

CITY OF FALL RIVER, MA
LAW DEPT.

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SENT VIA CERTIFIED MAIL AND EMAIL

Paul Coogan, Mayor
Fall River City Hall
One Government Center, Room 619
Fall River, MA 02722

Re: WPA Notification Correspondence on behalf of Chief Kelly Furtado

Dear Mayor Coogan,

This office represents the personal and professional interests of former Chief Kelly Furtado (hereinafter "Chief Furtado"). This correspondence is intended to request Chief Furtado's personnel file from the City of Fall River (hereinafter "City") under the Massachusetts Personnel Records Statute, M.G.L. c. 149, §52C.

The statute defines a "personnel record" as any "record kept by an employer that identifies an employee, to the extent that the record is used or has been used or may affect or be used relative to that employee's qualifications for employment, promotion, transfer, additional compensation or disciplinary action."

Accordingly, pursuant to M.G.L. c. 149, §52C, we request a full and complete copy of any and all written documents contained in Chief Furtado's personnel file within 5 business days following receipt of this request. If there are additional "personnel records" maintained by multiple offices outside of the Human Resources Department, we request any and all copies and/or versions of Chief Furtado's disciplinary and/or personnel file including, but not limited to, any "personnel records" in the possession of the City.

This correspondence is also intended to place the City of Fall River on formal notice of Chief Furtado's Massachusetts Whistleblower claim pursuant to M.G.L. c. 149, sec. 185 (b)(1), as well as (b)(3).

Throughout her tenure as Chief of Police, Chief Furtado reported, objected to and otherwise refused to accept multiple issues of concerning conduct that she reasonably believed

constituted violations of law, misuse of public resources, violations of departmental rules and regulations, ethics violations, payroll and compensation irregularities, improper handling of public property, firearms-related violations, retaliatory conduct, and other misconduct occurring within the Fall River Police Department, including, but not limited to, the actions of former Chief Gauvin and his associates.

Among other matters, Chief Furtado personally provided her supervisors with notice of additional concerning misconduct by former Chief Gauvin and others which included:

- Improper compensation and accrued time practices;
- Missing and/or unaccounted-for department property;
- Firearms located within department facilities and associated compliance concerns;
- Potential violations of departmental policies and procedures;
- Retaliatory conduct directed toward department personnel;
- Conduct implicating public trust, accountability, and integrity within the Fall River Police Department.

Chief Furtado additionally reported concerns regarding the retention of City-owned property by former Chief Paul Gauvin, including a department-issued cellular telephone that had not been returned to the City despite its potential evidentiary significance. Despite being placed on notice of the potential evidentiary value of the device, City officials failed to take reasonable steps to secure, recover, or preserve the contents of the phone. Upon information and belief, the phone remains unreturned. The City's apparent indifference toward obtaining and preserving potentially relevant evidence raises serious concerns regarding the selective treatment of complaints involving former Chief Gauvin and the City's efforts to minimize or disregard allegations involving favored officials.

Importantly, the concerns reported, disclosed, and investigated during Chief Furtado's tenure were not speculative. Following her assumption of office, the City retained Comprehensive Investigations & Consulting, LLC ("CIC") to conduct an independent investigation into multiple allegations involving former Chief Paul Gauvin and matters occurring within the Fall River Police Department. The investigation included witness interviews, documentary review, body-worn camera footage, department records, firearms records, payroll records, and other evidence.

The resulting investigative report substantiated numerous concerns and identified significant misconduct and policy violations. Among other findings, the report concluded that former Chief Gauvin possessed firearms in his department locker that were not registered to him, failed to follow required procedures regarding the receipt and storage of firearms, improperly maintained firearms without required documentation, engaged in conduct concerning department property and compensation practices that warranted further scrutiny, and engaged in conduct that raised serious concerns regarding truthfulness, judgment, policy compliance, and abuse of authority. The investigation further documented evidence that former Chief Gauvin left a knife and bullet in the incoming Chief's desk and that Chief Furtado reasonably perceived those items as a threat. The report also documented concerns regarding retaliatory conduct directed toward union officials and the handling of internal investigations.

Notably, the independent investigator found that former Chief Gauvin never filed any report concerning the firearms located in his locker, despite department requirements that recovered firearms be documented and processed through appropriate channels. Lieutenant Mendes advised investigators that "the proper protocol when receiving firearms would be to log them into evidence for destruction and filing a report" and confirmed that former Chief Gauvin "never filed a report about the firearms in his locker."

The investigation likewise documented Chief Furtado's report that she discovered a knife and bullet in an otherwise empty desk drawer immediately upon assuming office. Chief Furtado advised investigators that she interpreted the items as a threat and stated: "that's a threat" and "that's to me, that's, oh, you're a backstabber. You're going to get a bullet." The investigator further documented Chief Furtado's observation that the drawer containing the knife and bullet appeared intentionally cleaned and otherwise empty.

The significance of these findings cannot be overstated. Rather than supporting the narrative advanced by Chief Furtado's critics, the independent investigation largely validated the legitimacy of the concerns being raised within the department and the necessity of investigating them. Chief Furtado fulfilled her obligations as Chief of Police by ensuring that allegations of misconduct were properly investigated and documented. Instead of being commended for protecting the integrity of the Department and safeguarding public resources, she became the target of escalating retaliation, public attacks, interference with her employment relationship, and efforts to force her from office.

Chief Furtado reasonably believed that the campaign ultimately resulting in her constructive discharge was motivated, at least in substantial part, by her willingness to expose misconduct, policy violations, and abuses of authority within the Fall River Police Department. The retaliation directed toward Chief Furtado intensified substantially as the timing of her employment contract approached expiration and negotiations concerning her continued service as Chief of Police commenced. Chief Furtado sought a two-year contract extension after successfully serving in the position despite initially receiving only a one-year appointment. Chief Furtado was informed that members of the City Council were actively opposing the proposed contract and compensation package.

Political opposition to Chief Furtado's continued employment became intertwined with ongoing efforts to undermine her authority, damage her reputation, and force her departure. Chief Furtado was further advised that members of the City Council opposed aspects of her contract renewal and had threatened to withhold support for certain municipal funding initiatives. The timing of these events, coupled with the escalating public criticism directed toward Chief Furtado, provides further evidence that the adverse treatment she experienced was not coincidental but rather part of a broader effort to pressure her into leaving her position.

These matters identified above were reported, objected to and investigated in good faith and pursuant to our client's obligations as a citizen and as a public employee. Chief Furtado reasonably believed that the conduct at issue constituted violations of law, rules, regulations, departmental policies, ethical obligations, and standards governing public officials. Following

these reports, disclosures, and investigations, Chief Furtado became the target of a sustained and escalating campaign of retaliation. The retaliatory conduct included, but is not limited to:

- Public attacks and criticism by members of the Fall River City Council;
- Efforts to undermine Chief Furtado's authority and effectiveness as Chief of Police;
- Public dissemination of false and misleading information regarding her conduct and decisions;
- Interference with ongoing employment contract and negotiations;
- Attempts to impair, diminish, or terminate her employment relationship with the City;
- Efforts to create political pressure designed to force her resignation;
- Creation of working conditions that became objectively intolerable.

The conduct directed toward Chief Furtado has interfered with her ability to perform her duties, damaged her professional reputation, undermined her contractual relationship with the City, and ultimately resulted in her constructive discharge.

It is patently clear that the retaliation and hostile treatment inflicted upon Chief Furtado was done as a direct consequence of her ongoing verbal and written complaints to multiple individuals and other supervisory authorities regarding her refusals to be a part of what she reasonably believed violated laws, regulations, ethical standards, and departmental policies.

The City of Fall River, its elected officials, officers, agents, employees, and representatives are hereby placed on notice that Chief Furtado intends to pursue all remedies available under M.G.L. c. 149, §185, as well as any other applicable statutory and common-law causes of action.

PRESERVATION OF EVIDENCE DEMAND

The City of Fall River, Fall River Police Department, Mayor's Office, Human Resources Department, Law Department, City Council, and all employees, agents, representatives, and officials are hereby directed to preserve any and all evidence relating in any way to Chief Furtado, her employment, her investigations, her reports of misconduct, her contract negotiations, and any adverse actions taken against her.

This preservation obligation includes, without limitation:

Emails; Text messages; Signal messages; WhatsApp messages; Facebook messages; Messenger communications; Direct messages through any social media platform; Voicemails; Audio recordings; Video recordings; Body-worn camera footage; Surveillance footage; Computer files; Draft documents; Personnel records; Calendars; Meeting notes; City Council communications; Communications among Council members; Communications with media organizations; Communications with union officials; Communications concerning Chief Furtado's employment agreement; Communications concerning contract negotiations; Communications concerning any vote of confidence or no-confidence effort; Communications regarding investigations involving former Chief Paul Gauvin; Communications with outside investigators and consultants; Metadata associated with electronically stored information.

This preservation demand specifically extends to personal cellular telephones, personal email accounts, private messaging applications, social media accounts, and any device used by City officials or employees to conduct City business, including members of the City Council.

No potentially relevant information shall be destroyed, altered, deleted, overwritten, or otherwise rendered unavailable. Given the public nature of many of the actions directed toward Chief Furtado, the likelihood of litigation is readily apparent and the City's preservation obligations have unquestionably attached.

Please confirm in writing within five (5) business days that the City has implemented an appropriate litigation hold on these items identified above and has taken steps to preserve all relevant evidence, including providing notice to members of the Fall River City Council.

Nothing contained herein shall be construed as a complete recitation of Chief Furtado's claims, facts, damages, or legal theories, all of which are expressly reserved.

Very truly yours,

/s/ Timothy M. Burke

Timothy M. Burke