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May 26, 2015

Sen. Joan B. Lovely, Senate Chair
Rep. Peter V. Kocot, House Chair
Committee Members
Committee on State Administration and Regulatory Oversight

Re: Testimony in Support of H.2772 & S.1676

Chairwoman Lovely and Chairman Kocot and Members of the Committee:

Thank you for letting me testify in support of H.2772 and S.1676. My name is David Milton. I am a civil rights lawyer with the Law Offices of Howard Friedman in Boston. To investigate potential claims, our firm frequently makes public records requests of police departments and jails. We often receive prompt compliance, but without an attorney's fees provision to penalize noncompliance, agencies are free to flout the law.

On May 7, 2014, an MBTA police officer pulled an intoxicated, wobbling man away from the edge of a subway platform at Park Street Station. Surveillance cameras captured the incident. The next day, the Transit Police released an edited clip of the video and held a press conference to praise the officer's actions. About two weeks later my office got a call from the intoxicated man, who had been hospitalized after the incident with multiple facial fractures and other injuries. He claimed that after pulling him away from the track, the officer threw him down and repeatedly punched and kicked him.

I sent a public records request to the MBTA asking for a complete copy of the video. The T denied the request, citing two grounds. They cited the deliberative process exemption, which protects internal agency memos relating to policy

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positions being developed. This clearly did not apply to the video, since whatever took place on the Red Line platform that day, it was not a meeting of high-level T officials deliberating policy matters.

The T also cited the investigatory exemption, which protects confidential investigative techniques and sources. This also made no sense, since there is nothing classified about a police officer's use of force in Park Street Station. And the T's public release of a portion of video undermined any claimed need to keep it secret.

I called the MBTA lawyer who had denied my request. She gave a new reason for the denial—a supposed litigation exemption. When I explained that the law did not have a litigation exemption, and that there was no lawsuit in any event, she insisted that the mere *potential* for litigation about the incident was grounds for withholding public records.

I filed a public records lawsuit in Superior Court. The T hired a large international law firm with offices in Boston, which assigned three lawyers to defend the case. Eventually, in March of this year, the T gave up and gave me the video.

Ten months after my request, having spent almost \$300 in filing fees and about 10 hours of my time, I finally had the video. Although it confirmed that the officer had repeatedly punched and kicked the man, and showed that the T had misled the public, the full video ultimately persuaded me not to bring a lawsuit. This often happens once I get police records.

I support the attorney's fees provision in the bill not because I want attorney's fees, but because I want to get public records without needing to file a lawsuit. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "David Milton".

David Milton