

John Monaghan

From: John Monaghan
Sent: Wednesday, August 7, 2024 12:20 PM
To: helen.rush-lloyd@mass.gov; Sophia.A.Apostola@mass.gov
Cc: [REDACTED]
Subject: Public Record Request OGC-2024-4 Fee Waiver Request



August 7, 2024

Via Email Only

Helen Rush-Lloyd
Records Access Officer
Massachusetts Department of Public Health
250 Washington St.
Boston, MA 02108
helen.rush-lloyd@mass.gov

Sophia A. Apostola
Deputy General Counsel
Massachusetts Department of Public Health
250 Washington Street, 2nd Floor
Boston, MA 02108
Sophia.A.Apostola@mass.gov

Re: Public Record Request OGC-2024-4

Dear Ms. Rush-Lloyd and Ms. Apostola:

In response to your July 22, 2024 letter quoting fees of \$5,700 to release the requested documents, the American Center for Law and Justice (ACLJ) on behalf of the Massachusetts Family Institute (MFI), respectfully requests a fee waiver.

By way of introduction, the ACLJ is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion. *See, for example, amongst others; Pleasant Grove City v. Summum*, 129 S. Ct. 1523 (2009) (unanimously holding that the Free Speech Clause does not require the government to accept counter-monuments when it has a war memorial or Ten Commandments monument on its property); *McConnell v. FEC*, 540 U.S. 93 (2003) (unanimously holding that minors enjoy the protection of the First Amendment).

Regarding the fee waiver, the Massachusetts Open Records Act states:

[T]he records access officer may waive or reduce the amount of any fee charged under this subsection upon a showing that disclosure of a requested record is in the public interest because [1] it is likely to contribute significantly to public understanding of the operations or activities of the government and [2] is not primarily in the commercial interest of the requestor . . .

Mass. Ann. Laws ch. 66, § 10(d)(v).

“Commercial interest” is defined as “the sale or resale of any portion of the public record... and shall not include gathering or reporting news or gathering information to promote citizen oversight or further the understanding of the operation or activities of government” Mass. Ann. Laws ch. 66, § 10(d)(iv).

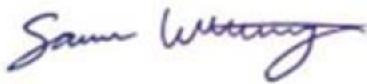
MFI meets both requirements. MFI is a non-partisan public policy organization that engages in research and informing the public on a wide range of public policy issues so the request will contribute to the public’s understanding of the government’s operations or activities. Specifically, we believe the public has a right to know if the Massachusetts Department of Public Health has coordinated with outside organizations to develop its public awareness campaign against pregnancy resource centers and, if so, to know the extent to which taxpayer dollars have been spent on the campaign.

Second, MFI will not make a profit from disclosure of the records, nor does it intend to sell or resell the records. It does not use information gathering as a tactic for garnering more income but to educate the public about government activities. MFI is a not-for-profit organization that relies solely on donations.

Additionally, Mass Ann. Laws ch. 66 § 10(d)(iv) states that if the requestor does not meet the first two requirements, the requestor may show that it “lacks the financial ability to pay the full amount of the reasonable fee.” MFI reiterates its reliance on donations and its nonprofit legal status. Although MFI does generate revenue, it does so for the purpose of using it to create events like leadership trainings and conferences. MFI values the trust of its donors, and MFI’s prudent use of donors’ funds is necessary to retain that trust. Therefore, MFI lacks the financial ability to pay the \$5,700 fee and asks for a reduction.

If this request cannot be complied with, kindly provide an explanation in writing.

Very truly yours,



Sam Whiting, Esq.
Staff Attorney
Massachusetts Family Institute
[Redacted]

Very truly yours,



John A Monaghan
Senior Litigation Counsel
[Redacted]

John A. Monaghan
Senior Litigation Counsel
American Center for Law and Justice



This email and any attachments or embedded messages may be confidential and privileged. If you are not the intended recipient(s) (or authorized to receive for the intended recipient(s)), notify me immediately. In that case, do not examine, use, distribute, or copy, in whole or part, the message or any attachment, and destroy the message and any attachment.

Receipt by anyone other than the intended recipient(s) (or those authorized to receive for the intended recipient(s)) is not a waiver of any privilege.