

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

June 14, 2024

VIA EMAIL ONLY

Nathaniel Lindzen, Esq.
Law Office of Nathaniel M. Lindzen
57 School Street
Wayland, MA 01778
nlindzen@corpfraudlaw.com

Re: GAO's April 9, 2024 Public Records Request – Supplemental Response

Dear Nathaniel Lindzen:

I write in supplemental response to our May 3, 2024 response to an April 9, 2024¹ public records request submitted to the Office of the Attorney General (AGO) by Joe Thomas of Government Accountability and Oversight (GAO)² for the following records:

- 1) common interest agreements entered by the Office of the Attorney General in 2023, or in 2024, which covers or includes the term i) climate superfund, and/or ii) climate change superfund. These terms are not case sensitive; and also
- 2) Common Interest, engagement, retainer, pro bono, representation, non-disclosure, confidentiality, contingency and/or fee contract or *agreement(s)* that were entered into by your Office in 2023 or 2024, with or that have as a party the law firm Sher Edling, LLP.

In our May 3, 2024 response, we provided GAO with forty-four (44) pages of records that may be responsive to the request and are subject to disclosure under the public records law, M.G.L. c. 66, § 10 and M.G.L. c. 4, § 7, cl. 26, and withheld two (2) additional records. One of the records – the Confidentiality Agreement with Sher Edling LLP – is properly withheld from

¹ We note that our initial responses, including the May 3, 2024 response, stated that we received the request on April 5, 2024. However, we received this request on April 9, 2024 and a different request from GAO on April 5, 2024.

² This supplemental response is provided to you as counsel for GAO in the ongoing litigation regarding this public records request.

Nathaniel Lindzen
June 14, 2024
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disclosure as it constitutes privileged attorney work product³ and an attorney-client communication.⁴

In addition, we withheld one other record – the AGO’s Guidelines for Special Assistant Attorneys General – as a privileged attorney-client communication.⁵ Upon further review, the AGO has decided to disclose this record, consisting of thirty-nine (39) pages, with portions redacted in accordance with M.G.L. c. 4, § 7, cl. 26(d), as they are deliberative or policymaking in nature and relate to an ongoing and evolving deliberative process, namely the AGO’s position with respect to the legal requirements and processes for handling civil and criminal litigation matters on behalf of the Commonwealth of Massachusetts, the disclosure of which would taint this continuous policymaking process by inhibiting the candid thinking that results in reasoned and legally defensible courses of action now and in the future. In addition, the redacted portions of this record constitute privileged attorney work product⁶ and attorney-client communications.⁷

Finally, to clarify any ambiguity in our May 3, 2024, response, the AGO does not have any records responsive to Part 1 of the request. The records provided and withheld in our May 3, 2024 response are records that may be responsive to Part 2 of the request.

Very truly yours,



Hanne Rush
Assistant Attorney General
General Counsel’s Office

cc: Angélica Durón, Assistant Attorney General

³ See DaRosa v. City of New Bedford, 471 Mass. 446 (2015); see also Commonwealth of Massachusetts v. Uber Technologies, Inc. and Lyft, Inc., 2022 WL 16839219 (Suffolk Sup. Ct. February 28, 2022).

⁴ See Suffolk Const. Co., Inc. v. Division of Capital Asset Management, 449 Mass. 444 (2007); see also Hanover Ins. Co. v. Rapo & Jepsen Ins. Services, Inc., 449 Mass. 609, 616 (2007) (citations omitted) (“The attorney-client privilege ... also protects such statements made to or shared with necessary agents of the attorney or the client ... for the purpose of facilitating the rendition of such advice.”).

⁵ *Id.*

⁶ See DaRosa, *supra*; see also Uber Technologies, Inc. and Lyft, Inc., *supra*.

⁷ See Suffolk Const. Co., Inc., *supra*; see also Hanover Ins. Co., *supra*.

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**GUIDELINES FOR
SPECIAL ASSISTANT ATTORNEYS GENERAL**

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Appendix A (Civil Guidelines)
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[REDACTED]

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III. FINANCIAL INTEREST IN CONTRACTS OF STATE AGENCY

[REDACTED]

[REDACTED]

[REDACTED]

IV. EDUCATION AND ON-LINE TRAINING REQUIREMENT FOR SPECIAL ASSISTANTS

[REDACTED]

[REDACTED] Special Assistants will receive with their appointment letters a memorandum outlining the new education and training requirements and a Summary of the Conflict of Interest Law prepared by the State Ethics Commission. Special Assistants should read the memorandum and follow the instructions concerning the return of certificates acknowledging their receipt of the Summary (which must be returned within 10 business days of receipt of the Summary) and their compliance with the on-line training requirement. The AGO will distribute the Summary annually and notify the SAAsG bi-annually when it is time to take the on-line test (January-April of odd-numbered years). Any questions about M.G.L. c. 268A, the State Ethics Reform Law, or the application of these laws may be directed to the General Counsel's Office.

V. POLITICAL ACTIVITY

[REDACTED]

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VI. SCOPE OF APPOINTMENTS

It is the Attorney General’s responsibility to establish a consistent legal policy for the Commonwealth. For that reason, except with respect to matters referred to a Special Assistant because of a conflict of interest, Special Assistants are subject to the authority of the Attorney General to direct their activities.

With respect to documents to be filed in the trial courts, except with respect to matters referred to a Special Assistant because of a conflict of interest, Special Assistants must submit pleadings, including dispositive motions, non-routine motions, memoranda, briefs, and other such pleadings and documents for review at least 7 days before serving (where Rule 9A applies) or filing. [REDACTED]

[REDACTED]

[REDACTED]

With respect to settlements, Special Assistants may not settle any assigned matters without the prior approval of the AGO contact as to both the amount and the terms of the settlement and as to the actual language of the settlement agreement and/or release. Special

[Redacted]

B. Federal Court

[Redacted]

C. Affirmative Litigation

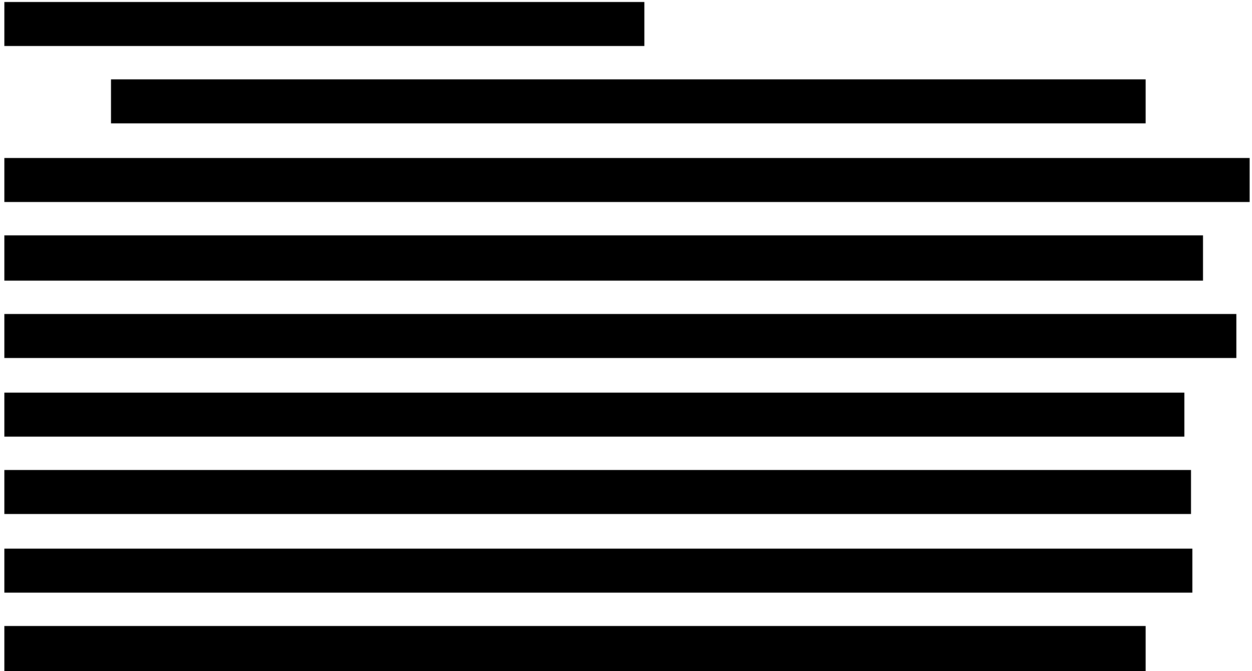
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D. Suits Against the Commonwealth

[Redacted]

E. Delegation to Agency Staff Counsel

[Redacted]



The following are examples of signature blocks that should be used.

(1) by Agency General Counsel:

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS,

By its attorney,

MAURA HEALEY
ATTORNEY GENERAL

By: _____
[Agency General Counsel's Name]
Special Assistant Attorney General
[Bar No.]
[Title/Agency]
[Address]
[Telephone Number]
[Fax Number]
[e-mail Address]

(2) by Staff Attorneys acting by designation of Agency General Counsel:

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS,

By its attorney,

MAURA HEALEY
ATTORNEY GENERAL

By: _____
[Agency General Counsel's Name]
Special Assistant Attorney General
[Bar No.]
[Title/Agency]
[Address]
[Telephone Number]
[Fax Number]
[e-mail Address]

On the brief [memorandum]: _____

(3) By a private attorney acting as a Special Assistant:

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS,

By its attorney,

MAURA HEALEY
ATTORNEY GENERAL

By: _____
[Attorney's Name]
Special Assistant Attorney General
[Bar No.]
[Law Firm]
[Address]
[Telephone Number]
[Fax Number]
[e-mail Address]

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F. Criminal Prosecutions

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VII. REPORTING

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Special Assistants who report to the Trial Division will also be assigned a Trial Division Supervisor, with whom they will have quarterly case review discussions regarding the status of their open cases, upcoming events, and case strategy.

In addition, all Special Assistants must provide a written status report every six months. Twice per year, Special Assistants will receive an e-mail from the General Counsel’s Office indicating it is time to provide a written status report, preferably in electronic form, and providing instructions. The information that should be included is as follows:

- Case name
- Court and docket number
- Nature of the claim
- Status of the case
- Recent activity on the case
- Expected next steps
- [REDACTED]
- [REDACTED]

VIII. SETTLEMENTS

[REDACTED]

[REDACTED]

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[REDACTED]

IX. DURATION OF APPOINTMENT

Special Assistants must be sworn in before making their first court filing or appearance in their Special Assistant capacity. The appointment letter provides additional instructions about the swearing in process. The time in which to be sworn in expires 90 days from the date of the appointment letter.

As a general proposition, the duration of each Special Assistant's commission is governed by the terms of his or her letter of appointment. Many Special Assistants are appointed to handle particular cases. When such a case is concluded, the Special Assistant and/or the AGO internal contact should notify the General Counsel's Office and the appointment will be vacated.

Other letters of appointment contain specific termination dates, while others have historically been open-ended. If a Special Assistant receives such an open-ended letter, the term of his or her appointment is coterminous with that of the Attorney General. Of course, all Special Assistants, as well as Assistant Attorneys General, serve at the pleasure of the Attorney General.

X. COMPENSATION

Unless otherwise agreed, Special Assistants who are compensated by the AGO will be paid at a uniform rate set by the Attorney General from time to time. Itemized billing statements should be submitted each month to the Assistant Attorney General designated for this purpose in the Special Assistant's letter of appointment. [REDACTED]

[REDACTED]

Please note that Special Assistants appointed by the AGO should not bill the AGO, and the AGO will not compensate Special Assistants for time spent completing the Special Assistant appointment process, such as submitting the conflict of interest statement, reviewing the Special Assistant appointment letter, or traveling locally to the Secretary of the Commonwealth's Office to be sworn in.

Since the fiscal year for the Commonwealth of Massachusetts ends on June 30, all bills for services rendered prior to this date must be submitted for payment by no later than July 15.

[REDACTED]

[REDACTED]

Except in the case of conflict SAAsG, the AGO reserves the right to request copies of itemized bills for work performed by the Special Assistant on behalf of the Commonwealth, regardless of whether the AGO or another Commonwealth agency is responsible for payment.

XI. PRESS

To ensure that the AGO speaks with one consistent voice and message, it is the policy of the Attorney General, for all cases in which the AGO appears through regular or Special Assistant Attorneys General, to have all press releases, statements, and answers to questions about particular cases issue from the AGO’s Press Office. Case-related contacts with the media must be approved in advance by the Director of Communications (617.963.2331). Special Assistants who receive questions from the media at court hearings or by other means should refer such questions to the Press Office in the first instance. The above policy does not apply to cases in which the Special Assistant is appointed because of a conflict of interest.

XII. PUBLIC RECORDS, FAIR INFORMATION PRACTICES, PERSONAL DATA SECURITY, AND RECORDS RETENTION

[REDACTED]

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[REDACTED] The [Statewide Records Retention Schedule](#) (and subsequent supplements) is available at <http://www.sec.state.ma.us/arc/arcidx.htm>. Section B-6 of the [Statewide Records Retention Schedule](#) is particularly important as it contains the retention periods for legal records unique to the AGO. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] At the beginning of the Special Assistant’s engagement and upon the completion of the matter for which the Special Assistant was retained, the AGO will provide detailed instructions to the Special Assistant.

Special Assistants are welcome to contact the AGO General Counsel's Office their AGO contact (or, in the case of Government Bureau/Trial Division cases, the Trial Division management team) if they have any questions or concerns.

General Counsel's Office

Judy Zeprun Kalman

General Counsel

Judy.Zeprun@massmail.state.ma.us

617.963.2018

Eileen Carey

Paralegal, General Counsel's Office

Eileen.Carey@massmail.state.ma.us

617.963.2921

For Trial Division Cases:

Anne Sterman

Chief, Trial Division (Government Bureau)

Anne.Sterman@massmail.state.ma.us

617.963.2524

Liza Tran

Deputy Chief, Trial Division (Government Bureau)

Liza.Tran@massmail.state.ma.us

617.963.2920

Jeffrey Collins

Managing Attorney, Trial Division (Government Bureau)

Jeffrey.Collins@massmail.state.ma.us

617.963.2312

Thank you for your service.

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2. SAAsG must notify the Division Chief of any court or filing dates seven (7) days in advance of such events; and

3. Per the Special Assistant appointment letter, twice per year, all SAAsG, whether handling certain categories of cases or handling individual cases are required to provide a written status report to the General Counsel's Office. When a bi-annual report is due, the Special Assistant will receive an e-mail from the General Counsel's Office indicating it is time to provide a written status report, preferably in electronic form. The information that should be included is as follows:

- Case name
- Court and docket number
- Nature of the claim
- Status of the case
- Recent activity on the case
- Expected next steps

- [REDACTED]
- [REDACTED]
- [REDACTED]

