



## CITY OF SOMERVILLE, MASSACHUSETTS LAW DEPARTMENT

BY ELECTRONIC MAIL

October 13, 2021

Honorable Mayor Joseph A. Curtatone  
Somerville City Hall  
93 Highland Ave.  
Somerville, MA  
[Jcurtatone@somervillema.gov](mailto:Jcurtatone@somervillema.gov)

Re: City Council Agenda Item 211812

Dear Mayor Curtatone:

You asked the Law Department for an opinion on the City Council's proposed amendment to Ordinance 2-123, which would require the City Solicitor to send the City Council any "claims against the City filed at the Massachusetts Commission Against Discrimination." For the reasons I describe below, this office does not believe it is appropriate or consistent with our longstanding commitment to employee privacy to make the contemplated dissemination of MCAD complaints before they become public records.

By way of background, complaints at the MCAD are not public records until the agency issues an investigatory disposition, at the conclusion of a thorough investigation. The disposition represents the agency's findings about whether, based on evidence collected by MCAD investigators, there is probable cause of a violation of c. 151B. If there is probable cause, the matter proceeds to a public hearing at the MCAD. If there is no probable cause, the MCAD dismisses the matter. When the City receives a new complaint, it typically conducts its own investigation and collects internal information, while defending the matter through the investigation stage. Because of the sensitivity and risk involved in these matters, they are handled by an attorney in the Law Department or outside counsel, sometimes in conjunction with Personnel investigators. Sometimes in response to early complaints, the City implements interim workplace measures to protect the employee who has made a complaint while it learns the facts. Sometimes, the City issues discipline based on information learned during an investigation, but sometimes it is satisfied that no employees have violated c. 151B. The City does not disclose the





existence or the details of MCAD complaints to employees who do not have a business reason to learn of them.

During the course of Council committee meetings, the Law Department proposed an edit to the draft of Ordinance 2-123 that requires the City Solicitor to notify the City Council of MCAD complaints, once they have become public records, pursuant to the Commission's regulations. This office does not believe the City Council members have any duties to carry out when the City first learns of MCAD complaints. The City Council does not have an investigatory, strategic or operational role under c. 151B or the City's Equal Opportunity Policy. If the City were to retain new outside counsel to handle the matter or the City wished to settle the case, it would approach the City Council for the necessary approvals and disclose the matter at that time. However, outside of those two situations, it is our belief that employees would suffer reputational damage and invasions of privacy if the City were to disseminate these early complaints amongst employees who have no operational role in their management. It could also have a chilling effect on a complainant's willingness to come forward if they knew that these highly personal and sensitive complaints would be received by a wide audience. Finally, an employee involved in a complaint may have a retaliation action against the City for unnecessarily disclosing these complaints without a business reason.

The Council was not receptive to the Law Department's proposed edit. The Councilors believed that because of their role as elected officials, they should know about these early stage complaints. The Council also believed they are entitled to a greater right of access to these early complaints than "members of the public." Finally, the Council expressed that they need to know about these complaints because of their role in confirming appointments.

The Law Department's opinion of the first two reasons is that, in this case, the members of the City Council are members of the public. The Law Department would not share an early complaint with anyone who did not have an operational role in investigating or providing evidence in the matter or implementing interim measures. Of course, if the Law Department sought funds to retain outside counsel or to settle a demand, the Council would have an operational need to know about the matter. Short of those circumstances, however, the City Council would not have to take an official City action in an early stage of an MCAD complaint. In terms of the Council's need to know for confirmation of appointments, the Law Department has long taken the position that it would be unduly prejudicial or retaliatory for the Council to make an employment decision based only on an allegation of a violation of c. 151B or the EO policy. As a result, the Administration currently does not share with the Council whether employees seeking confirmation have ever been accused of violating the EO Policy or c. 151B.



The Law Department's advice remains unchanged that the amendment to Ordinance 2-123 should include a reference to disclosing MCAD complaint to the City Council once they have become public records.

Please let me know if I can be of any further assistance in this matter.

Sincerely,

Julie McKenzie  
Chief Labor Counsel

cc: Frank Wright, City Solicitor