

C

Michael Brandon
27 Seven Pines Avenue
Cambridge, Massachusetts 02140

May 12, 1994

Cambridge City Council
c/o City Clerk
795 Massachusetts Avenue
Cambridge, Massachusetts 02140

RECEIVED BY
CITY CLERK
1994 MAY 12 PM 5:04
CAMBRIDGE MA.

Re: Timely public access to the City Manager's weekly Agenda

Councilors:

The Secretary of State's Office has indicated to me that the Supervisor of Public Records will soon issue an advisory opinion supporting my contention that the City Manager's communications to the City Council are public records as soon as they are created (not when they are received by the individual councilors, as the City Solicitor has incorrectly contended).

As you can see from the attached documents, which supplement my earlier communication about this matter, the manager is reacting by formally limiting public access to his weekly Council submissions until 9:30 on Monday morning. This unreasonable, unnecessary, unfair, and unacceptable new policy effectively prevents a large portion of the working public from examining the materials in a timely fashion and communicating with their city councilors before the 5:30 Council meeting.

Surely it does not require much effort for the manager's staff to generate a few extra copies of his Agenda for delivery to the public libraries or pickup in his office on Friday afternoon. (Indeed, I would think it more efficient to reproduce and collate all needed copies at the same time.)

If the task is indeed so burdensome, perhaps the manager could obtain logistical advice or assistance from the City Clerk's staff, who seem to have no difficulty in preparing the large Council Agenda packets by 4:30 on Friday.

By the way, neither the Council's nor the Manager's Agenda was available for review at the libraries last weekend, despite the Council order establishing this policy several months ago.

Cambridge City Council
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I again respectfully request that you urge the City Manager to adjust his office procedures as needed so that his Agenda is easily available to the press and public at the same time it is finalized for the members of the Council. Ideally, it should be available in the Clerk's office along with the Council Agenda and Consent Communications by 4:30 on Friday.

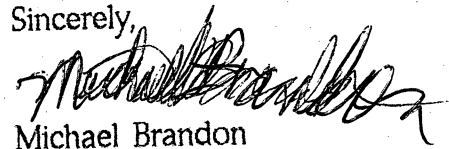
I would also suggest that additional unbound public copies of the Manager's Agenda attachments and the Council Consent Communications be available in the Sullivan Chamber during the Council meetings (there are already multiple copies of the Council Agenda).

In addition, I would ask that the City Clerk be requested to include a copy of the current Rules of the City Council in the loose-leaf Agenda binder provided in the Sullivan Chamber for public review during your meetings.

Finally, I think it would also be helpful for the councilors as well as the public if copies of all charter-righted items from the previous meeting were included in the bound packets for reference during the Council meetings.

I appreciate your efforts to promote citizen participation in Cambridge government and look forward to appearing before you Monday night and answering any questions you may have.

Sincerely,



Michael Brandon

encl.

cc: Ms. Lauren Inker, Division of Public Records



The Commonwealth of Massachusetts

Office of the Secretary of State
Michael Joseph Connolly, Secretary

James W. Igoe
Deputy Secretary of State
Supervisor of Public Records

May 3, 1994
Case Number: SPR94/265

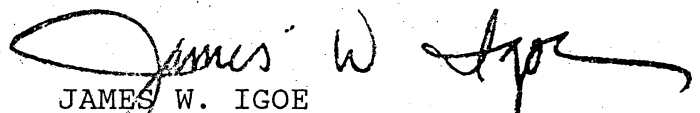
Michael Brandon
27 Seven Pines Avenue
Cambridge, Massachusetts 02140

Dear Mr. Brandon:

This office is in receipt of your letter appealing the failure of the Cambridge City Manager to comply with your request for records.

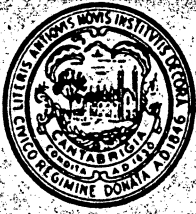
I have directed a member of my staff* to investigate this matter. When my review of the investigation has been completed, you will be advised in writing of the disposition of this case.

Very truly yours,


JAMES W. IGOE
Supervisor of Public Records

JWI/js

* Lauren Inker



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

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Cambridge, Massachusetts 02139
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Laura H. Yager
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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.

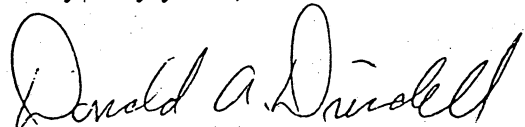
The difficulties presented by the application of the rules of the public records law in these circumstances has led to a further examination by the City Manager of the staffing and organizational issues involved in producing the materials. The City Manager has concluded that the earliest time by which 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

Consent Comm. # 6 Cal # 1

Comm. from Michael Brandon regarding timely
access to the City Manager's weekly agenda.

In City Council,

May 23, 1994

*Charter Right Exercised
by Councillor Sullivan*

6/6/94 Referred to the

Rules Committee

*Copy sent to Rules
Committee 6/8/94 (de)*