



CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL 349-4300
FAX 349-4307

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

May 5, 1994

To Whom it May Concern:

- Please be advised that difficulties pertaining to the production and assembly of the City Manager's Agenda have occasioned the need to establish a schedule that differs in some respects from past practices. Anyone who has visited the office late on a Friday afternoon will have observed Diane Squires, Maryellen Vera, and Lisa Peterson rushing to complete the assembly of my Agenda for the City Council meeting scheduled for the following Monday. The Agenda document itself can run to several hundred pages. Diane and Maryellen understand that the primary goal is to compile complete packages for the members of the City Council to be delivered by hand to the Councilors on Friday evening. In the past there has been an effort to compile copies for Department Heads and copies that may be made available to interested members of the public.

The burden of completing the assembly of these documents has increased as the scope of the Agenda has grown. I find it necessary to advise the public that it will no longer be possible to compile sufficient copies of the Agenda package to be available to the general public and Department Heads until 9:30 am on Monday prior to each Council meeting.

Sincerely,

Robert W. Healy
City Manager



CITY OF CAMBRIDGE

Office of the City Solicitor
City Hall

795 Massachusetts Avenue
Cambridge, Massachusetts 02139

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Linda A. Stamper
Legal Counsel

Arthur J. Goldberg
Legal Counsel

May 6, 1994

Lauren Inker
Public records Division
Office of the Secretary of State
One Ashburton Place, Room 1719
Boston, MA 02108

Re: *Case Number: SPR94/265*

Dear Ms. Inker:

Thank you for the materials you faxed to me regarding the above-referenced claim by Mr. Michael Brandon.

As Mr. Brandon indicates in his appeal the records he seeks are copies of the City Manager's Agenda to the City Council generally prepared throughout the week and completed and compiled during the day on Friday in order to be distributed to the elected members of the City Council Friday evening. The items in the Agenda are dated for the following Monday and become a part of the City Council records for its regular Monday night meetings. The task of compiling the documents has often lead to the staff of the City Manager's office working past the regular quitting time of 5:00 pm just to complete the nine packages for City Councilors. The long standing custom in the City has been for on-duty police officers to deliver the materials during the evening on Fridays to the homes of the members of the City Council.

For some time now Mr. Brandon and several other members of the public have arrived at the City Manager's office late on Friday afternoon asking for a copy of the compiled materials. For the most part the City Manager's staff have been able to create sufficient additional packages to accommodate these requests. As the volume of materials has grown in recent years in response to an increasingly complex agenda, it has grown more difficult to complete copies on Friday during regular business hours.

Responding to the increasing demands on his staff to produce copies on Friday afternoons, the City Manager began to question the legal requirement (as insisted upon by Mr. Brandon) of producing these copies to members of the general public on Friday. The Manager has questioned whether or not the Agenda materials should be considered a public record prior to their delivery to the City Councilors to whom they are addressed. In responding to the City Manager's inquiry in that regard, I have advised him that I have found no cases directly on point in interpreting the Massachusetts Public Records Law, but I think a question is legitimately raised as to when a record must be deemed "made" so that it becomes subject to the public records law. I have reviewed the materials you provided and I do not find that they clearly address the issue suggested by the City Manager. In my discussion with you by telephone you suggested that as soon as a record is physically generated by a public official it becomes a public record. This strikes me as potentially over inclusive. For example, I have now "physically" generated a portion of this letter to you. Applying your approach, I assume that you would conclude that if Mr. Brandon arrived at my office now and asked for a copy of all correspondence I have had with your office I would be required to include a copy of this portion of my letter to you. The City Manager stated his belief that a reasonable interpretation of "made" in the context of a communication from a public official to another party would be, at least, when that communication has been sent to the addressee, if not when received by them. I would appreciate your response to this position.

In addition to his concern that it seemed inappropriate to produce a communication to a third party prior to even sending it to the addressee, the City Manager indicated a concern that in many respects his Agenda represents a formulation of policy in response to specific requests by the City Council. Actual practice demonstrates that the responses are sometimes being developed right up to the last minute before the packages are delivered to the addresses of the City Councilors. In this respect the City Manager in effect was suggesting that some, at least, of the documents in the package might fall within Exemption (d) of the public records law. Labeling a document "unapproved" or "revised by subsequent draft" does not adequately address the concern of preventing premature disclosure of policy positions being developed by the City Manager. The complexity of determining which if any portions of the package might be revised prior to actual delivery of the package to the addresses of the City Council members, complicates the determination of how to respond to individuals such as Mr. Brandon who arrive in the office at 4:45 pm on Friday requesting a copy of the package when the packages for the Councilors have not yet left the office for delivery to the City Councilors, and the contents could change up till the last moment before delivery.

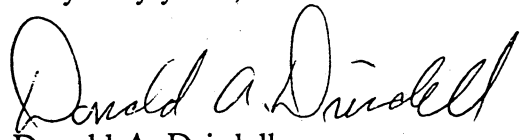
The difficulties presented by the application of the rules of the public records law in these circumstances has led to a further examination by the City Manager of the staffing and organizational issues involved in producing the materials. The City Manager has concluded that the earliest time by which his staff can reasonably produce copies of the package for anyone other than the City Councilors is 9:30 am on Monday mornings. Making copies available sooner cannot reasonably be accomplished without requiring overtime by the

limited staff in his office. The City Council meets regularly at 5:30 pm each Monday, and in addition to copies of the materials that may be obtained by interested members of the public from 9:30 am on, ample copies are always made available to the public at the meeting itself on Monday evenings.

I would, of course, appreciate your thoughts on the difficult questions raised on the issues of when a record is "made" in this context, and on the application of Exemption (d). I do not believe, however, that those questions need be resolved in any formal manner at this time because an analysis of the timeliness of the Manager's response to Mr. Brandon's requests is dispositive of this appeal. The requested documents cannot reasonably be required to be produced on Friday, and it is adequate that the City Manager is able to make the documents available at 9:30 am on Mondays.

Please feel free to contact me if you have any questions.

Very truly yours,



Donald A. Drisdell



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139

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EXECUTIVE DEPARTMENT

ROBERT W. HEALY

City Manager

RICHARD C. ROSSI

Deputy City Manager

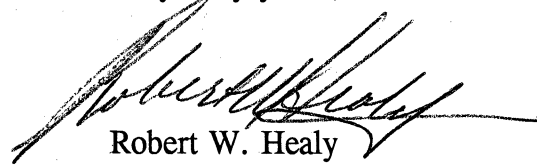
May 16, 1994

To The Honorable, The City Council:

With respect to Calendar Item No. 11, enclosed please find a copy of my communication to department heads and other interested parties, as well as a copy of Deputy City Solicitor Drisdell's letter to the Public Records Division of the Secretary of State. These communications identify my concern with the timeliness issue that is raised by a demand for documents that may be between 75 and 150 pages to be produced with two minutes notice.

Logistics and staffing capacity, as well as potential document amendments preclude the full material being available prior to 9:30 a.m. Monday morning. While we can make an effort to have two copies available in the Central and Main Libraries as soon as practical, it is not possible to prepare full copies prior to Monday for general circulation.

Very truly yours,



Robert W. Healy
City Manager

RWH/mev
attachments

Consent Agenda # 9

Information relating to Calendar Item
Number Eleven.

In City Council,

May 16, 1994

*Referred to Calendar
Item # 11*

16
27 Seven Pines Avenue
Cambridge, Massachusetts 02140
April 26, 1994

Cambridge City Council
c/o City Clerk
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Re: City Manager's evasion of Public Records Law

Councilors:

City Manager Bob Healy has recently started to deny the public access to his weekly City Council communications when they are finalized and duplicated by his staff on Friday afternoons.

As the attached correspondence indicates, I believe this practice violates the state statute on public records and needlessly impedes citizens who seek to adhere to the written policies of the City Council by actively participating in local affairs.

Just as city councilors need sufficient time to review the detailed, complex, and sometimes voluminous materials the city manager generates each week, so do private citizens. A voter may want to discuss a particular item with several individual councilors over the weekend; or to urge a specific elected representative to accept a worthy recommendation or reject a bad one; or to appear before the entire Council on Monday evening with a carefully prepared statement addressing precise issues raised in the manager's submissions.

In keeping with your commendable policy of providing public libraries with copies of the council agenda packets every Friday, and for the sake of open government and effective participatory democracy, I urge you to ask the city manager and his staff to comply fully with the spirit of the Public Records Law each week by making complete copies of his council communications available without delay to anyone who requests them at City Hall on Friday afternoon.

Sincerely,


Michael Brandon

c: Supervisor of Public Records

RECEIVED BY
OFFICE OF CITY CLERK
1994 APR 28 PM 4:58
CAMBRIDGE MA.

27 Seven Pines Avenue
Cambridge, MA 02140
April 22, 1994

Mr. Robert W. Healy, City Manager
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

RE: Public Records Request

Sir:

Pursuant to 950 CMR 32.05, I request that you immediately release to me a copy of the communications to the City Council you have prepared for the meeting of April 25.

On April 8 at 4:45, a member of your staff denied me access to the agenda attachments you had prepared for the Council meeting of April 11. She told me that you had established a firm policy of not making these public records available on Friday afternoons when they are provided to the City Clerk and are sent to members of the City Council.

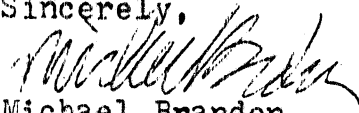
City Solicitor Russell Higley appeared shortly thereafter and confirmed that I could not have these documents until the following Monday morning because they were "not public records until received by the Council members." He refused to say whether his interpretation was based on a determination from the Supervisor of Public Records for the Commonwealth.

I believe these items become public records as soon as they are made, regardless of when they are delivered to the individual members of the City Council, who do not receive them simultaneously and in certain situations may not even get them until after the Monday-night Council meeting (for instance, if a member is incarcerated out of state and serving in absentia). You seem to forget that, after all, the members of the City Council are merely the representatives of the larger public, and although you might want to seem deferential to them for reasons of job security, it is really the citizens of Cambridge who employ you.

If you believe a statutory exemption applies to this material, please cite it in writing and explain why. I would also appreciate an explanation of why you decided to change your previous policy, and I would like to receive a copy of any written policy or internal memoranda in your files pertaining to this matter.

I look forward to your prompt response.

Sincerely,


Michael Brandon

cc: Supervisor of the Public Records
City Council

Michael Brandon
27 Seven Pines Avenue
Cambridge, Massachusetts 02140
Telephone (617) 864-3520

April 26, 1994

Mr. James W. Igoe, Deputy Secretary of State and
Supervisor of Public Records
Office of the State Secretary
One Ashburton Place, Room 1719
Boston, Massachusetts 02108

950 CMR 32.08 Appeal

Dear Mr. Igoe:

I write to appeal Cambridge City Manager Robert W. Healy's repeated denials of my requests for timely access to public records in his custody.

I also appeal his failure to comply with 950 CMR 32.08.1, which he has breached by not providing a written explanation for his April 8 denial and by failing to advise me of pertinent legal remedies.

The weekly records I am seeking prompt access to—the city manager's official communications to the City Council—are described in my April 22 written request to Mr. Healy, a copy of which is attached.

As they did on April 8, the city manager's staff on April 22 refused to release these prepared documents, informing me that as a matter of policy Mr. Healy had personally ordered them withheld "because he wants them delivered to the city councilors first, as a matter of courtesy." I pointed out that the city manager owes equivalent courtesy to the citizens who elect the city councilors as representatives and who pay their salaries as well as his, but to no avail.

In fact, I was told, in order to prevent the public from possibly seeing the agenda attachments before the councilors do, Mr. Healy has now discontinued his longstanding practice of delivering copies of them to the city clerk on Friday afternoon. (After being denied access by the manager's staff on April 8, I had gone to the clerk's office, where I was able to inspect the materials in question.)

Mr. James W. Igoe
April 26, 1994
Page 2

It is clearly practicable for the city manager to release his Council communications to the public as soon as his staff finalizes and duplicates them on Friday afternoon: he has been doing so with fair regularity for at least the past three years when asked by private citizens, members of the press, and city councilors.

Moreover, it decidedly serves the public interest for him to continue the practice. Just as city councilors need sufficient time to review his detailed submissions in advance of the regular Monday meetings of the City Council, so do civic-minded private citizens who want to participate in local affairs and influence how their elected representatives respond to the city manager's information and recommendations. An informed electorate and knowledgeable citizen activists are crucial to effective city government and to the democratic process.

To his credit, Mr. Healy has traditionally waived copying fees for the records at issue, in accordance with 950 CMR 32.06.5—thus tacitly acknowledging that the unfettered disclosure of these items indeed benefits the public interest.

Please contact me if you have any questions or would like me to provide your staff with additional information to help in their investigation.

I hope you will respond to this appeal favorably and expeditiously—by ordering the city manager not only to provide all citizens with free and full access to the materials he prepares on their behalf, but also to afford them the "prompt access" mandated in 950 CMR 32.02.

Sincerely,


Michael Brandon

encl.

cc: Robert W. Healy, City Manager
City Council

Consent Communication #16 Cat # 11S-228

A comm. received from Michael B. Brandon
in disagreement with certain actions
taken by the City Manager.

In City Council May 2, 1994

Charter right exercised
by Councilor Walsh.

5/9/94 Tabled by
Councilor Born

5/16/94 Referred to the
Rules Committee

5/20/94 Copy sent to Rules Committee