



REQUEST UNDER THE MASSACHUSETTS PUBLIC RECORDS LAW

January 17, 2019

Ms. Lorraine A.G. Tarrow
Assistant Attorney General
General Counsel's Office
One Ashburton Place
Boston, MA 02108-1518

VIA EMAIL: lorraine.tarrow@state.ma.us, jonathan.Cubetus@MassMail.State.MA.US

Dear Ms. Tarrow,

Pursuant to M.G.L. Chapter 66, Section 10, *et seq.*, please provide us certain described correspondence, and its accompanying information¹, including also any attachments, copies of all correspondence dated from **January 1, 2016, through April 15, 2016**, inclusive, which was sent to or from or copying (whether as cc: or bcc:) **Christopher Courchesne and/or Michael Firestone**, which also includes any party, be it to, from or copying (again whether as cc: or bcc:), a) mp@pawalaw.com, b) steve@hbsslaw.com c) any address ending in @sheredling.com, d) any address *including* Oreskes, and/or e) any address ending in @bordaslaw.com.

Please consider as responsive entire email “threads” containing any information responsive to this request, regardless whether any part of that thread falls outside the cited search parameters.

¹ This includes public records, and associated public information, see discussion of Data Delivery Standards, *infra*.



In making your fee estimate we ask that you please note the low probability that records responsive to this request are properly subject to any privilege.

As this matter involves a significant issue of public interest, please produce responsive information as it becomes available on a rolling basis but consistent with the Act's prescribed timelines.

We make this request aware of the requirement that covered agencies shall release any segregable portion of a responsive record, 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.

In the interests of expediting the search and processing of this Request, CEI is willing to pay fees up to \$200. Please provide an estimate of anticipated costs in the event that fees for processing this Request will exceed \$200. To keep costs and copying to a minimum **please provide copies of all productions to the email used to send this request.** Given the nature of the records responsive to this request, all should be in electronic format, and therefore there should be no photocopying costs (see discussion, *infra*).

We request records on your system, e.g., its backend logs, and do *not* seek only those records which survive on an individual's own machine or account. Individual system users typically are not able to perform such searches and are, regardless, the most conflicted parties imaginable for conducting such initial searches for what records should be considered to possible



release. As such, we also suggest that a legally acceptable search is conducted by other than the correspondents themselves, and on other than the correspondents' machines, but instead by IT.

We note your Office's historical refusal to produce other than low-res PDFs created for the purpose of responding. We reiterate and intend to defend our position that covered agencies owe native format productions. We do not demand your Office produce requested information in any particular form, instead **we request records in their native form, with specific reference to the U.S. Securities and Exchange Commission Data Delivery Standards.**² The covered information we seek is electronic information, this includes electronic *records*, and other public *information*.

To quote the SEC Data Delivery Standards, "Electronic files must be produced in their native format, i.e. the format in which they are ordinarily used and maintained during the normal course of business. For example, an MS Excel file must be produced as an MS Excel file rather than an image of a spreadsheet. *(Note: An Adobe PDF file is not considered a native file unless the document was initially created as a PDF.)*" (emphases in original).

In many native-format productions, certain public information remains contained in the record (e.g., metadata). Under the same standards, to ensure production of all information requested, if your production will be de-duplicated it is vital that you 1) preserve any unique metadata associated with the duplicate files, for example, custodian name, and, 2) make that unique metadata part of your production.

² <https://www.sec.gov/divisions/enforce/datadeliverystandards.pdf>.

Native file productions may be produced without load files. However, native file productions must maintain the integrity of the original meta data, and must be produced as they are maintained in the normal course of business and organized by custodian-named file folders. A separate folder should be provided for each custodian.

In the event that necessity requires your Office to produce a PDF file, due to your normal program for redacting certain information and such that native files cannot be produced as they are maintained in the normal course of business, in order to provide all requested information each PDF file should be produced in separate folders named by the custodian, *and* accompanied by a load file to ensure the requested information appropriate for that discrete record is associated with that record. The required fields and format of the data to be provided within the load file can be found in Addendum A of the above-cited SEC Data Standards. All produced PDFs must be text searchable.

In the context of our experience with responsive agencies taking the effort to physically print, then (often, poorly) scan *electronic* mail into (typically, non-searchable) PDF files, we note that production of electronic records necessitates no such additional time, effort or other resources, and no photocopying expense. Any such effort as described is most reasonably viewed as an effort to frustrate the requester's use of the public information.

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202 331 0640 *fax*



If you have any questions, or would like to discuss this matter further, do not hesitate to contact me by email. We look forward to your timely response.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris Horner", with a long horizontal flourish extending to the right.

Christopher C. Horner
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