

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

SUPERIOR COURT
Civil Action No. _____

CONSERVATION LAW FOUNDATION,)
)
 Plaintiff,)
 v.)
)
 MASSACHUSETTS EXECUTIVE)
 OFFICE OF ENERGY AND ENV'T'L)
 AFFAIRS,)
)
 Defendant.)

VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Massachusetts Public Records Law, G.L. c. 66, § 10 and c. 4, § 7, Twenty-sixth, and the Declaratory Judgment Act, G.L. c. 231A, § 1, seeking public records from an agency of the Commonwealth, the Executive Office of Energy and Environmental Affairs (“EEA” or “defendant”).
2. As part of a regional effort coordinated by the New England Governors through the New England States Committee on Electricity (“NESCOE”), employees and representatives of EEA have been engaged in discussions regarding the procurement of additional natural gas pipeline capacity and additional imports of Canadian hydroelectric power.
3. As a result of these discussions, NESCOE has proposed that a new tariff be established by the regional electric grid operator, the Independent System Operator of New England (“ISO-NE”), to pass the costs of any new natural gas pipelines onto electric customers within New England. Such a tariff is unprecedented and could result in multi-billion dollar costs for electric customers.

4. In addition, EEA and its employees have been advancing legislative proposals within Massachusetts in an attempt to support the above-referenced infrastructure initiative.
5. As part of an effort to examine the proposals set forth by NESCOE and supported by employees and representatives of EEA, CLF requested documents concerning EEA's participation in discussions regarding the Governors' initiative to procure additional natural gas pipeline capacity and additional Canadian hydroelectric power in March 2014. The request sought all documents from June 30, 2012 to the present regarding these proposals, including internal communications and any communications with NESCOE, employees or representatives of other New England states, ISO-NE, the Federal Energy Regulatory Commission ("FERC"), electricity market participants, and natural gas transmission or distribution companies. See March 19, 2014 Letter from Shanna Cleveland, CLF, to Energy Undersecretary Barbara Kates-Garnick, EEA. (Exhibit A).
6. However, EEA has refused to provide these documents within the ten-day time frame mandated by the statute. Instead, EEA has claimed that it does not have the resources to produce these records any sooner than July 31, 2014, coincidentally, the very last day of the legislative session in which the infrastructure legislation is being considered, and after the NESCOE deadline for additional comments on the proposal, July 3, 2014. See June 19, 2014 Letter from Hinna Upal, EEA to Shanna Cleveland, CLF. (Exhibit B).
7. EEA's continued refusal to provide CLF with copies of the documents or access to those documents that have already been identified will also prevent CLF from having sufficient time to review responsive documents prior to the next steps in the stakeholder process on the proposed tariff at ISO-NE. Additional stakeholder meetings are scheduled for July 22 and 28 with additional meetings for voting on the proposal scheduled for August 11 and 29.

8. These refusals to provide the documents occurred after CLF had already provided a check for \$958.42 to pay for the resources to compile and copy these documents. See April 22, 2014 Letter from Shanna Cleveland, CLF to Deputy General Counsel Hinna Upal, EEA. (Exhibit C).
9. Despite payment and repeated requests explaining the time sensitive nature of CLF's requests, EEA continues to delay production of the records. See May 8, 2014 Email from Shanna Cleveland, CLF to Hinna Upal, EEA. (Exhibit D); June 12, 2014 Letter from Shanna Cleveland, CLF to Hinna Upal, EEA (Exhibit E).
10. CLF seeks a declaration that EEA was required to provide CLF with the requested documents no later than ten days from the date of CLF's request. CLF also seeks a preliminary and permanent injunction requiring the immediate release of the requested records, which will educate the public about the proposed legislation and proposed tariff and allow CLF to make timely, informed comments on these proposals and participate meaningfully in the stakeholder process at ISO-NE.

Parties

11. Plaintiff the Conservation Law Foundation ("CLF") is a non-profit membership organization of over 3,000 members and supporters. CLF is incorporated under the laws of Massachusetts with a principal place of business at 62 Summer Street, Boston, MA 02110. CLF's mission is to protect New England's environment for the benefit of all people. CLF has a long history of working to reduce harmful air emissions, including greenhouse gas pollution, from all sectors of the economy on behalf of its members.

12. Defendant the Executive Office of Energy and Environmental Affairs (“EEA”) is an agency of the Commonwealth established pursuant to G.L. c. 21A, § 1. Its principal place of business is located at 100 Cambridge Street, Suite 900, Boston, MA 02114.

Jurisdiction and Venue

13. This Court has jurisdiction over this action under G.L. c. 66, § 10(b), which states, “[i]f a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the supreme judicial court or superior court shall have jurisdiction to order compliance.”

14. Venue is proper in Suffolk County because CLF’s usual place of business is in Boston.

Relevant Statutory Law

15. Under the Massachusetts Public Records Law, G.L. c. 66, § 10, “every person having custody of any public record . . . shall, at reasonable times and without unreasonable delay, permit it . . . to be inspected and examined by any person” upon request.

16. “Public records” are documents and records “made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or any political subdivision thereof, or of any authority established by the general court to serve a public purpose. . . [.]” G.L. c. 4, § 7, Twenty-sixth.

17. Pursuant to c. 66, § 10(b), “A custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request.”

18. The corresponding regulations underscore that the public must be provided “prompt access to all public records in the custody of state governmental entities and in the custody of governmental entities of political subdivisions of the Commonwealth.” Mass. Regs. Code tit. 950, § 32.02.

Factual Allegations

19. To inform itself and the public about EEA's actions with respect to the regional infrastructure initiative, CLF sent a letter requesting public records on March 19, 2014. (Exhibit A).
20. On March 28, 2014, CLF received a response from EEA's Deputy General Counsel stating that EEA was in the process of identifying documents and would provide a further response "as soon as practicable." (Exhibit F).
21. EEA did not provide a further response until April 17, 2014. At that time, EEA stated that it estimated responding to the request would take roughly 34 hours and would cost \$958.42. (Exhibit G).
22. CLF prepared and delivered the check for \$958.42 on April 25, 2014. After receiving no further response, CLF informed EEA that time was of the essence due to the need to provide public comment on the pending tariff proposal no later than May 30, 2014. (Exhibit D).
23. On June 12, 2014, CLF submitted a letter to EEA indicating that if the documents were not provided within 7 days of the letter, CLF would have no choice but to consider its administrative and legal remedies. (Exhibit E).
24. In response, on June 19, 2014, EEA provided a letter explaining that "it is our intention to provide you with responsive documents, or the opportunity to come to the office to copy any responsive documents, before July 31, 2014." (Exhibit B).
25. EEA has yet to provide any responsive documents and has denied a request to review in person any documents that have been gathered thus far.

STATEMENT OF CLAIMS

Count I

(Declaratory Judgment, G.L. c. 231A, § 1)

26. CLF realleges and incorporates by reference the allegations above.
27. An actual controversy has arisen between CLF and EEA as to whether EEA has failed to comply with the Public Records Law by refusing to provide responsive documents within ten days of receiving CLF's request.
28. EEA is an "executive office" of the commonwealth and is subject to the requirement to comply with public records requests within ten days of receiving such a request.
29. For these reasons, this Court should declare that, the Public Records Law requires disclosure of documents within ten days of receipt of a request absent any claim of exemption or privilege.

Count II

(Violation of G.L. c. 66, § 10 and c. 4, § 7, Twenty-sixth)

30. CLF realleges and incorporates by reference the allegations contained above.
31. Under G.L. c. 66, § 10, "every person having custody of any public record . . . shall, at reasonable times and without unreasonable delay, permit it . . . to be inspected and examined by any person" upon request."
32. G.L. c. 66, § 10(b) requires that a custodian "shall" comply with such a request within ten days following receipt of the request.
33. By refusing to provide the documents requested by CLF within ten days after receipt of the request, EEA has violated the Massachusetts Public Records Law.

34. CLF is entitled to preliminary and permanent injunctive relief ordering compliance with its request.

Prayer for Relief

WHEREFORE, Plaintiff, CLF, prays that the Court:

1. Issue the requested declaratory relief;
2. Enter preliminary and permanent injunctions ordering the defendant (a) to conclude review of the records; (b) identify all records and data that are responsive to CLF's Request; and (c) to disclose all public records to CLF immediately;
3. Issue a short order of notice for a hearing to show cause why the Court should not grant the relief requested in these Prayers for Relief; and
4. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,
CONSERVATION LAW FOUNDATION
By its attorney,



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July 9, 2014

VERIFICATION

I, Shanna Cleveland, hereby declare under the pains and penalties of perjury that the factual allegations contained in this Verified Complaint for Injunctive and Declaratory Relief are true and accurate to the best of my knowledge, information, and belief, on this 9th day of July, 2014.