

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

Tracking Number: I-20-182

RE: Civil Service Commission investigation, pursuant to G.L. c. 31, §§ 2(a) and 72-74, regarding the prior use of non-civil service intermittent police officers in the Methuen Police Department.

FINDINGS, CONCLUSIONS, ORDERS AND RECOMMENDATIONS

I EXECUTIVE SUMMARY

The results of an investigation conducted by the Civil Service Commission (Commission) show that, for years, Joseph Solomon, former Chief of the Methuen Police Department (MPD), circumvented the civil service law and rules by improperly allowing *non-civil service* intermittent police officers to serve as de facto, full-time, civil service police officers. While a 1945 Special Act allowed for the *limited* use of non-civil service intermittent police officers in the City of Methuen (City), Chief Solomon ignored key restrictions on such appointments, including a provision that limited the use of such appointments to situations where incumbent *civil service* police officers and *civil service* reserve police officers were not available to perform assigned duties. City records show that the City paid over \$1.5 million to seven *non-civil service intermittent police officers* whose service as full-time officers was impermissible—either because their full-time employment was not in compliance with the 1945 Special Act or, in some cases, because they did not have the statutorily-required training to perform the duties of a full-time police officer, or both.

The most brazen example of abuse, which occurred (in plain sight) over a period of years, was Chief Solomon’s employment of Sean Fountain, the former Chair of the Methuen City Council, as a “full-time permanent intermittent police officer.” In addition to violating the above restrictions imposed by the 1945 Special Act, Fountain’s service as a full-time officer was improper in numerous other ways: he was never certified by the state’s Municipal Police Training Committee (MPTC) to serve as a full-time police officer, nor was he eligible for a waiver; there is no evidence that he ever completed a physical or medical examination; he was over the City’s own age restriction of thirty-five at the time of appointment; and, after beginning his employment, he resided outside of Methuen, also in violation of City policies.

The unlawful employment of Fountain was not the result of a mere oversight or a misreading of the law. This is evidenced by the fact that Chief Solomon and other City officials from prior administrations knowingly submitted false information to the civil service unit of the

state's Human Resources Division (HRD) representing that Fountain was a permanent, full-time *civil service* police officer. Chief Solomon unquestionably knew that Fountain was *not*.

There are three bright spots in this report. First, the record shows that, even prior to the initiation of this investigation by the Commission, incumbent Mayor Neil Perry was already taking several steps to investigate—and ultimately end—the City's use of non-civil service intermittent police officers, including the drafting of a home rule petition adopted by the City Council seeking a repeal of the 1945 Special Act. Mayor Perry, along with current City Solicitor Kenneth Rossetti and Assistant City Solicitor Peter McQuillan, also ensured that the Commission was given unfettered access to all relevant City records in addition to facilitating the interviews of several City employees at the Commission's request. Their ongoing commitment to finding the truth and ensuring that controls are implemented to prevent a reoccurrence of the type of prior abuses outlined in this report, is commendable.

Second, despite significant resistance from Chief Solomon and efforts by Fountain to silence them through the court actions, certain members of the City Council, including Public Safety Chair Michael Simard, have served with distinction. They have appropriately questioned whether Chief Solomon was circumventing the civil service law and demanded an end to such unlawful practices.

Third, there are numerous examples of individual City employees who tried, albeit unsuccessfully at times, to shine light on the unlawful practices that were taking place. One of those employees is Jill Stackelin, the City's Personnel Coordinator. At her own peril, she not only verbally questioned whether Fountain's employment as a full-time officer was lawful, she also penned an email objecting to the City's submission of false information to HRD. Stackelin represents the best in public service.

The final section of this report contains a series of orders and recommendations meant to ensure a fair, impartial process for the appointment and retention of police officers in the Methuen Police Department.

II THE COMMISSION'S AUTHORITY TO CONDUCT INVESTIGATIONS & OUTLINE OF HOW ITS INVESTIGATION WAS CONDUCTED

The Civil Service Commission is responsible for ensuring that employment decisions made by civil service employers are based on basic merit principles. The General Laws define "basic merit principles," in relevant part, as:

[R]ecruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including **open consideration of qualified applicants** for initial appointment; . . . assuring fair treatment of all applicants and employees in all aspects of personnel administration . . . and . . . assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.

G.L. c. 31, § 1.

Section 2(a) of Chapter 31 vests the Commission with the power and duty “[t]o conduct investigations at its discretion or upon the written request of the governor, the executive council, the general court or either of its branches, the administrator, an aggrieved person, or by ten persons registered to vote in the Commonwealth.”

In accordance with Section 72 of Chapter 31, the Commission may “investigate all or part of the official and labor services, the work, duties and compensation of the persons employed in such services, the number of persons employed in such services and the titles, ratings and methods of promotion in such services.”

Sections 73 and 74 of Chapter 31 provide the Commission additional authority in addressing and penalizing violations of the civil service law and rules.

Pursuant to the above-referenced authority, the Commission, following published reports regarding potential violations of the civil service law and rules by the City, including its use of non-civil service intermittent police officers, initiated an investigation on January 28, 2021.

As part of this investigation, the Commission took the following steps:

- I. Requested, received, and reviewed thousands of records provided by: the City of Methuen, the state’s Human Resources Division,¹ the Town of North Andover, and the state’s Municipal Police Training Committee.²
- II. Conducted structured interviews with the following individuals, listed in the order in which they were interviewed:
 - **Brady Abraham**, former full-time Methuen intermittent police officer (2017 – 2020); currently serving as special police officer
 - **Neil Perry**, Methuen Mayor (2020 – present)
 - **Michael Havey, Jr.**, former full-time Methuen intermittent police officer (2014 – 2015); currently serving as full-time civil service police officer
 - **Michael Simard**, Methuen City Councilor (2020 – present); Chair of Council’s Public Safety Committee
 - **Eric Ferreira**, Methuen Police Captain
 - **Kristopher McCarthy**, Methuen Police Captain
 - **Mark Parolisi**, Methuen Police Officer

¹ HRD’s timely responses to the Commission’s requests played an important role in this investigation.

² The Commission also reviewed documents from an arbitration proceeding related to the City’s decision to end the use of full-time, intermittent police officers.

- **Derek Licata**, Methuen Police Sergeant; former MPD Training Support Coordinator (2014 – 2022);
- **Randy Haggard**, Methuen Police Captain
- **Kathleen Buote**, Executive Assistant to Methuen Police Chief
- **Lisa Crowley**, Methuen Human Resources Director (2020 – present);
- **Anthony LaRosa**, former full-time Methuen intermittent police officer (2017 – 2020); currently serving as special part-time police officer
- **Christian Max**, Methuen Police Lieutenant
- **Jill Stackelin**, Methuen Head Clerk and Personnel Coordinator
- **Christopher Gagne**, former full-time Methuen intermittent police officer (2018 – 2020); currently serving as full-time, civil service Police Officer
- **Lawrence Norman**, Program Coordinator, MPTC; former Director, Northeast Regional Police Institute
- **Alfred Donovan**, owner of three companies: APD Management, Police Assessment Center, and Integrity Testing; retired Tewksbury Police Chief
- **Robert J. Ferullo, Jr.**, Acting Executive Director, MPTC; former Woburn Police Chief
- **Paul Fahey**, former Chief of Staff to former Methuen Mayor James Jajuga (2018 – 2020)
- **Sheryl Wright**, Methuen Interim City Auditor (October 2018 – June 2019);
- **Anne Randazzo**, Methuen Human Resources Director / Assistant City Solicitor (February 2012 – April 2020); Assistant City Solicitor (April 2020 – August 2020)
- **Richard D’Agostino**, Methuen City Solicitor (September 2016 – January 2021)
- **Stephen Zanni**, former Methuen Mayor (2012 – 2017)
- **James Jajuga**, former Methuen Mayor (2018 – 2019); former State Trooper; former State Senator; former Secretary of Public Safety; former Methuen City Councilor

The Commission provided the following individuals with the opportunity to participate in a structured interview regarding this investigation, but they either refused or did not respond:

- **Joseph Solomon**, former Methuen Police Chief (September 2002 to January 2021)
- **Sean Fountain**, former full-time Methuen intermittent police officer; former Methuen City Council Chair; former North Andover firefighter
- **Matthew Despina**, former full-time Methuen intermittent police officer
- **Richard Stanley**, former North Andover Police Chief; owner, RMS Associates

III COMMISSION FINDINGS

Background information regarding Methuen, its Police Department, and the legal framework surrounding the use of non-civil service intermittent police officers.

1. The City of Methuen is located in the Merrimack Valley, twenty-seven miles north of Boston and twenty-six miles south of Manchester, New Hampshire. The City has a population of approximately 53,000 people. In 1993, Methuen voters approved a Charter change converting from a town to a city form of government. The position of Town Manager was changed to that of an elected Mayor. The Methuen City Council is a nine-member body charged with enacting the resolutions and ordinances that govern Methuen. The nine members are elected for two-year terms, with three Councilors elected “at-large” (City-wide), and six elected from the three voting districts (East, Central, and West) in Methuen. In regard to the ten-year period that is the subject of the Commission’s review, Stephen N. Zanni served as Mayor from 2012 to 2017; James P. Jajuga served as Mayor from 2018 to 2019; and current Mayor Neil Perry took office on January 6, 2020.
[\(https://dls.gateway.dor.state.ma.us/reports/rdPage.aspx?rdReport=CommunityPage&rdLink>DataLayers=CommunityPage&rdRequestForwarding=Form;](https://dls.gateway.dor.state.ma.us/reports/rdPage.aspx?rdReport=CommunityPage&rdLink>DataLayers=CommunityPage&rdRequestForwarding=Form;)
[https://www.cityofmethuen.net/sites/g/files/vyhlf886/f/uploads/methuenguide2016_0.pdf;](https://www.cityofmethuen.net/sites/g/files/vyhlf886/f/uploads/methuenguide2016_0.pdf)
[https://www.cityofmethuen.net/about-methuen;](https://www.cityofmethuen.net/about-methuen) <https://www.cityofmethuen.net/city-council>)
2. Joseph Solomon (Chief Solomon) commenced his service with the MPD in or about April 1986. He rose through the ranks, ultimately being appointed to the position of Police Chief in or about September 2002. He retired on January 10, 2021. (City Supplemental Response). As noted above, Solomon declined the Commission’s invitation to participate in an interview.
3. 92% of the MPD’s approximately seventy-eight uniformed police officers are white, compared to an overall City population that is 65% white. Less than 8% of uniformed police officers in Methuen are female. (2021 Section 67 Report and US Census Statistics)
4. In all civil service communities in Massachusetts **except** Methuen, the terms “reserve” and “intermittent” police officers were essentially interchangeable in describing a type of employment whose appointment and use is governed by the civil service law and rules, prior to the rescission of the 1945 Special Act, as discussed in more detail below. (HRD Certification Handbook, hereafter “HRD Handbook”; and HRD Response to Request for Information, hereafter “HRD Response”)
5. In **Methuen**, the appointment and use of **reserve** police officers is governed by the civil service law, while the appointment and use of **intermittent** police officers is not. (HRD Response)
6. Civil service **reserve** police officers are intended to provide civil service communities with:
(a) a roster of civil service employees who can be called up at short notice to work on an as-needed basis, performing essentially as substitutes for full-time employees who may be out ill or on vacation; and (b) extra personnel in emergency or special situations on a short-term

basis. The reserve police officer system is not designed to provide additional staff to work on a full-time, regularly scheduled basis for long periods of time. According to HRD, “the misuse of [reserve police officers] through long-term assignments is inappropriate under the provisions of [the civil service law] and may have a detrimental effect on the rights of the employees involved. [Civil service communities] are asked to insure [sic] that this employment category is properly utilized.” (HRD Handbook)

7. The use of non-civil service **intermittent** police officers in Methuen began in 1945 upon enactment of Chapter 201 of the Acts of 1945 (hereafter, the 1945 Special Act). The 1945 Special Act was intended to address the shortage of police personnel in the City caused by World War II.³ Thus, it established explicit restrictions on when non-civil service intermittent police officers could be used in Methuen, stating in relevant part:

No member of the **permanent intermittent police force** shall be called into service as a police officer **so long as there are members of the regular or reserve police forces of said town available for service**, nor, except as herein provided, so long as any vacancy in said regular or reserve police force remains unfilled. If a requisition has been made upon the director of civil service for the purpose of filling any such vacancy and the director certifies that there is no suitable eligible list from which certification can be made, **such a member may be employed during such time as there is no such list** or if such a requisition has been made and there is such a list, **such a member may be employed for a period not to exceed thirty days from the making of such requisition**, pending the filling of such vacancy from such list.

(1945 Special Act) (emphases added)⁴

Chief Solomon failed to ensure that Fountain completed basic prerequisites prior to being appointed as an intermittent police officer in 2016.

8. Sean Fountain (Fountain) was appointed as a permanent, civil service **firefighter** in the **Town of North Andover** effective August 30, 1999. HRD records show that on May 10, 2018, an “Absence and Termination Notice / Form 56” signed by the North Andover Fire Chief was uploaded to the state’s NEOGOV system stating that Fountain had resigned from his position as a permanent, full-time North Andover firefighter effective August 12, 2017. (HRD Response). Fountain was also previously employed by the Essex County Sheriff’s Office starting in 2013 as a “Deputy / Investigator.” (City Response). As noted above, Fountain declined the Commission’s invitation to participate in an interview.

³ <https://www.mass.gov/opinion/ec-coi-97-1>, footnote 4.

⁴ Chapter 164 of the Acts of 2004 amended the 1945 Special Act by increasing the maximum number of intermittent officers that Methuen could employ from twelve to twenty.

9. Fountain also served three consecutive terms on the Methuen City Council, from January 1, 2012 through December 31, 2017, and was elected by the Council as Chair in 2013 and 2016. (City Response)
10. The Methuen City Charter states, in relevant part: “No Councilor shall, while a member of the City Council, hold any other office or position the salary or compensation for which is payable out of the City treasury.” (City Response)
11. On July 7, 2016, Fountain received an opinion from counsel that if Fountain filed appropriate disclosure / exemption forms with the City Council, and if the City Council approved the exemption, Fountain could work private details as an intermittent police officer in Methuen, so long as payments for those details were paid directly to Fountain (as opposed to being paid to the City and then Fountain). (City Response)
12. Fountain subsequently submitted a “Disclosure of Appearance of Conflict of Interest,” stating in part that he was being appointed “to intermittent police officer. Will not be taking any city treasury funds or City funds.” (City Response)
13. By letter dated July 7, 2016, Chief Solomon informed Mayor Zanni⁵ of the following:

This letter is in reference to Intermittent Officer Sean Fountain. While he is a city councilor he will not be authorized to accept city DPW road details or any outside details for a city department. In addition he will not receive any checks from the city treasury that originate from city funds.

(City Response)
14. On or around the same date, Fountain submitted a “Disclosure Form Under Chapter 4A, Methuen Municipal Code,” stating: “If I am appointed as an intermittent police officer. I will not work any job or project which the city or state appropriated funds approved by city council are appropriated therein. I will not accept pay as a councilor from this day forward.” (City Response)
15. On July 8, 2016, Fountain signed a financial disclosure / exemption request form regarding his employment as a Methuen intermittent police officer while also serving as a member of the City Council. (City Response)
16. On July 11, 2016, the Methuen City Council, then chaired by Fountain, met and voted to approve Fountain’s exemption request. Fountain turned the meeting over to the Vice Chair at the time and abstained from the vote. (City Response)
17. On July 12, 2016, Chief Solomon signed off on Fountain’s disclosure form, certifying:

⁵ As noted on page 4, Solomon served as Chief of the MPD from September 2002 to January 2021. Stephen Zanni served as Mayor of Methuen from January 2012 to December 2017.

I have received a disclosure under G.L. c. 268A, § 20(b) from a municipal employee who seeks to provide personal services to my municipal agency, identified above. **I certify that no employee of my agency is available to perform the services described above as part of his or her regular duties.**

(Emphasis added). One day prior, the Vice Chair of the Methuen City Council signed off on the disclosure form. (City Response)

18. On August 22, 2016, City Solicitor Richard D'Agostino⁶ sent a letter to Mayor Zanni regarding the appointment of Fountain as an intermittent police officer. As part of that letter, Attorney D'Agostino informed Mayor Zanni of his (D'Agostino's) understanding that Fountain would only be paid for details, and only those details paid directly by the private entity to Fountain. (City Response)⁷
19. Fountain's conditional offer of employment as an intermittent police officer, signed by Mayor Zanni on June 30, 2016, was starkly different than other conditional offers of employment, including those sent to other intermittent candidates appointed during Mayor Zanni's tenure. For example, a conditional offer sent to candidate Brady Abraham required that Abraham complete the following prior to his employment as an intermittent officer: medical examination, physical examination, psychological examination; and completion of a reserve police training academy within one year. None of these requirements were included in Fountain's conditional offer of employment. Rather, Fountain's letter stated simply that his offer was conditional upon "compliance with the rules and regulations and policies and procedures of the Methuen Police Department," and "compliance with all conditions determined by the Chief of Police." (City Response)
20. There is no documentation in Fountain's personnel folders showing that he ever completed a physical⁸, medical or psychological evaluation prior to commencing his employment as an

⁶ D'Agostino served as the City Solicitor from September 2016 to January 2021.

⁷ While Fountain was serving as a part-time intermittent officer and reportedly only working details that were not paid through the City's account, the State Ethics Commission, via letter dated December 12, 2016, notified Fountain:

As you know, we were reviewing a concern regarding your holding a position as an intermittent police officer in Methuen while also being a city councilor. Relying on the information you provided us and on any necessary follow-up investigation, we are satisfied that this matter does not require any further action on our part.

(City Response)

⁸ In a March 15, 2022 email from Jill Stackelin to Lt. Ferreira, Stackelin wrote: "Sean Fountain was not given a physical per verbal orders from Former Chief Solomon. It was stated he previously passed a Civil Service Physical for the North Andover FD and he was 'transferring' to Methuen PD."

intermittent police officer in Methuen or at any point thereafter.⁹ (Ferreira Interview; City Response)

21. The below “checklist” from Fountain’s personnel folder was provided to the Commission:

Methuen Police Department				
New Officer Checklist				
	Name: <i>Sean Fountain</i>	Computer #:	<i>387</i>	
	Task	Completed By:	Date Completed	Initials
1	Human Resources Paperwork (see below)	Human Resources		
2	Medical	Human Resources		
3	PAT	Human Resources		
4	Psychological Exam	Human Resources		
5	Cooper Standards - PT Test	Training		
6	Application to Reserve Academy	Training		
7	Application to Full Time Academy	Training		
8	Personnel Order Issued	Training		
9	Issue Policy & Procedure Manual	Training	<i>8/9/16</i>	<i>DL</i>
10	Issue Key Fob	Technical Services	✓	✓
11	Policy 99 - Emergency Contact Info	Training	✓	<i>DL</i>
12	Notify Neptunes - New Employee	Training	✓	<i>DL</i>
13	Firearms Training	Training		
14	Firearm Issued	Training		
15	CPR Training	Training	✓	<i>DL</i>
16	First Responder Training	Training		
17	O.C. Training	Training		
18	Baton Training	Training		
19	Use of Force Training	Training		
20	Vest issued	Training		
21	Field Training Officer Packet	Training		
22	Academy Uniforms	Training		
23	Duty Equipment / Uniforms	Training		
24	Radio Issued	Technical Services	✓	
25	Cruiser / Radio use	Technical Services	<i>8/9/16</i>	<i>DL</i>
26	Direct Deposit	Payroll		
27	Active Work Schedule / Detail List (Y/N)	Payroll	✓	<i>MR</i>
28	Change in Payroll Status	Payroll		
29	Change in Address	Payroll		
30	Badge # entered into Pro IV	Payroll	✓	<i>MR</i>
31	Computer #	Payroll	✓	<i>MR</i>
32	Waiver of Overtime for Academy	Training		
33	Email Set up	Scanlon	✓	<i>GS</i>
34	Add to email group: Policesworn	Scanlon	✓	<i>GS</i>
35	Voicemail Set up	Scanlon		
36	Locker	C04		
37	ProIV Password	Scanlon	<i>8/8/16</i>	<i>GS</i>
38	Badge Issued	C03	✓	<i>DL</i>
39	Bade Number Collar Pin	C03	✓	<i>DL</i>
40	Belt Trauma Kit	Training		
41	Self Aid/Buddy Aid Training	Training		
42	Go Bag	Training		
43	Badge #	Chief's Office	✓	<i>DL</i>
44	Added to MPTC Online Training Database	Training		

22. According to records from an arbitration proceeding regarding the termination of Fountain and two others as full-time intermittent patrol officers:

⁹ To ensure clarity, the Commission’s review included a time period that encompassed Fountain’s entire employment with the MPD. There is no evidence that Fountain completed these basic job requirements at any point during his employment with the MPD.

Intermittent Police Officers [in Methuen] are [required to be] selected following an extensive background check, which examines academic, credit, criminal and work histories as well as interviews with persons who have knowledge of the candidate's character and aptitude for the position. **Applicants must be and remain Methuen residents who are between twenty on (sic) and thirty-five at the time of appointment.** Successful applicants will be recommended by the Chief to the Mayor for appointment.

(Emphasis added) (Joint Exhibit from arbitration proceeding)

23. There is no evidence that Fountain was ever subject to the usual extensive background check. (City Response, Ferreira Interview)
24. Fountain was over the age of thirty-five at the time of his appointment, and his personnel records showed that he had a New Hampshire address at certain times while he was employed as an intermittent officer for the City. (City Response)
25. On July 1, 2016, Fountain signed an application for employment as an intermittent police officer in Methuen. Under the "Education" section, Fountain hand-wrote the following responses:

Name of School: NERPI
Address: Tewksbury, MA
From Month/Year: [left blank]
To Month / Year: 1996

Fountain's references included Tim Sheehy, Methuen Fire Chief, and then-City Councilor James Jajuga, whose title was listed as "consultant" on Fountain's application. Voters subsequently elected Councilor Jajuga as Mayor and he served in that capacity from January 1, 2018 to January 6, 2020. (City Response)

26. Fountain also answered "Yes" to the question on the employment application that asked: "Are you currently or have you attended any police academy in the past?" When asked to explain that "yes" response, Fountain wrote "(NERPI)". (City Response)¹⁰
27. Sgt. Derek Licata was a training coordinator in the MPD at the time of Fountain's appointment. Having been instructed to onboard Fountain as an intermittent police officer,

¹⁰ In a "demand for settlement" dated October 8, 2020, Fountain's attorney, George C. Malonis, Esq., wrote in part: "Contrary to Councilor Simard's misleading and inflammatory statements, aimed squarely at Mr. Fountain as the sole Permanent Intermittent Police Officer who has worked homicide investigations, all officers are certified and must complete a strict internal Field Training Officer program." Later in the same letter, Malonis, referring to a statement Solomon made to the City Council in response to a question regarding whether Fountain had attended a Police Academy, wrote: "In response Chief Solomon accurately noted that (1) he knew who Councilor Saba was referring to and that the officer has more certifications than most . . ."

Sgt. Licata asked Fountain, among other things, for his reserve police officer certification referenced in Fountain’s application. Sgt. Licata recalls Fountain saying words to the effect of, “Oh I lost it; I went to the Academy with Steve Smith; I’ll have to look for it.” Sgt. Licata then told Fountain that he (Fountain) would need to produce the certificate in order to serve as an intermittent police officer. But under Chief Solomon’s leadership, Fountain began serving as an intermittent police officer without providing this certification. (Licata Interview; City Response)

28. Approximately “two or three months” later, Sgt. Licata contacted Fountain’s former employer, the Essex County Sheriff’s office, to determine if they had a copy of Fountain’s reserve police academy training certificate. Sgt. Licata was informed that the Essex County Sheriff’s office had already provided Fountain with his entire personnel folder (which did not contain a police academy training certificate). (Licata Interview)

29. Four months into Fountain’s employment as an intermittent police officer, Sgt. Licata contacted the MPTC to determine if Fountain had completed an MPTC-approved reserve training academy. The MPTC told Sgt. Licata that only Fountain himself could request that documentation. (Licata interview)

Chief Solomon allowed Fountain, who had failed to meet the requirements for serving as a part-time intermittent officer, to become a full-time intermittent police officer in violation of additional state and city laws, regulations, and policies.

In regard to reserve or intermittent officers, Section 96B of Chapter 41 states: “Each person appointed as a reserve, or intermittent police officer, in a city or town shall, prior to exercising police powers, satisfactorily complete a course of study prescribed by [the municipal police training] committee.” In regard to full-time officers, Section 96B states in relevant part:

Every person who receives an appointment to a position on a full-time basis in which he will exercise police powers in the police department of any city or town, shall, prior to exercising police powers, be assigned to and satisfactorily complete a prescribed course of study approved by the municipal police training committee
.....

Every police officer on a full-time basis in any such municipal police department, shall be assigned to and shall attend a prescribed course of study approved by the municipal police training committee for in-service officers training at such intervals and for such periods as said department may determine. Any such police officer who receives an appointment to a position of higher rank shall, in addition, complete such other courses of supervisory training as said committee may determine

Upon petition to the department of criminal justice training by the appointing authority, a person appointed to a position on a full-time basis in which he will exercise police powers in the police department of any city or town may be exempted by said committee, in whole or in part, from the provisions of this

section prior to his exercising police powers. The requirement that training be completed prior to exercising any police powers may be waived by said committee.

Failure of an appointed person to comply with the provisions of this section prior to his exercising police powers, shall result in the appointed person's removal by the appointing authority, provided said person has not been exempted therefrom by said committee as herein provided. Failure of an appointed person to satisfactorily complete the prescribed course of study may result in his removal by the appointing authority.

(Emphasis added)

30. In a three-page memorandum dated March 20, 2013, Dan Zivkovich, then-Executive Director of the MPTC, reminded all “Appointing Authorities and Police Department Administrators” of the statutory requirements related to “police officer certifications.” Earlier in the same memo, Zivkovich wrote:

If you are appointing a reserve/intermittent officer (or someone who has only attended a Reserve/Intermittent Basic Training Program) to a full-time position, the reserve officer must attend a full-time recruit academy. No exemptions are available, except for officers who have already attended a full-time MPTC-authorized academy or a substantially equivalent full-time recruit academy in another jurisdiction. Please see above section for details.

(Emphasis added)

31. Fountain has never attended or completed a full-time police academy. (City Response)
32. Prior to serving in a full-time capacity, MPD policies require that all such officers, including intermittents, must complete an in-house field officer training program. With the exception of Fountain, the incumbent police officer who trains the new recruit was required to document that the training was completed when both the training officer and the new recruit completed their time sheets. Fountain was not subject to this requirement. Rather, he was permitted to come in and “volunteer” on his own time as part of a “professional development program” and choose which officer he would accompany on a shift. Concerned about this unusual arrangement, Lt. Christian Max, who was then in charge of training, told Fountain that he needed to keep a separate log of any field training hours completed. Lt. Max provided Fountain with a spreadsheet to be filled out as training was completed. As Fountain never submitted a completed spreadsheet or log of entries to him, Lt. Max refused to “sign off” on Fountain serving as a full-time officer. (Max Interview; City Response)
33. Notwithstanding Fountain’s failure to show that he had completed the required field officer training, on January 5, 2017, a “Personnel Order” was issued stating: “Effective January 5, 2017 at 1630 hours, the following temporary assignment will take effect: Intermittent

Officer Sean Fountain has completed the Field Training Officer Program and is now eligible to work by himself on patrol.” (Emphasis added) (City Response)¹¹

A home rule petition regarding Fountain did not supersede any state or city laws regarding the prerequisites to serve as a police officer.

34. On April 18, 2017, the Methuen City Council took up a home rule petition regarding the appointment of Fountain as an intermittent police officer. (City Response)

35. On August 1, 2017, Chapter 60 of the Acts of 2017 (the home rule petition submitted on behalf of the Methuen City Council) was enacted. The 2017 Act states (with emphasis):

SECTION 1. Notwithstanding section 2-5 of the charter of the city known as the town of Methuen, [section 20 of chapter 268A of the General Laws](#) or any other general or special law to the contrary, Sean Fountain may, upon appointment by the mayor and approval of the city council ***and prior to the expiration of his term as city councilor for the city known as the town of Methuen on December 31, 2017***, be appointed to the position of permanent intermittent police officer of the police department of the city known as the town of Methuen and may continue to serve as permanent intermittent police officer¹² until he resigns, retires or is otherwise relieved of his duties. If Sean Fountain is appointed to and serving in the position of permanent intermittent police officer while also serving as a city councilor, he shall only be compensated for his service in 1 such position; provided, however, that Sean Fountain may choose for which position he shall receive compensation.

SECTION 2. This act shall take effect upon its passage.

36. Attorney D’Agostino, then-City Solicitor, has since confirmed that nothing in the “Fountain Special Act” exempted Fountain from any of the requirements of serving as a police officer, nor did it supersede the limitations of the 1945 Special Act. Rather, as D’Agostino confirmed, the sole intention of the Special Act was to allow Fountain the ability to receive City funds as an intermittent prior to leaving the Council and serving a one-year grace period. (D’Agostino Interview)

37. On August 9, 2017, Chief Solomon, despite the fact that Fountain had not completed a full-time police academy, issued a “Personnel Order” stating: “Effective August 9, 2017 at 0030

¹¹ On January 5, 2017, Chief Solomon’s Executive Assistant sent Chief Solomon an email, copied to Capt. Kristopher McCarthy, stating: “Chief, The Captain ask [*sic*] me to forward to you to see if we should add anything more” with the January 5, 2017 Personnel Order attached.

¹² “Permanent intermittent police officer” is the same term used in the 1945 Special Act. Put another way, this Act did not create a new or special title for Fountain nor, as referenced above, did it exempt Fountain from the minimum requirements of serving as an intermittent police officer.

hours, the following assignments will take effect: Officer Sean Fountain from Part Time Intermittent Officer to Full Time Intermittent Officer assigned to Field Operations Bureau Platoon IV.” (Emphasis added) (City Response)

38. City records show that from August 2017 to May 2020, while Fountain was employed as a full-time intermittent officer, he was paid a total of \$406,766, including \$205,222 in regular wages and \$201,543 in overtime, detail, holiday, court and other pay. (City Supplemental Response)
39. On September 18, 2017, the City Council approved three collective bargaining agreements pertaining to the MPD. Fountain abstained from voting to approve the contract with the police patrolmen’s union but voted to approve the agreement with the police superior officers’ union. (Methuen City Council Special Meeting Minutes from Monday, September 18, 2017)
40. According to the findings of an investigation by the Office of the Inspector General issued on December 23, 2020, the contract approved by the City Council resulted in raises of approximately 35% to 183% for superior officers.¹³
41. On September 20, 2017, two days after the City Council voted on the police contracts, Chief Solomon issued another “Personnel Order” stating: “Effective immediately, the following temporary assignment will take effect: Officer Sean Fountain from Full-Time Intermittent Officer, Field Operations Bureau, Platoon IV to Permanent Full-Time Intermittent Officer, Field Operations Bureau, Platoon IV. Officer Fountain’s badge number will change effective immediately from I29 to P162.” (Emphasis added) (City Response). This “P” designation was used by the City to designate permanent, full-time civil service police officers, which Fountain never was. Fountain was serving as a Methuen City Councilor at the time. (City Response)
42. On November 26, 2017, Chief Solomon issued a Personnel Order transferring Fountain from the Field Operations Bureau to the Criminal Investigation Bureau. (City Response)
43. On March 1, 2018, a Personnel Order was issued stating:

Effective Sunday March 4rd [*sic*], 2018 following [*sic*] temporary transfers will take effect: Detective Sean Fountain (P162), from Criminal Investigations Unit weekend schedule, Saturday and Sunday 8:30 am to 0030 hours and Monday, 8:30 am to 1630 hrs to Criminal Investigations Unit administrative schedule, Monday thru [*sic*] Friday Group A.

(City Response)

¹³ See: <https://www.mass.gov/report/oig-report-2020-leadership-failures-in-methuen-police-contracts>

44. On June 28, 2019, Chief Solomon issued General Order GO19-02 stating: “Effective immediately, Intermittent officers who are working in a full-time capacity shall be called for extra work by seniority and by hours *in the same manner as regular full-time officers*. DHQ will be updated to allow Intermittent officers to sign up for details.” (Emphasis added) (City Supplemental Response)
45. On October 30, 2019, Chief Solomon issued a Personnel Order stating in part: “Effective Sunday, November 3, 2019, the following temporary personnel transfer shall take effect: Detective Sean Fountain from Criminal Investigations Bureau, Criminal Investigations Division, to the Anti-Crime Task Force.” (City Response)
46. On November 27, 2019, Chief Solomon issued another Personnel Order stating: “Effective Sunday, December 1st, 2019, at 0830 hours the following temporary personnel transfer shall take effect: Detective Sean Fountain from the Anti-Crime Task Force to the Criminal Investigations Bureau, Criminal Investigation Division.” (City Response)

Chief Solomon routinely stonewalled information requests related to Fountain’s qualifications.

47. On February 6, 2019, Chief Solomon received a public records request from a local reporter named Tim Wood, asking, in part, for Chief Solomon to confirm when Fountain became a full-time employee and whether Fountain had completed a full-time police academy. (City Response)
48. Chief Solomon replied to the public records request stating in part, “I cannot comment on personnel matters. All comments on those matters must come from HR Director Anne Randazzo.” Chief Solomon also stated that he didn’t have the information “readily available” to him. (City Response)
49. Wood replied to Chief Solomon with an email stating in part that he was simply “looking for confirmation . . . for when he [Fountain] was hired full-time and if he has gone through the proper academy training. I have made the same information request regarding the training to the MPTC.” (City Response)
50. On February 14, 2019, at 12:56 P.M., Wood sent a follow-up email to Randazzo, Chief Solomon, and Mayor Jajuga’s Chief of Staff Paul Fahey, stating:

I am writing to request any documentation you may have of Officer Sean Fountain’s full-time Officer academy training, as required by the Municipal Training Council . . . The MPTC replied to my request last week and has no record of Fountain completing the required training, so I am looking for any documentation you may have on the city side to clear up this issue.

(City Response)

51. That same day (February 14, 2019) at 2:32 P.M., Randazzo forwarded the above inquiry from Wood to Fahey with the message: “Do you want to meet on this?” (City Supplemental Response)
52. Beginning on February 27, 2019, there is a series of email exchanges between Randazzo, Chief Solomon, and Greg Gallant¹⁴ regarding Wood’s public records request.
53. On February 28, 2019, Gallant wrote an email to Solomon stating in part:

Tim Woods [*sic*] request stated: Full-time start date for Officer Sean Fountain
Date that Officer Sean Fountain was authorized to join the Methuen Police
Patrolmans [*sic*] Association Current seniority list for Methuen Police Department
Any record city has of full-time academy training for Officer Sean Fountain.

So,

If we need to we can have Ann reply Sean didn’t attend full-time academy. He attended reserve/intermittent police academy. If Tim wants the records, he can do a request to MPTC.

(City Response)

54. On March 6, 2019, Randazzo replied to Wood (with a copy to John Wilson¹⁵) stating, in relevant part, that the “City has no documentation regarding attendance at police academy . . . We have requested documentation from the academy and a search is being conducted.” (Emphasis added). Randazzo attached a spreadsheet that lists Fountain as a police officer, with “Dept. Seniority” of fourteenth (out of sixty-seven officers) and a “civil service date” of August 29, 1999.¹⁶ (City Response)¹⁷
55. On April 16, 2020, Councilor Simard sent the following email to Chief Solomon:

¹⁴ Greg Gallant served as a Methuen Police Captain and president of the super officers’ union at the time. (Office of the Inspector General Report (December 23, 2020))

¹⁵ Wilson was the City Clerk at that time.

¹⁶ As noted in findings below, Chief Solomon and Randazzo both knew, at the time of this reply to the public records request, that: (a) Fountain was not a civil service employee; and (b) his prior employment as a North Andover firefighter, which began on August 29, 1999, was irrelevant because civil service employees cannot seamlessly transfer into wholly different occupational titles.

¹⁷ We spoke to Tim Wood for background purposes as part of this investigation. He relayed to us events that, as described, go far beyond stonewalling and could more accurately be described as intimidation.

Hello Chief,

The Public Safety and Security Committee is currently reviewing our police department/use of intermittent officers.

Could you please provide the following information by 3pm Friday 04/17?

1. The names and addresses of officers currently work as full time intermittent officers.
2. The dates they attended their full or part time academy and the location and agency where they attended their full or part time academy.

Respectfully Yours, Councilor Simard.

MSimard

(City Supplemental Response)

56. On April 17, 2020 at 6:17 P.M., Chief Solomon sent a reply email to Councilor Simard identifying the following full-time intermittent officers: Despins; Fountain; LaRosa; Gagne; and Abraham. Chief Solomon informed Councilor Simard: “We will need to pull the Intermittent Officers hiring packets from the archives and go through each file to look for their academy paperwork.” (Emphasis added) (City Supplemental Response)¹⁸
57. At 12:49 P.M. on April 19, 2020, Councilor Simard sent a reply email to Chief Solomon voicing his strong objections to Chief Solomon’s failure to produce all of the information requested. Councilor Simard stated, in relevant part: “As it pertains to training files, your response that these files were in ‘archives’ of your department could be interpreted and may appear to be deceptive and a direct attempt to delay and fail to respond to the council’s official request.” (City Supplemental Response)

Facing increased scrutiny, Chief Solomon sought a waiver for Fountain from the MPTC.

58. The same day that Councilor Simard inquired with Chief Solomon (April 19, 2020), Chief Solomon signed a memorandum to the MPTC stating:

The Methuen Police Department is requesting a temporary waiver be granted for a period of 270 days beginning on April 19, 2020 for Sean Fountain. The reason for the request of the waiver is that the City of Methuen Police Department is short full-time police officer positions and during this Covid-19 pandemic we need every position filled. Granting this waiver will allow one of the positions to

¹⁸ During interviews, the Commission asked multiple MPD employees whether there was indeed an “archive” where personnel files were sent. Each MPD employee answered “no.”

be filled by Sean Fountain. We have attempted to send officers to the Academy but due to budgetary constraints is not feasible at this time. Sean Fountain attended and graduated from the Reserve / Intermittent Academy on May 13th, 1995 and has misplaced his graduation certificate. He has requested a copy of the certificate but has not received it at this time. Included is a copy of that request. Your consideration is greatly appreciated at these trying times.

(Emphasis added) (City Response)¹⁹

59. On April 22, 2020, Chief Solomon forwarded an email to Robert Ferullo, Acting Director of the MPTC, stating:

Good Evening Chief [Ferullo]:

Please see attached requests for a 279 day waiver (sic).

Pls let me know if you have any questions?

Thank you
Joe

Attached to the email were waiver requests for Fountain and Brady Abraham, Fountain and Brady's resumes,²⁰ a transcript request form related to Fountain, and the above memo from Chief Solomon. (City Supplemental Response)

60. On April 24, 2020, Mayor Perry responded to Councilor Simard's April 21 email seeking additional information. Mayor Perry provided Councilor Simard with the addresses of each of the police academies associated with the names of the five full-time intermittent officers, including "Sean Fountain, Northeast Regional Police Institute, Tewksbury Ma." (City Supplemental Response)

61. On April 26, 2020, Councilor Simard sent the following email to Mayor Perry:

Dear Mayor,

Thank you for ensuring I received this information timely. I do have concerns that for at least one of the individuals listed that the training has not been verified and

¹⁹ The MPTC waiver request form signed by Chief Solomon listed a Salem, New Hampshire address for Fountain. As referenced previously, the City's policy regarding intermittent police officers states in part that: "Applicants [for intermittent police officer] must be and remain Methuen residents" (Joint Exhibit from arbitration proceeding)

²⁰ Fountain's resume stated that he had been serving as an "Intermittent Police Officer" with the MPD since 2016 and that he was the "lead investigator for major cases including but not limited to homicide, armed robbery, commercial breaks, missing persons."

no official training certificates exist. In your meetings with the HR Director, could you please ensure/verify that the city does in fact have in its possession the proper documentation of training as required by the MPTC. Could you also provide copies of the training certificates of these officers to the Public Safety Committee as we continue to review the intermittent officer policy and the liability exposure to the city. Thank You!

MSimard

(City Supplemental Response)

62. On Thursday, April 30, 2020, Chief Solomon made two outgoing phone calls to Ferullo, each two minutes in duration. (City Supplemental Response)
63. On Friday, May 1, 2020, the following email exchange took place:

10:05 A.M. from Ferullo to Chief Solomon:

Joe-

I am on a call until about 11:30. *I am concerned about Fountain ... we can talk. I will call.*

RF

10:06 A.M. from Chief Solomon to Ferullo:

Sure I am available

(Emphasis added) (City Supplemental Response)

64. At 10:18 A.M. the same day (May 1, 2020), Methuen HR Director Lisa Crowley²¹ sent the following email to Chief Solomon:

Good Morning Chief:

Can you send me copies of the certifications the Mayor asked us to get yesterday. I don't have them housed in HR since they are Intermittent PO's.

I'd like to get them to him ASAP.

Much appreciated.

Lisa

²¹ Crowley has served as the City's Human Resources Director since April 6, 2020.

(City Supplemental Response)

65. Later that morning (May 1, 2020), at 11:48 A.M, Solomon made an outgoing phone call to Ferullo at the MPTC. City phone records show that the call lasted eleven minutes. (City Supplemental Response)
66. On May 6, 2020, a Records Analyst at the MPTC forwarded to Ferullo a chain of 2019 emails between former MPTC Director Dan Zivkovich and senior managers at the Executive Office of Public Safety with the subject line: “Records request regarding Officer Sean Fountain of Methuen”. The Records Analyst’s email to Ferullo stated: “Hi Chief, I know you’re in the car. But I wanted you to see this correspondence. I will call you in a moment as well.” The 2019 emails pertain to the records request from Tim Wood. The emails and an attached article explicitly reference that Fountain had been serving as a full-time police officer in Methuen. (City Supplemental Response)
67. On May 20, 2020, the MPTC met remotely. Among the various agenda items was the approval of various waiver requests. A motion was made to approve the waiver request of Abraham and other non-Methuen police officers. The motion was approved unanimously. No request was brought forward regarding the waiver request of Fountain, whose name had been submitted by Chief Solomon at the same time as Abraham’s. (MPTC Training Committee Monthly Meeting Minutes: <https://www.mass.gov/lists/mptc-open-meeting-minutes#2020->)

Chief Solomon personally provided the “lost” Fountain training certificate to the City’s Human Resources Director, which was ultimately sent to the MPTC.

68. On Monday, May 4, 2020 at 9:01 A.M., Chief Solomon sent the following email to Crowley:

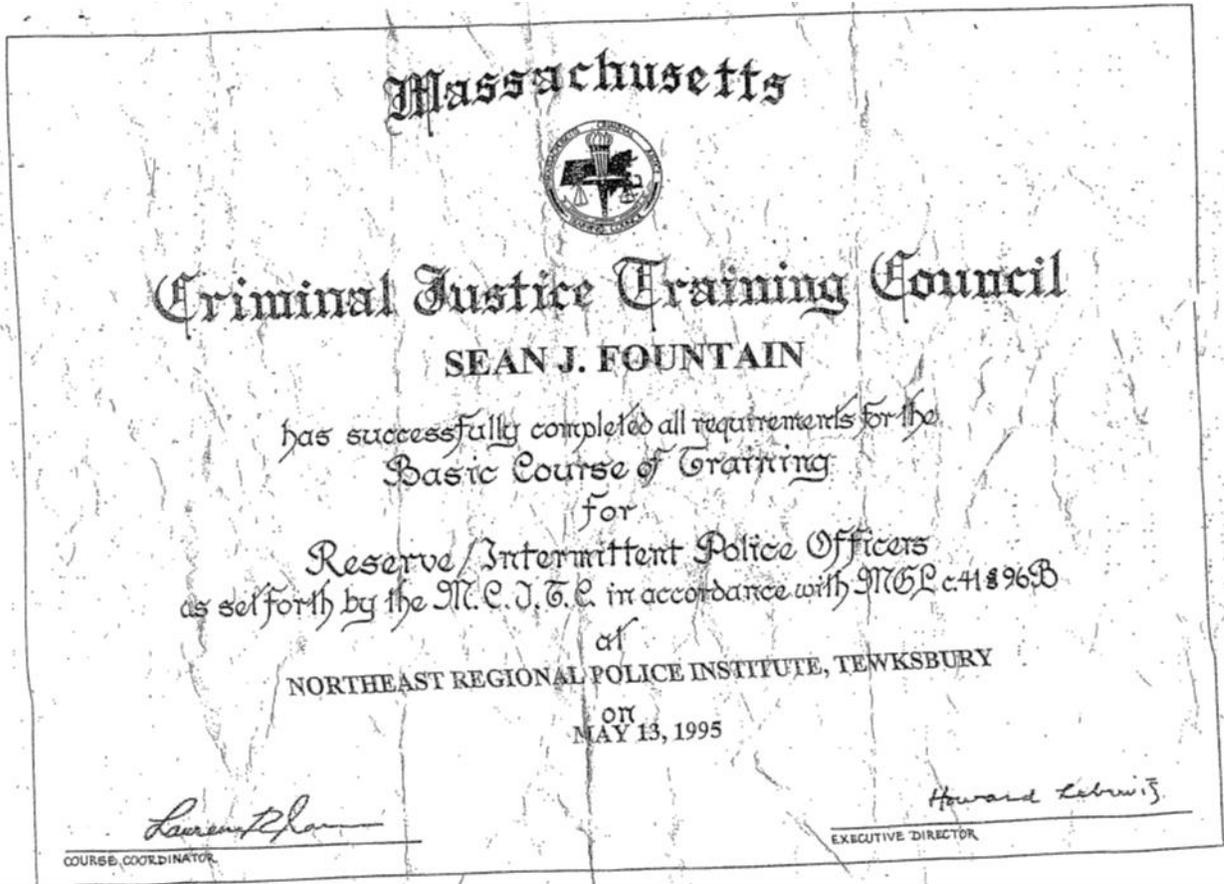
Lisa,

Good Morning,

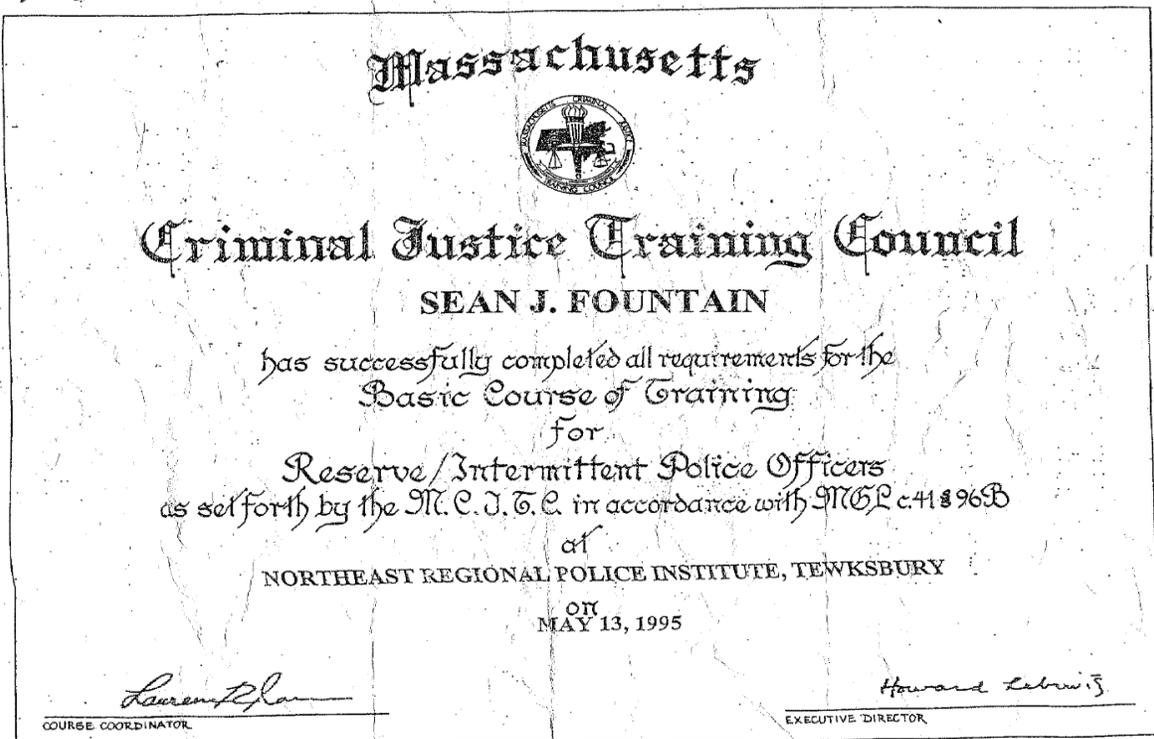
I attached the certs for A. LaRosa, B. Abraham and C. Gagne. I will send you the ones for S. Fountain and M. Despins.

(City Supplemental Response)

69. At 1:13 P.M. the same day, Crowley replied to Chief Solomon: “Hey Chief, Can I get an ETA for the other two certifications?” At 2:49 P.M., Chief Solomon replied: “Lisa: I do not have a specific time frame. I will get them as soon as we locate them. We are working on it and will do it as fast as possible.” (City Supplemental Response)
70. On May 5, 2020 at 12:47 P.M., Chief Solomon emailed Crowley: “Lisa, Here are the other two certificates.” Chief Solomon attached the following document related to Fountain:



71. On May 7, 2020, Mayor Perry forwarded Councilor Simard the above certificate that had been provided by Chief Solomon. (City Response)
72. On August 19, 2020, after a series of internal emails regarding the training status of various officers including Fountain, Chief Solomon sent an email to Captain Randy Haggar stating in part: "I attached Fountains academy certificate for your files." Chief Solomon attached the following to his email:



73. Two minutes later (at 1:53 P.M.), Capt. Haggar replied and copied Sgt. (Derek) Licata: "Thanks Chief, DEREK< see attached certificate for Officer Fountain." (City Supplemental Response)
74. Sgt. Licata replied with an email two minutes later to Capt. Haggar and Chief Solomon: "Thank you Lt. I will place it in his training file." (City Supplemental Response)
75. On September 22, 2020, in response to an email from Crowley asking for a complete copy of Fountain's "Personnel File," Chief Solomon responded with an email attaching thirty-nine pages, including the following document:

NERPI
DIRECTOR LARRY NORMAN
TEWKSBURY MASS

NORTH ANDOVER POLICE DEPARTMENT SPONSORED RECRUITS

THOMAS ABERNATHY
JOHN BURKE
GLENN DAIGLE
SEAN FOUNTAIN JR
JASON HICKS
MICHAEL LANE

CHIEF OF DEPARTMENT RICHARD STANLEY
COMPLETED/GRADUATION 5/13/1995

(City Supplemental Response)

76. After conducting a diligent search at the Commission's request, the Town of North Andover found no record of this letter or any other document showing that former North Andover Police Chief Richard Stanley sponsored Fountain for the Reserve / Intermittent Police Academy at NERPI in 1995. (Town of North Andover response)
77. The Commission has made multiple requests to Mr. Stanley asking him to participate in an interview regarding this matter. He has failed to respond to the requests. (Administrative Notice.)

Chief Solomon orchestrated the filing of false sworn reports regarding Fountain with HRD.

78. Section 67 of Chapter 31 states in relevant part:

Each appointing authority shall submit to the administrator [HRD], on or before March 1st of each year, a list of civil service employees in its department as of January second of the same year. Such list shall be in the form as is required by the administrator, shall be made under the pains and penalties of perjury, shall specify the series and title of the position of each such employee and the seniority of such employee as determined pursuant to section thirty-three.²²

(Emphasis added)

²² Section 33 relates to computing the seniority of civil service employees, including civil service employees being transferred from one appointing authority to another civil service position maintained by another appointing authority. Fountain never transferred from North Andover (he resigned), and he never occupied a civil service position in Methuen; accordingly, Section 33 does not apply here.

79. On February 23, 2017, approximately one year prior to the City receiving a reminder from HRD to begin filing annual “Section 67” reports, the following email exchanges took place involving Al Donovan (whom the City had contracted to conduct promotional assessment centers), HRD, Chief Solomon, and Fountain:

10:28 A.M.: From Donovan to HRD:

. . . A quick question. Can a Civil Service Fireman get a lateral transfer to a Civil Service Police Department?²³

11:44 A.M.: From HRD to Donovan:

Hi Mr. Donovan, The transfer, for civil service, needs to be to and from the same exact title. Therefore, a Police Officer could transfer to the role of a Police Officer in another town.

11:48 A.M.: Email from HRD forwarded from Donovan to Chief Solomon

11:55 A.M.: Email from Donovan forwarded from Chief Solomon to Fountain

11:59 A.M.: Reply Email from Fountain to Chief Solomon:

Thanks.

(City Response)

80. On February 20, 2018, Chief Solomon received an email from HRD, reminding all appointing authorities of the requirement to file an annual Section 67 report. Chief Solomon forwarded the email to Randazzo, stating: “Anne, I just received the below email from civil service. I don’t remember seeing this before. If [*sic*] this something you do or should we do it. Joe.” Randazzo responded, writing: “Chief, I do not believe I have ever seen this before although I checked the statute and it says it’s an annual report and it must be posted. I think Jill [Stackelin] and I can get this done but if we have questions I will let you know.” (City Response)

81. There is no record showing that the City filed the required Section 67 report requested by HRD for calendar year 2017. (Administrative Notice)

82. On January 28, 2019, around the same time that the City was contemplating potential layoffs in the MPD, Randazzo sent an email to HRD inquiring about how to file a Section 67 report for calendar year 2018, asking: “Is there a particular form that should be used for the Section

²³ As noted in previous findings, Fountain previously served as a North Andover firefighter from August 30, 1999 to August 12, 2017.

67 report?” The same day, HRD forwarded Randazzo two links with a Section 67 template and Report Guidelines. (City Response)

83. The following email exchanges took place later on **Monday, January 28, 2019:**

11:14 A.M.: From Paul Fahey²⁴ to Randazzo and Chief Solomon:

I want to be clear about Sean’s status..did Civil Service notify us that he can’t be laid off due to the statute allowing for his hiring in the first place? Absent that, he needs to be part of the next layoffs. Please advise, thanks.

11:19 A.M.: From Randazzo to Fahey and Chief Solomon:

Paul:

I have not mentioned specifically Sean Fountain to civil service. I discussed the different titles of employees working for the city. Civil service does not recognize our permanent intermittents who are not appointed through civil service. I have not been part of any conversation that discussed Fountain’s status. However, I see no reason to treat him any differently than the other intermittents who were working full time and who were notified of being laid off. I would think that the union will certainly object to an individual who is a permanent intermittent working full time when civil service employees are being laid off.

Anne

11:24 A.M.: Chief Solomon to Randazzo and Fahey:

Anne

I thought you had an email from civil service that said civil service time transferred over for an employee. That is how Fountain was placed on the list.²⁵

Can we meet today when everyone is available and review all the information. I am available all day.

Joe

11:29 A.M.: Randazzo to Chief Solomon and Fahey:

²⁴ Fahey served as Chief of Staff for former Mayor Jajuga from January 1, 2018 to January 5, 2020.

²⁵ As referenced above, Solomon received an email from HRD on February 23, 2017, that he forwarded to Fountain, stating that transfers can only occur to and from “the exact same title.”

I'm not sure what that means but I have no such email.

Anne

12:03 P.M.: Fahey to Randazzo and Chief Solomon:

Let's meet at 3PM in the Solicitor's Office.

2:29 P.M.: Randazzo to Fahey:

I'm waiting for the repair to be complete but should be there by 3.

2:29 P.M.: Fahey to Randazzo:

OK keep me posted.

2:57 P.M.: Randazzo to Fahey:

I am here.

2:58 P.M.: Fahey to Randazzo:

On my way.

(Emphasis added)

84. One day after Chief Solomon's requested meeting with Fahey and Randazzo, the following email exchanges took place on Tuesday, January 29, 2019:

1:19 P.M.: From Stackelin to Randazzo:

I made the changes however I don't agree with #61 being civil service but I was also not privy to any discussions on it.

(Emphasis added) [Attached to the email was a spreadsheet. "#61" refers to Fountain, who was listed as an "officer" with a "civil service date" of August 9, 1999.]

1:33 P.M.: From Randazzo to Stackelin:

Is that Fountain? We'll see what civil service says.
Anne

1:33 P.M.: From Stackelin to Randazzo:

Yes, but they might not say anything as he is listed as officer and not intermittent.

1:40 P.M.: From Randazzo to Stackelin:

Noted.

1:39 P.M.: From Randazzo to Fahey:

Paul:

This is the final civil service seniority list.

Just for clarification purposes, I would not be surprised if civil service will be contacting us about Fountain’s presence on this list as he is a permanent full time intermittent police officer and did not get appointed as a police officer through the civil service process.

I will be sending this list to civil service.

Anne

1:55 P.M.: Fahey to Randazzo:

Ok

On January 30, 2019, Randazzo sent the Section 67 report to HRD. The report consisted of a spreadsheet entitled “Permanent Civil Service Employees as of January 2019.” Below the title states: “Seniority Date is ranking based on length of service as a permanent employee after certification as defined in MGL Chapter 31, Section 33.” The spreadsheet submitted by Randazzo to HRD contains the following information regarding Fountain:

Municlass ²⁶ Title Code	Name of Employee	Seniority Date	Permanent Title After Certification	Full-Time (FT) Part-Time (PT)
0083A	Sean Fountain	8/29/1999	Police Officer	FT

85. On February 27, 2019, Randazzo sent an email to Chief Solomon, with a copy of the above Section 67 report containing the signature of then-Mayor James Jajuga and a signature of

²⁶ The “Municlass Manual” is a state manual containing “job titles which are authorized by the [Personnel Administrator] and approved by the Civil Service Commission for use by cities and towns whose positions are under the classified civil service.” Code 0083A is to be used for those persons occupying the title of police officer as classified by civil service.

Solomon with the initials “KB”²⁷ next to the signature. Randazzo was reminding Chief Solomon that the Section 67 report must be posted at Police Headquarters. (City Response)

86. On February 7, 2020, a few weeks after Mayor Perry assumed office, Chief Solomon visited him in the Mayor’s office with a copy of the Section 67 report for the next year (2019) and asked Mayor Perry to sign the report. Mayor Perry signed it, unaware of the meeting that Chief Solomon had with Randazzo and Fahey one year prior, and/or unaware that a decision had been made to add Fountain to the report as a permanent, civil service employee, when he was not. Mayor Perry recalls telling Chief Solomon, as part of the February 7, 2020 discussion, that one of the Mayor’s top priorities was to conduct a thorough review of the MPD’s use of non-civil service intermittent police officers. (Perry Interview)
87. After his meeting with Chief Solomon on February 7, Mayor Perry recalls contacting Randazzo to begin getting some background information on the City’s use of non-civil service intermittent police officers. (Perry Interview)
88. Later that morning on February 7, Randazzo sent an email to Mayor Perry with the subject line: “questions re: Section 67 report” stating in part:

The intermittents who are appointed per the 1945 Methuen statute are not civil service appointments and therefore those individuals do not belong on this list. Those would be the individuals on the list that you are referring to. I have confirmed with civil service that our statutory intermittents should not be there as they are not civil service employees. Just as an FYI, in civil service, the reserve and intermittent designation is often used interchangeably. Our reserves, on both fire and police, are appointed as permanent reserves through the civil service process. That is the interviewing process that we just concluded in the police department where 32 individuals were interviewed as we requested to add 16 certified civil service reserves to our police reserve list. The formula as you have probably heard is 2 plus 1. If we request to fill 16 spots then civil service provides us with a certified list from which we can select 33 names (2 x 16 plus 1).

I would be happy to meet with you to discuss this situation further.

(City Response)

89. On February 10, 2020, Randazzo submitted the City’s Section 67 report to HRD, with Mayor Perry and Chief Solomon’s signatures, which listed Fountain as a permanent, full-time civil service police officer with a civil service seniority date of August 29, 1999. (City Response)

²⁷ KB are the initials of Kathleen Buote, who has been employed by the City since January 2005 and has served as a confidential secretary in the Office of the Methuen Police Chief since July 2012. During her interview with the Commission, she provided an email verifying that Solomon had authorized and directed her to sign his (Solomon’s) name to the Section 67 report. (City Supplemental Response)

Examples of other non-civil service intermittent police officers employed by Methuen, three of whom were employed by Solomon's private security company.

90. In addition to Fountain, six other non-civil service intermittent police officers²⁸ served as de facto full-time civil service police officers at various points during Chief Solomon's tenure. These arrangements violated the 1945 Special Act, which allows for limited use of intermittents only when regular or reserve police officers are not available. Collectively, the City paid these non-civil service officers just over \$1.1 million. (City Response and City Supplemental Response)
91. Three of those six other non-civil service officers (Matthew Despins, Anthony LaRosa and Michael Havey, Jr.) were employed by Eagle Investigation Services (EIS), a "privately owned security firm" that is "owned and operated" by Joseph D. Alaimo, former Deputy Chief of the MPD, and Chief Solomon, who is identified as the "Chief Financial Officer." (City Response and EIS, Inc. website)
92. Matthew Despins served as a full-time intermittent officer despite having never attended or completed a full-time police academy during his employment with the MPD. (City Response)²⁹
93. Brady Abraham began serving as a full-time intermittent MPD officer in May 2017, despite the fact that he had not attended a full-time academy. He subsequently received a waiver from the MPTC in May 2020 and completed the full-time academy on April 16, 2021. (City Response and City Supplemental Response)

²⁸ Matthew Despins; Brady Abraham; Anthony LaRosa; Michael Havey, Jr.; Chris Gagne; and Jason Pierce.

²⁹ On August 1, 2016, Randazzo sent an email to Chief Solomon stating:

Chief: I have been shown the personnel form regarding Matthew Despins being designated a full-time intermittent officer to replace Ethan Huynh. I am attaching a section of the Civil Service Certification Handbook which indicates that this designation should not be made ... Methuen cannot appoint from our intermittent list without going through the certification process. Also, as you know, we have reserves available who have gone through the certification process and are available for appointment. I'm not trying to be difficult, but unless you only want to do this temporarily for a short time, it appears to me that this would be circumventing the civil service law. I'm reluctant to sign the personnel form in its current form. Anne

Mayor Perry took a series of steps to ensure compliance with the 1945 Special Act, including corrective actions regarding Fountain.

94. On May 12, 2020, Mayor Perry sent a letter to Fountain informing him that because he had not completed a full-time academy, he could no longer serve as a full-time intermittent police officer. Mayor Perry's letter also informed Fountain (who was residing in New Hampshire) that he must establish residency in Methuen in order to serve as a part-time intermittent officer. The letter stated, in part: "It is incumbent upon each of us to follow the law, the guidelines and the training requirements to minimize the risks and liabilities associated with the assignment of policing powers in the City of Methuen and the Commonwealth of Massachusetts." (City Response)

95. On July 8, 2020, Crowley sent an email to Mayor Perry stating:

Here is the letter to the intermittent officers. During one of our conversations we had as a group, we discussed that these positions were to be eliminated and not refilled. However, the Chief just called and said his impression was they were being laid off and that if they returned they would return to the reduced hours. Can you confirm your intent and if the Chief is correct, I will resubmit the letters.

Attached to the email was the following draft letter:

July 8, 2020

Dear Intermittent Officer Fountain:

Due to the COVID-19 pandemic, the anticipated lack of state and federal funding, and the municipal shortfall in revenue, the City will be eliminating the position of full-time, permanent intermittent police officer effective July 31, 2020.

Included in this letter is information on unemployment and Cobra benefits.

Please accept our appreciation for your service while with the City of Methuen.

Sincerely,
Lisa Crowley

(City Response)

96. At 7:08 P.M. on July 8, 2020, Mayor Perry sent a one-sentence reply: "It is not my intent to restore the intermittent officers." (City Response)

97. On July 10, 2020, Fountain sent the following email to Crowley:

Lisa Crowley

HR Director

I am in receipt of your recent notice regarding the elimination of my position. I am requesting that you make reference to House Bill #3674 and its Act which was signed into law by Governor Baker on 8/1/17 under Chapter 60 of the Acts of 2017. MGL Ch 31 Sec 48 refers to appointments by the Governor and not subject to a lay-off or elimination.

Additionally, After reviewing the summary sheet posted by your department under Mgl Ch 31 S 67 and signed by Mayor Perry(Appointing Authority) on 2/7/20, page 3 showed my employment status as full time officer with a start date of 8/29/99. I will be happy to provide a copy to you if needed.

I am also requesting that your office provide a response to my employment rights which are also protected under the OWBPA which falls under the ADEA.

Respectfully Submitted
Sean Fountain

Cc Atty Morgan
Atty Caffrey
Atty Becker
Chief Solomon

BCC Mcad

(City Supplemental Response)³⁰

98. On July 30, 2020, Mayor Perry sent an email to Crowley stating in part:

The intermittent [*sic*] are laid off.

They can be used, as there are more intermittent, to do details part-time, not paid for by the city, if and when regular officers have declined.

They cannot perform any city paid function. That's the rule.

I have asked the CAFO to make sure we follow that guideline. It is up to you and payroll to ensure that we follow that guideline, so let me know how it will be done.

(City Supplemental Response)

³⁰ G.L. c. 31, § 48 exempts the following positions from the civil service law: "Heads of departments, members of boards and commissions, chaplains employed as such, members of authorities and other officers appointed by the governor or whose appointment is subject to approval by the governor, and heads of municipal departments."

99. On July 31, 2020, the MPD issued a Personnel Order stating in part that, effective immediately, Fountain’s employment status was changed from “Permanent Full Time Police Officer, Criminal Investigations Bureau to Permanent Part time Intermittent Officer.” (City Response)³¹

100. Chief Solomon followed up the same day with an email to Crowley stating:

I am a little unclear on the city work. I thought we left it that they can work details after the regulars like the other Intermittents and they can work shifts after everyone refused them. I am a little unclear on the working city paid hours like a DPW detail which made me question my understanding of working shifts after everyone refused them.

(City Response)

101. Later that same day, on August 10, 2020, Crowley replied by email to Chief Solomon, with a copy to Mayor Perry, stating:

Chief: I thought that we were all on the same page on this issue after our last meeting.

These officers . . . were laid off due to the budget short fall. They can come on as p/t intermittent officers and can enjoy the same liberties as the other p/t intermittent officers. They can (after all regular civil service officers and reserve officers deny or refuse a detail, outside detail, or shift) fill those positions. This includes any City Details (i.e. HS events, DPW details, City events, etc..). They are to be treated the same as all other p/t intermittent officers.

Again, these open shifts, details, and outside details must be offered to all regular, full-time officers and reserves before offering to an intermittent officer. I think you have (or should have) a rotating list so that every intermittent officer gets the same opportunity to fill one of these open details/shift. This will prevent the same officers being offered all the open shifts, details, or outside details. For shifts, I believe you said the intermittent officer had to have a specific certification. Any

³¹ Fountain has subsequently filed a complaint in Federal District Court contesting his termination from his position as a full-time police officer in Methuen which included allegations of federal and state civil rights violations related to comments made about him by three Methuen City Councilors (including Councilor Simard) and Mayor Perry, each of whom was a named defendant in the suit. On September 22, 2022, United States District Judge Angel Kelley dismissed all of Fountain’s complaint except for that part of the complaint related to his termination as a full-time police officer, concluding that Fountain may pursue his claim against the City regarding whether his termination was “in violation of public policy.” As a result of the Court’s ruling, the claims against the four individual defendants were dismissed. See Fountain v. City of Methuen, Neil Perry, Michael R. Simard, Davis Beauregard, Jr., and James McCarty, U.S. District Court No. 21-CV-11-46-AK (2022).

intermittent officer who is qualified to fill an open shift should have the same opportunities as the other qualified intermittent officer. Again, these can only be filled once a regular CS officer or reserve officer refuses or denies the shift....

I will respond to the attorney as such.

If you still have questions, please let me know.

Lisa

(Emphasis added) (City Response)

Chief Solomon filed for retirement after Mayor Perry placed him on administrative leave following a report by the Office of the Inspector General.

102. On December 23, 2020, the state’s Office of the Inspector General issued a report as part of an investigation into exorbitant pay increases granted to Methuen superior police officers. The report stated, in relevant part:

Chief Solomon violated his obligations to the City and the public by remaining silent about . . . unapproved language Captain Gallant put in the Superiors’ Contract . . . Chief Solomon did not act in the best interests of the City and may have had a conflict of interest when he served on the City’s negotiating team for contracts that increased his compensation.

Among the report’s recommendations was that “the Mayor should evaluate all available avenues of discipline against Chief Solomon” (Office of the Inspector General)

103. The same day (December 23, 2020), Mayor Perry placed Chief Solomon on administrative leave, effective immediately.

104. In a letter dated January 8, 2021, Chief Solomon informed Mayor Perry of his “intent to retire from the Methuen Police Department as I turn 60 this month.” Chief Solomon’s letter listed what he considered to be his accomplishments as Police Chief and his strong objection to the findings in the Inspector General’s report.³² (January 8, 2021 Letter from Chief Solomon to Mayor Perry)

³² In his letter to Mayor Perry, Chief Solomon stated that the Inspector General’s Office never provided him with the opportunity to respond to the allegations. When presented with the opportunity to respond to the Civil Service Commission’s investigation, he declined.

IV COMMISSION CONCLUSIONS

As referenced at the outset of this report, Section 74 of Chapter 31 (the civil service law) states in part that:

“Any person who willfully or negligently violates or conspires to violate any of the provisions of the civil service law and rules, or who knowingly makes an appointment or employs any person in violation of such law and rules, or who refuses or neglects to comply with any provision of such civil service law and rules, shall be punished by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both, unless a different penalty is specifically provided in this chapter.”

This report identifies multiple instances in which Chief Solomon and Sean Fountain violated various provisions of the civil service law and, in the case of Chief Solomon, employed persons in violation of the civil service law. Those violations are referenced in some of the following conclusions:

1. Chief Solomon subverted the civil service law and the 1945 Special Act by allowing the use of non-civil service, full-time intermittent police officers in the Methuen Police Department.

The language of the 1945 Special Act is unambiguous. Methuen was prohibited from using non-civil service intermittent police officers “**so long as there are members of the regular or reserve police forces of said town available for service . . .**” Chief Solomon simply ignored this restriction. Without any regard for whether regular or reserve civil service officers were available, Chief Solomon allowed seven individuals, including three who worked for his own private security company, to serve as de facto, full-time civil service officers. Chief Solomon brazenly dropped even the pretense of complying with the 1945 Special Act when he issued a General Order on June 28, 2019 stating: “Effective immediately, Intermittent officers who are working in a full-time capacity shall be called for extra work by seniority and by hours in the same manner as regular full-time officers. DHQ will be updated to allow Intermittent officers to sign up for details.” Chief Solomon, in plain sight over a period of years, operated a parallel, unlawful, non-civil service system of police officers.

The unlawful employment of non-civil service officers had consequences for other individuals, including the qualified individuals who took a civil service examination and scored high enough to be considered for appointment at the time. Put another way, had these seven unlawful non-civil service appointments not been made through Chief Solomon’s parallel system, seven qualified individuals on a civil service eligible list or reserve roster likely would have been appointed, legitimately, through the civil service system. Chief Solomon’s actions deprived deserving candidates of employment opportunities.

- 2. Chief Solomon allowed Fountain to commence employment as an intermittent police officer despite the following facts: (a) Fountain had not provided documentation verifying that he completed an MPTC-approved reserve police academy; (b) Fountain never completed a physical or medical examination; and (c) Fountain was over the maximum age of thirty-five.**

All intermittent police officers, prior to commencing employment with the City, were required to produce documentation showing they had completed an MPTC-approved reserve / intermittent academy. Fountain repeatedly ignored requests from Sgt. Licata, the training coordinator, to produce such documentation. Further, there is no evidence that Fountain ever passed a physical or medical examination. Finally, it is undisputed that Fountain was over the age of thirty-five at the time of appointment, in violation of the City's age requirement for intermittent officers. Even so, Chief Solomon allowed Fountain to be issued a firearm and badge and commence employment as an intermittent officer.

- 3. Chief Solomon allowed Fountain and three others to serve as full-time intermittent police officers despite his knowledge that they had not completed a full-time police academy.**

Full-time police officers must complete an MPTC-approved, full-time police academy prior to beginning their duties and responsibilities. It is undisputed that Fountain never completed a full-time academy. Yet, Chief Solomon issued a series of personnel orders installing Fountain as a full-time officer, including an assignment as a detective in the criminal division. The seriousness of this unlawful employment cannot be overstated, including the possibility that any arrests made by Fountain, and any criminal charges that flowed from those arrests, are open to challenge based on the fact that Fountain was never authorized to serve as a full-time police officer in Massachusetts.

Chief Solomon also permitted three others to work as full-time intermittent police officers without first attending a full-time police academy, including Despina, an employee of Chief Solomon's private security firm who never completed a full-time academy.

- 4. Chief Solomon stonewalled requests for public records which, if responded to candidly, would have shown that Fountain was employed illegally.**

Chief Solomon received multiple information requests regarding the City's employment of Fountain, from the media as well as the City Council. In response to the City Council, Chief Solomon initially claimed that Fountain's files had been "archived" and that it would take time to retrieve them. This claim was false, as affirmed by multiple MPD employees who provided statements to the Commission. In regard to requests from the media, Chief Solomon disingenuously asserted that he did not have the information requested and that such requests needed to be routed through the City's Human Resources Director. Email communication including Chief Solomon shows that responses were then carefully worded in an ambiguous manner, never explicitly stating what Chief Solomon knew to be true, as it was his own doing: despite never attending a full-time academy, Fountain was unlawfully employed as a full-time intermittent police officer.

5. Citing the COVID-19 pandemic as justification, Chief Solomon personally submitted a belated waiver request directly to the MPTC Executive Director.

Massachusetts law provides, with only one temporary exemption, that all police officers must have graduated from a full-time MPTC-authorized recruit academy (or a substantially equivalent full-time recruit academy in another jurisdiction) *prior* to exercising police powers in a full-time capacity. G.L. c. 41, § 96B. Pursuant to 550 Code Mass. Regs. 3.03, however, if the employing policing agency petitions the MPTC's Standards Committee and can demonstrate a “documented public safety emergency or other exigent circumstance”, the Committee has the ability to grant the officer a 270-day temporary waiver permitting full-time employment pending graduation from a full-time academy. (MPTC 2013 Memorandum)

In April 2020, Chief Solomon, who was not the Appointing Authority, unilaterally submitted a waiver request on Fountain’s behalf to MPTC Executive Director Robert Ferullo—approximately *three years* after Fountain had commenced his *full-time* employment with the MPD. In that request, Chief Solomon stated that Fountain had “misplaced” his reserve / intermittent police academy certificate. Chief Solomon failed to disclose that Fountain had actually never produced a certificate prior to commencing his employment as an intermittent police officer in Methuen.

6. Former Mayors Zanni and Jajuga failed to provide sufficient oversight to prevent the unlawful employment of Fountain and other full-time intermittent police officers.

In published reports, Chief Solomon has cited the fact that the City’s Mayor, not the Police Chief, is the appointing authority for the MPD. Having reviewed thousands of documents and listened to the credible statements of many current and former MPD employees, it is painfully clear that Solomon considered MPD operations to be his sole domain, instilling a fear of retaliation against anyone who questioned his authority or decisions.

Even in that context, however, both Mayor Zanni and Mayor Jajuga failed to exercise proper leadership to prevent the unlawful employment of full-time non-civil service police officers during their respective administrations. Mayor Zanni told the Commission he was unaware that Fountain, or any other intermittent officer, was working in a full-time capacity. Mayor Zanni also claimed to have never read the 1945 Special Act that permitted employment of intermittent officers on a limited basis. Even accepting that statement as true, it shows a shocking lack of oversight of a major municipal department for which he was statutorily obligated to serve as the Appointing Authority.

Mayor Jajuga candidly acknowledged to the Commission that he was aware Fountain was serving as a full-time intermittent police officer despite having never completed a full-time police academy. Jajuga, who has known Fountain and his family since Fountain was a child, accepted Fountain’s self-serving representation that his full-time employment was

permissible. However, as a former long-time State Trooper who once served as Secretary of Public Safety, Jajuga knew or should have known that this was simply not true.

7. Paul Fahey, former Chief of Staff to Mayor Jajuga, and Anne Randazzo, former Assistant City Solicitor and Human Resources Director, authorized the submission of a report to the state’s Human Resources Division falsely stating that Fountain was a permanent, civil service police officer.

Anne Randazzo and Paul Fahey are long-time public servants who voluntarily appeared before the Commission for structured interviews without any limitations on the questions that would be posed to them. A careful review of their email communications from their time as City employees shows that they each had the right instincts regarding the employment of Fountain. For example, Chief Solomon, despite knowing otherwise, suggested that Randazzo had an “email from civil service” saying that Fountain could somehow be deemed a permanent civil service *police officer in Methuen* based on his prior employment as a *firefighter in North Andover*. Randazzo bluntly replied, “I’m not sure what that means, but I have no such email.” Separately, Fahey unequivocally stated that, should there be layoffs, Fountain (a non-civil service employee) should be laid off before any civil service regular or reserve officers, unless told otherwise by HRD.

Yet, after a meeting with Chief Solomon regarding the status of Fountain, both Randazzo and Fahey inexplicably facilitated the submission of a report to HRD falsely representing that Fountain was a permanent, civil service Methuen Police Officer with a civil service seniority date of August 29, 1999 (Fountain’s appointment date as a North Andover firefighter). Neither Randazzo nor Fahey could recall the details of their meeting with Chief Solomon or the subsequent decision to submit the erroneous report to HRD. A contemporaneous email from Methuen’s Personnel Coordinator alerted Randazzo that Fountain’s name did not belong on a list of civil service police officers. Although Randazzo “[n]oted” this objection, it appears she deliberately ignored it. This was a regrettable error in judgment.

Neither Mayor Jajuga nor Mayor Perry were participants in the meeting between Chief Solomon, Fahey, and Randazzo preceding the submission of the first Section 67 report in 2019, and I credit their statements that they were unaware, at the time they signed the report, of the significance of Fountain’s name appearing on it.

8. Upon learning that Chief Solomon knowingly facilitated the unlawful employment of certain individuals as full-time intermittent police officers, including Fountain and three others who had no full-time police academy training, Mayor Perry, in addition to the other proactive steps referenced in this report, should have taken the additional step of determining whether discipline, including the termination of Solomon and Fountain, was warranted.

As noted at the outset of this report, Mayor Perry has taken several proactive steps to restore integrity to the operations of the MPD. Over Chief Solomon’s objections, Mayor Perry ended the impermissible use of full-time intermittent police officers. Mayor Perry then authored the home rule petition to rescind the 1945 Special Act altogether, which was

subsequently approved by the City Council and the state Legislature, with the repeal recently becoming official with the signature of Governor Baker. In May 2020, Mayor Perry also engaged an outside consultant to conduct a comprehensive performance audit of the MPD, the results of which were published in January 2021.

Mayor Perry has taken several other positive steps, including the appointment of current MPD Chief Scott McNamara, who is committed to a fair, impartial appointment and promotional process based on merit, as opposed to personal or political favoritism.

While Mayor Perry's steadfastness and good moral compass have put an end to the unlawful practices outlined in this report, in hindsight it would have been advisable for Mayor Perry to determine whether discipline, up to and including termination, would have been warranted against Chief Solomon prior to his retirement. No public official should be allowed to avoid the consequences of misconduct, particularly on the scale alleged in this report and that of the Inspector General, by opting to retire. While Chief Solomon's misconduct could still conceivably be addressed in a different forum, the lack of discipline against Solomon at the time: (a) potentially deprived the citizens of Methuen of the opportunity to learn the full extent of Chief Solomon's misconduct; and (b) saddled the taxpayers of Methuen and the employees' retirement fund with a burden that may not otherwise be necessary.³³

Further, given the instances of Fountain's misconduct documented in this report, including his failure to provide required certifications prior to commencing employment and his failure to complete the required field training program, there were ample grounds to pursue disciplinary action against Fountain as well.

9. The MPTC failed to exercise due diligence regarding Fountain's unlawful employment as a full-time police officer and failed to accurately respond to public records requests.

The MPTC's core mission is to ensure the development, delivery, and *enforcement* of training standards for the thousands of officers performing police duties and functions in the state of Massachusetts. At best, the MPTC ignored numerous yellow flags regarding whether Fountain had completed the necessary training prior to serving as a full-time intermittent police officer in Methuen. Chief Solomon, who was *not* the appointing authority for the MPD, sent an email directly to MPTC Interim Executive Director Robert Ferullo in April 2020 seeking a waiver to allow Fountain to serve as a full-time police officer in Methuen. Chief Solomon stated that Fountain's reserve / intermittent training certificate had been misplaced. Although Director Ferullo stated that he was unaware that Fountain had already been unlawfully employed as a full-time Methuen police officer for over two years by the time of the waiver request, the resume attached to the waiver request explicitly stated that Fountain served as a "lead investigator for major cases including but not limited to homicide,

³³ I acknowledge that the Civil Service Commission (Commission), with this Commissioner voting in the affirmative, voted to overturn a decision many years ago by former Methuen Mayor William Manzi to terminate Solomon's employment for unrelated alleged misconduct, and instead impose a long-term suspension.

armed robbery, commercial breaks, missing persons.” Further, only a short time after that waiver request was submitted, a Records Analyst at the MPTC presented Ferullo with an email chain from the prior year clearly referencing Fountain’s employment as a full-time police officer in Methuen. Even, however, if Ferullo overlooked these documents, he had an obligation to conduct some level of due diligence regarding Fountain’s employment status and his “misplaced” training certificate.

The emails between Ferullo and Chief Solomon from that time, as well as records showing an eleven-minute phone call shortly thereafter, suggest that Ferullo had indeed looked into Fountain’s training history, and Ferullo conveyed certain information to Chief Solomon. Ferullo, however, does not recall the impetus behind his email to Chief Solomon, nor does Ferullo recall what they discussed during their ensuing phone call. It is clear, however, that even after Chief Solomon informed the MPTC that Fountain’s *reserve / intermittent* certificate was “misplaced,” Chief Solomon allowed Fountain to continue employment as a *full-time* intermittent officer in Methuen without any objection on the MPTC’s part.

The MPTC has received multiple public records requests regarding Fountain’s credentials, dating back to early 2019, and many months ago Director Ferullo was made aware of serious concerns regarding the legitimacy of Fountain’s training records. Numerous questions surrounding Fountain have been brought to the MPTC’s attention, but (to this Commission’s knowledge) it has yet to initiate corrective action.

10. The “Fountain Special Act” was a mistake.

The record has not shown any merit-based justification for the City Council’s decision to carve out an exception to the City Charter allowing Fountain, then the Chair of the City Council with no experience as a police officer, to simultaneously serve as a City Councilor and an intermittent police officer. Notwithstanding that this home rule petition did not supersede the 1945 Special Act or the civil service law, it never should have been initiated by the City Council or enacted by the Legislature.

V COMMISSION ORDERS AND RECOMMENDATIONS

- 1. The Commission orders the City, within 120 days, to identify any person potentially denied appointment as a civil service police officer or reserve police officer in Methuen as a result of the unlawful appointments of full-time, non-civil service intermittent officers identified in this report and to petition the Commission for appropriate relief on their behalf.**

As discussed above, Chief Solomon's unlawful practice of appointing full-time officers outside the civil service system deprived qualified civil service candidates of opportunities for appointment. Given the passage of time, the process of identifying those potentially-harmed individuals no doubt will be complicated, but the City should work with HRD to locate those individuals and propose appropriate relief. To be clear, the Commission is not recommending relief in the form of back pay or benefits. Rather, the Commission is acting to ensure that these aggrieved persons be now given at least one opportunity for fair consideration (i.e., through a request to place such individuals at the top of future certifications until such time as they have been given at least one opportunity for hiring consideration).

- 2. The Commission orders the City, within 120 days, to present the Commission with more fully developed internal controls that (a) prevent the appointment of individuals who have not met all state, local and department prerequisites; and (b) ensure the integrity of police personnel files.**

The Commission recognizes that, since it initiated this investigation, the City has ended the practice of using non-civil service intermittent police officers. In addition, at the state level, the establishment of the Peace Officer Standards and Training (POST) Commission will go far toward ensuring that all police officers, including those in Methuen, have the proper credentials.

Those developments, however, do not supplant the need for more stringent internal controls at the local level, with appropriate checks and balances that ensure: (1) all police officer recruits are onboarded in a consistent manner; and (2) no candidate is appointed without first providing verification of having met all prerequisites.

Further, the Commission's investigation has found what appear to be gaping holes in how Methuen police department personnel files are accessed and maintained. There is continued ambiguity regarding where these files are stored and who has access to them, in addition to any tracking system to identify when such files have been accessed and for what reason.

Given the considerable progress the MPD has made regarding administrative reforms under Chief McNamara's leadership, we do not anticipate this task being a heavy lift, as it may be sufficient for the MPD to expand upon already-enacted reforms.

- 3. The Commission orders the City, within thirty days, to submit amended Section 67 reports to HRD which clarify that Fountain was never a permanent, civil service police officer in Methuen.**

The submission of annual “Section 67” reports by appointing authorities to HRD is not a ministerial exercise. Rather, the statutorily-required reports, submitted under the penalties of perjury, ensure crucial transparency regarding the civil service system and provide important demographic information about who works in the civil service system. Over a period of two consecutive years, the City submitted Section 67 reports with false information about the status of Sean Fountain. At a minimum, those reports should be amended by the City and re-submitted to HRD.

- 4. The Commission recommends that the City continue to explore legal action against Joseph Solomon, as well as Sean Fountain, notwithstanding Chief Solomon’s retirement and Sean Fountain’s resignation.**

Although Chief Solomon has been approved for retirement, this report, along with the findings of the Inspector General, provide detailed examples of his serious misconduct during his tenure as the City’s Police Chief. It is inconceivable that a public employee could completely evade accountability for such misconduct by simply filing for retirement benefits. Nor should Sean Fountain be permitted to avoid accountability for his misconduct.

We recommend that the City continue to explore all avenues of recourse to ensure accountability regarding the misconduct identified in this report. To that end, the Commission, on its own initiative, is providing a copy of this report to the following agencies for review and appropriate action, as warranted: the Office of the Attorney General; the Office of the Inspector General; the State Ethics Commission; the Essex County District Attorney’s Office; the Public Employee Retirement Administration Commission (PERAC); the Methuen Retirement Board and the Essex County Retirement Board.

- 5. The Commission recommends that the City implement a streamlined and transparent system for processing and responding to public records requests.**

Transparent and timely responses to public records requests can often shed light on impermissible or unlawful conduct. Here, it appears that the responses to public records requests during Solomon’s tenure about the employment of Fountain and others were designed to delay or distract the person making the request, rather than provide forthright answers that could have sooner uncovered the misconduct outlined in this report. To that end, we recommend that the City post online all public records requests it receives, along with the City’s written reply and a summary of the information provided. The City should update this online log promptly and regularly so it remains current.

6. The Commission recommends that the City Council move to repeal Chapter 60 of the Acts of 2017 (the Fountain Special Act).

As referenced above, there was no merit-based justification to support the City Council's decision to pass a home rule petition allowing Fountain to be appointed as an intermittent police officer while also serving on the City Council. Repealing this Special Act will do more than symbolically recognize that misstep. Rather, it will allow the City Council to clarify that the Act was never intended to supersede the 1945 Special Act or any provisions of the civil service law. It may also go a long way toward addressing Fountain's woefully misguided, ongoing argument that the Special Act prohibited his termination as an intermittent police officer.

Three final notes in regard to recommendations:

First, the Commission is aware that the City, as referenced above, is involved in its own independent investigation related to the legitimacy of Fountain's training records. Knowing that the City will continue to pursue that portion of the investigation on its own initiative, the Commission does not find it necessary to make any formal recommendation in that regard.

Second, the Commission recognizes that MPTC activities do not fall under the jurisdiction of the Civil Service Commission. The Commission would be remiss, however, not to suggest that the MPTC evaluate its current procedures for: (a) processing waiver requests; (b) fully and accurately responding to public records requests; and (c) ensuring the legitimacy of training records in its possession.

Third, the focus of this report is on the impermissible use of non-civil service police officers in Methuen. As part of this review, however, questions were raised in regard to the delegation of assessment center examinations to private vendors. For example, Chief Solomon, while simultaneously being employed as an assessor by a partner of ADP Management, owned by Al Donovan, played an active role in Methuen's decision to contract with another Donovan-owned company to conduct promotional assessment center examinations. This is hardly the type of arms-length relationship required to ensure the appearance of a fair and impartial examination process. In short, HRD would be well-advised to shine a spotlight on the process by which appointing authorities select vendors for this purpose.

VI CONTINUING JURISDICTION

To ensure compliance with and to monitor the orders and recommendations contained herein, and to assist the City with its ongoing investigation into these matters, as warranted, the Commission maintains jurisdiction over this matter until ordered otherwise.

SO ORDERED.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman

Chair

/s/ Robert L. Quinan, Esq.

Robert L. Quinan, Jr., Esq.

General Counsel

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein, and Tivnan, Commissioners) on January 26, 2023.

Notice to:

Kenneth Rossetti, Esq. (City of Methuen)

Peter McQuillan, Esq. (City of Methuen)

Michele Heffernan, Esq. (Human Resources Division)

Copies to:

Office of the Attorney General

Office of the Inspector General

State Ethics Commission

Essex County District Attorney's Office

Public Employee Retirement Administration Commission (PERAC)

Essex County Retirement Board

Peace Officer Standards and Training (POST) Commission

Municipal Police Training Committee (MPTC)

Methuen Retirement Board