

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT  
DEPARTMENT OF THE  
TRIAL COURT

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THE HARVARD CRIMSON, INC., )  
 Plaintiff, )  
 v. )  
 PRESIDENT AND FELLOWS OF )  
 HARVARD COLLEGE, )  
 HARVARD UNIVERSITY POLICE )  
 DEPARTMENT and FRANCIS D. )  
 RILEY in his role as Chief of Police to )  
 Harvard University Police Department, )  
 Defendants. )

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CIVIL ACTION  
NO. 03-3137

**COMPLAINT**

This is an action for declaratory and injunctive relief pursuant to the Massachusetts Public Records Law, G.L. c. 66, § 10, and the Declaratory Judgment Act, G.L. c. 231A, § 1. The plaintiff, The Harvard Crimson, a daily newspaper, seeks relief to compel the defendants to disclose public records in their custody. Specifically, The Harvard Crimson seeks disclosure of records created by Harvard University police officers who hold police powers pursuant to state law under which they are deputized by the Middlesex and Suffolk County Sheriffs or are sworn special state police officers.

**PARTIES**

1. Plaintiff The Harvard Crimson, Inc. (“The Crimson”) is a Massachusetts corporation with its principal place of business in Cambridge, Massachusetts.

2. Defendant the President and Fellows of Harvard College, also known as the Harvard Corporation or Harvard University, is a Massachusetts corporation with its principal place of business in Cambridge, Massachusetts.

3. Defendant the Harvard University Police Department (“HUPD”) is a department of Harvard University with its principal place of business in Cambridge, Massachusetts.

4. Defendant Francis D. Riley (“Riley”) is the Chief of Police of HUPD and the custodian of certain records requested by The Crimson. Riley is named solely in his role as Chief of Police of HUPD and has a principal place of business in Cambridge, Massachusetts.

### **FACTS**

5. The Crimson realleges and incorporates by reference the allegations contained in paragraphs 1 through 4 above.

6. HUPD is a full-service police department comprised, at least in part, of sworn police officers. The police officers are sworn as special state police officers under G.L. c. 22C § 63 and possess deputy sheriff powers in Middlesex and Suffolk counties. Consequently, they are empowered to stop, question, detain and even formally arrest individuals. If an HUPD officer qualifies, the officer may carry a firearm in the course of his or her duties.

7. Upon information and belief, HUPD officers are deputized sheriffs authorized to carry out law enforcement duties in 52 towns and cities in Middlesex and Suffolk counties. As deputized sheriffs and/or special state police officers, HUPD officers possess policing powers unique to public law enforcement agencies.

8. The state public records law, G.L. c. 66, § 10, provides that every person having custody of any public record “shall, at reasonable times and without unreasonable delay, permit

it, or any segregable portion of a record which is an independent public record, to be inspected and examined by any person....”

9. “Public records” are defined by G.L. c. 4, § 7 cl. 26 as:

All books, papers ... or other documentary materials or data, regardless of physical form or characteristics, **made** or received **by any officer** or employee of any agency, executive office, department, board, commission, bureau, division or authority of the Commonwealth, or of any political subdivision thereof.” (Emphasis added).

10. On or about June 2, 2003, The Crimson requested certain records under G.L. c. 66 §10 from the Cambridge Police Department and HUPD. On or about June 4, 2003, The Crimson made an additional request for records from the Boston Police Department. The Crimson requested all records, including but not limited to incident reports and correspondence, related to certain incidents listed on HUPD’s weekly log of complaints.

11. On or about June 11, 2003, HUPD informed The Crimson that the request for records had been denied. HUPD cited previous decisions refusing to produce any records kept by HUPD, including denials of requests made by The Crimson on April 28, 2002, and April 9, 2001. HUPD claimed in all of these denials that it is not a public entity and, thus, is excluded from the requirements of the statute governing requests for public records.

12. HUPD has not invoked any exemption under G.L. c. 4, § 7, cl. 26 to the requirement for disclosure of public records.

13. On or about June 16, 2003, the Cambridge Police Department responded to The Crimson’s request and provided several documents, including an incident report.

14. On or about June 23, 2003, the Boston Police Department produced documents, including an incident report, in response to The Crimson’s request.

**COUNT I**

(Violation of G.L. c. 66 § 10)

15. The Crimson realleges and incorporates by reference allegations contained in paragraphs 1 through 14 above.

16. As a result of the public powers bestowed upon HUPD police officers by the state police and the sheriffs' offices, the incident reports these officers have made are public records pursuant to G.L. c. 66, § 10 and G.L. c. 4, § 7, cl. 26 that are in the possession of the defendants and are subject to public inspection and copying in accordance with G.L. c. 66 § 10.

17. By refusing to provide access to or copies of the documents requested by The Crimson, the defendants have violated G.L. c. 66 § 10, entitling The Crimson to injunctive relief ordering compliance with its requests.

**COUNT II**

(Declaratory Judgment)

18. The Crimson realleges and incorporates by reference the allegations contained in paragraphs 1 through 17 above.

19. An actual controversy has arisen between The Crimson and the defendants as to whether the records requested by The Crimson constitute public records subject to mandatory disclosure under G.L. c. 66 § 10.

20. The Crimson seeks a declaratory judgment decreeing that the records made by police officers acting with authority as special state police officers and/or deputy sheriffs and held by HUPD are public records subject to disclosure under G.L. c. 66 § 10.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff The Harvard Crimson respectfully requests that this Court grant the following relief:

- (a) Enter a permanent injunction directing the defendants to provide The Harvard Crimson with access to, or copies of the requested public records;
- (b) Enter judgment for The Harvard Crimson on Count I;
- (c) Enter a declaratory judgment for The Harvard Crimson, declaring Harvard University Police Department the holder of public records made by its police officers that are subject to disclosure in accordance with G.L. c. 66 § 10 and G.L. c. 4 § 7 cl. 26;
- (d) Grant The Harvard Crimson such other and further relief as this Court deems just and proper.

Dated: Boston, Massachusetts  
July \_\_, 2003

Respectfully submitted,

DECHERT LLP

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