18. On August 10, 2018, Plaintiff Combs used the procedure set forth on Defendant's website to submit a second public record request electronically to Defendant. *See Combs's Second Electronic Record Request attached as Exhibit 5.*

19. The request was received and first viewed by the RAO on August 10, 2018.

20. On or about August 10, 2018, Plaintiff Carlton used the procedure set forth on Defendant's website to submit a second public record request electronically to Defendant. *See Carlton's Second Electronic Record Request attached as Exhibit 6.*

Plaintiff Carlton's second request is materially and substantively the same as Plaintiff Combs's second request.

21. On August 10, 2018, Plaintiff Carlton sent an identical paper copy of his electronic request via FedEx addressed to Defendant's RAO, which was received by the RAO on August 13, 2018. *See Carlton's Second Paper Record Request attached as Exhibit 7.*

22. On August 29, 2018, Defendant Healey responded to Plaintiff Combs's two valid records requests with a blanket refusal to provide *any* records whatsoever. Defendant Healey denied Plaintiff Combs's access to every possible document responsive to his valid requests, including publicly available documents, on the basis that:

...the AGO is currently involved in litigation and one or more investigations concerning '3Dprinted guns.' The disclosure of any records related to these ongoing matters that have been and continue to be compiled by this Office would divulge our litigation, prelitigation, and investigative strategies and reveal our sources of information such that our legal and enforcement positions would be compromised. Records responsive to your requests are therefore exempt from disclosure under the deliberative process and investigative exemptions to the public records law, G.L. c. 4, § 7, cl. 26(d)3 and (f). We cannot provide any more specificity about the requested records without disclosing these AGO legal and investigative strategies. *Defendant's Records Response to Plaintiff Combs, attached hereto as Exhibit 8.*

23. Defendant's overbroad and complete refusal to provide *any and all* responsive public records to Plaintiff Combs is unlawful, arbitrary and capricious, and in violation of M.G.L. c. 66 § 10.

24. On August 29, 2018, Defendant Healey responded to Plaintiff Carlton's two valid records requests with a blanket refusal to provide *any* records whatsoever. Defendant Healey's claimed exemptions for every possible document responsive to Plaintiff Carlton's valid requests was identical to the exemptions claimed in response to

Plaintiff Combs's requests. *Defendant's Records Response to Carlton, attached hereto as Exhibit 9.*

25. Defendants overbroad and complete refusal to provide *any and all* responsive public records to Plaintiff Carlton is unlawful, arbitrary and capricious, and in violation of M.G.L. c. 66 § 10, *et seq.*

**COUNT I**  
**Violation of Mass. Gen. L. c. 66, § 10(b)**

26. The plaintiff realleges and reasserts paragraphs 1 through 25 of this Complaint, which are incorporated herein by reference.

27. Defendant Healey's refusal to provide public records responses to the plaintiffs' lawful records requests constitutes a violation of 950 CMR 32.02 and M.G.L. ch. 66, § 10.

28. Defendant Healey has not and cannot meet her burden to overcome the legal presumption that the records sought are public records.

29. Defendant Healey has not and cannot meet her burden to prove with specificity why she should be allowed to withhold *each and every* responsive document to Plaintiffs' public records requests. Defendant has not met her burden of showing how the claimed exemption applies to each responsive record withheld.

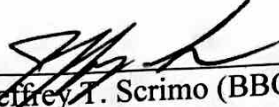
30. Defendant Healey failed and refused to identify any and all responsive documents that it intends to withhold and failed to state with specifically the basis for withholding each public document.

WHEREFORE, the plaintiffs pray that this Court:

1. Enter judgment for Plaintiffs Combs and Carlton against Defendant;

2. Award equitable relief in the form of an Order compelling Defendant to produce the public records requested by Plaintiffs; and,
3. Award such other relief as this Court deems just and proper, including attorney's fees and costs.

Respectfully submitted,  
Brandon Combs and Brent Carlton,  
By their Attorney,

  
\_\_\_\_\_  
Jeffrey T. Scrimo (BBO# 649864)  
Lynch Scrimo – Attorneys  
68 Main Street, PO Box 1787  
Lenox, MA 01240  
Phone: 413-637-1300  
Fax: 866-230-7304  
jeff@lenoxattorney.com

Dated: September 13, 2018



<b>CIVIL ACTION COVER SHEET</b>	DOCKET NUMBER <b>18-2896F</b>	<b>Trial Court of Massachusetts The Superior Court</b>
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<b>PLAINTIFF(S):</b> Brent Carlton and Brandon Combs ADDRESS: _____ _____ <b>ATTORNEY:</b> Jeffrey Scrimo / Lynch Scrimo Attorneys ADDRESS: 68 Main Street, PO Box 1787, Lenox, MA 01240 _____ <b>BBO:</b> # 649864	<b>COUNTY:</b> Berkshire <b>DEFENDANT(S):</b> Massachusetts Office of the Attorney General and Maura Healey in her official capacity as Attorney General of the Commonwealth of Massachusetts ADDRESS: 1 Ashburton Place, Boston, MA 02108-1518 _____ _____
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**TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)**

<b>CODE NO.</b> E99	<b>TYPE OF ACTION (specify)</b> Violation of G.L. c. 66, Section 10 - MA Public Records Law	<b>TRACK</b> X	<b>HAS A JURY CLAIM BEEN MADE?</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>*If "Other" please describe:</b>			

**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) .....	\$ _____
<b>Subtotal (A):</b>	<b>\$ _____</b>

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) .....

2018 SEP 17 A 11 42 AM  
 SUPERIOR COURT  
 CIVIL CLAIMS OFFICE  
 MICHAEL JOSEPH DONOVAN  
 CLERK / MAGISTRATE

G. Briefly describe plaintiff's injury, including the nature and extent of injury:  
 Defendants violated the Massachusetts Public Records Law by failing to produce records requested by Plaintiffs.

**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: Sep 13, 2018**

**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: Sep 13, 2018**