



CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139
Tel. (617) 349-4121
Fax. (617) 349-4134

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Legal Counsel

Birge Albright
Gail S. Gabriel
Arthur J. Goldberg
Linda A. Stamper
Deborah R. Cautela
Nancy E. Glowa

January 17, 1995

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Unlawful Provisions of Financial Disclosure Ordinance;
Council Communication #03 dated 12/19/94

Dear Mr. Healy:

The City Council requested a response to a letter dated November 15, 1994 submitted by Michael Brandon. A copy is attached. The letter references an opinion from the State Supervisor of Public Records dated July 27, 1994 (attached) that concludes that Cambridge City Code §2.118.020(C) is in direct conflict with state public records law. Code §2.118.020(C) requires written identification of people who request a copy of a City official's financial disclosure form so that the filer can be notified of the requester's inspection of the form.

Mr. Brandon asks that the City Council:

"1. Ask the city administration to stop enforcing the unlawful public access restrictions.

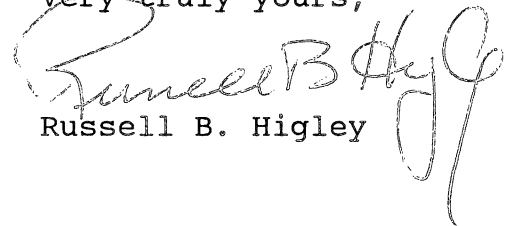
2. Amend the Cambridge Financial Disclosure Ordinance to eliminate the improper provisions and bring local law into accord

with Massachusetts statutes.

3. Ask the city manager and the city solicitor for a written report explaining their failure to act on this matter in a timely fashion."

Request #1 has been done. Request #2 can be accomplished by the City Council if it adopts the attached proposed amendment to Cambridge City Code §2.118.020(C). Request #3 is answered by the attached letter of January 6, 1995 from me to you.

Very truly yours,

A handwritten signature in cursive script that reads "Russell B. Higley". The signature is written in dark ink and is positioned to the right of the typed name.

Russell B. Higley

3

Michael Brandon
27 Seven Pines Avenue
Cambridge, Massachusetts 02140

November 15, 1994

Cambridge City Council
c/o City Clerk
City Hall
Cambridge, MA 02139

RE: Unlawful provisions of the Financial Disclosure Ordinance

Councilors:

More than four months ago, the Secretary of State's Office formally advised City Solicitor Russell Higley that certain restrictions the city places on citizen access to public records are in conflict with Massachusetts law.

At issue is the Cambridge Financial Disclosure Ordinance, specifically Chapter 2.118.020(C), which limits the public availability of the Statements of Financial Interest ("SFIs") filed annually by city officials and local candidates. The Cambridge law improperly requires that requestors identify themselves in writing so that the filers of inspected SFIs can be notified.

This requirement does not conform with state freedom-of-information regulations, which expressly provide that individuals may request such nonexempt government records *orally* and *anonymously*. Moreover, the "chilling effect" created by the restriction undermines the effectiveness of the Cambridge ethics ordinances by discouraging members of the public from exercising their right to know about hidden financial interests that might be unduly influencing the operation of city government and the electoral process.

Besides the inconvenience the sign-up procedure causes record requestors, who must fill out a separate request form for each SFI to be inspected, the red tape creates needless administrative and mailing costs for the city while putting additional burden on the busy staff at the Election Commission, who act as custodians of these city records.

Eliminating the requestor-identification provision will reduce the possibility that citizens who inspect SFIs may be subjected to improper questioning, intimidation, or other reprisals. (I was telephoned at home and interrogated by one candidate whose SFI I reviewed, and was openly ridiculed at a public hearing by a city official who took offense at my inspecting his disclosure statement.)

Cambridge City Council
November 15, 1994
Page 2

Inexplicably, the city solicitor has not instructed the Election Commission to stop enforcing the unlawful restriction. In fact, he has not even provided the commissioners with a copy of the state's formal advisory opinion, which he himself requested following the commission's initial inquiry to him early this year.

Last April 15, Mr. Higley advised the city manager "that unless and until there is a formal determination that the identification requirement of the ordinance is directly in conflict with state law, it should be enforced." Supervisor of Public Records James W. Igoe provided that determination in July, yet City Solicitor Higley has not put a stop to the improper enforcement.

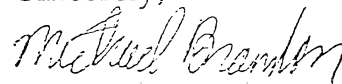
The city manager, who is charged by ordinance with properly enforcing both city and state laws, has not formally communicated with the City Council about this matter or recommended appropriate revisions of the ordinance.

I am therefore submitting herewith the relevant documentation and formally requesting that the City Council take appropriate action—namely:

1. Ask the city administration to stop enforcing the unlawful public-access restrictions.
2. Amend the Cambridge Financial Disclosure Ordinance to eliminate the improper provisions and bring local law into accord with Massachusetts statutes.
3. Ask the city manager and the city solicitor for a written report explaining their failure to act on this matter in a timely fashion.

Thank you very much for your consideration.

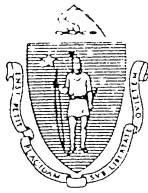
Sincerely,



Michael Brandon

encl.

cc: Cambridge Election Commission
Supervisor of Public Records James W. Igoe



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

July 27, 1994
SPR94/227

Russell B. Higley
City Solicitor
City of Cambridge
City Hall 795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Dear Mr. Higley:

Pursuant to 950 C.M.R. 32.07, I am in receipt of your request for an advisory opinion on behalf of the City of Cambridge (City). Your request focuses on the City's disclosure of financial statements regarding the income of local officials and candidates for public office. City ordinance 2.118.020(c) requires an individual to provide valid identification and put any request in writing before the City will disclose these records. You question whether such conditions to access are appropriate under the Public Records Law.

"Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any city of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26)(a-m) (1992 ed.). The statutory exemptions are strictly and narrowly construed. Attorney General v. Assistant Commissioner of the Real Property Department of Boston, 380 Mass. 623, 625 (1980); Attorney General v. Board of Assessors of Woburn, 375 Mass. 430, 432 (1978). Public records, and any non-exempt, segregable portions thereof, are subject to mandatory disclosure upon request. G. L. c. 66, § 10(a) (1992 ed.); see also Reinstein v. Police Commissioner of Boston, 378 Mass. 281, 289-90 (1979) (the statutory exemptions are not blanket in nature). Moreover, there is a presumption that all government records are public. G. L. c. 66, § 10(c) (1992 ed.); 950 C.M.R. 32.08(4). Therefore, it is the burden of the record custodian to demonstrate that an exemption applies in order to withhold a requested document. G. L. c. 66, § 10(c) (1992 ed.); 950 C.M.R. 32.08(1).

Exemption (a)

As you are aware, the Public Records Law permits a requester to make oral requests for records. 950 C.M.R. 32.05(3). Moreover, a custodian can not ask a requester to identify himself. 950 C.M.R. 32.04(5). In an April 15, 1994, letter to this office, you argue that the ordinance at issue does not conflict with these basic tenets of the Public Records Law. You suggest instead that the ordinance operates through exemption (a) of the Public Records Law to restrict access to records unless certain conditions are met. Accordingly, exemption (a) must be examined. It applies to materials which are:

specifically or by necessary implication exempted from disclosure by statute.

G. L. c. 4, § 7(26)(a) (1992 ed.).

An agency may use exemption (a) as a basis for withholding requested materials where the language of the underlying exempting statute suggests that the public's right to inspect records under the Public Records Law is restricted. Collector of Lynn, 377 Mass. at 154; Ottaway Newspaper Company v. Appeals Court, 372 Mass. 539, 545-46 (1977). Exemption (a) clearly specifies that the exempting law must be a statute. G. L. c. 4, § 7(26)(a) (1992 ed.). Given its plain and ordinary meaning, a statute is considered that which is enacted by the general court. See G. L. c. 4, § 6 (Third) (1992 ed.) (words and phrases shall be construed according to the approved usage of the language); see also G. L. c. 4, § 1 (1992 ed.) (effective date of statutes). Moreover, the Massachusetts Legislature has established that when construing statutes, an ordinance shall be synonymous with a by-law, not a statute. G. L. c. 4, § 7(22) (1992 ed.). A strict and narrow application of exemption (a) therefore will not permit an ordinance to place restrictions on access to public records.

The Public Records Law was designed to ensure the availability of information concerning the operation of government officials. Real Property Department of Boston, 380 Mass. at 625. Accordingly, the Legislature has enacted very specific and narrow exemptions which may be employed to withhold government records. G. L. c. 4, § 7(26)(a-m) (1992 ed.). None of these enumerated exemptions will operate to place restrictions on the disclosure of financial statements which are filed by local officials and candidates with the City's Election Commission. Id.

Legislative History

Massachusetts has had a law mandating disclosure of public records since 1851. See 1851 Mass. Acts 161, § 4 (original statute). The law has been revised many times over the years but at no juncture has it required that public records requests be written or that a requester identify himself prior to access. See, e.g., 1897 Mass. Acts 439, § 7; 1948 Mass. Acts 55, § 5 (public records available to any person). Even under prior versions of the law, the right to inspect records was read very broadly. See Direct-Mail Service v. Registrar of Motor Vehicles, 296 Mass. 353, 356 (1937) (Public Records Law allows "any person" to inspect public records).

When enacting the current definition of public records, the Legislature intended to broaden, rather than narrow, access to public records. See Hastings & Sons Publishing Company v. City Treasurer of Lynn, 374 Mass. 812, 816 (1978) (Chapter 1050 clearly evidences a legislative intent to expand the disclosure of records). In addition to expanding the definition of public records, the Legislature added Section 10(b), which provides citizens with a right of appeal when they are denied access to records. 1973 Mass. Acts 1050, §§ 1, 3; see also 1976 Mass. Acts 438, § 2 (amending appeal process). The requirement of a written request is specific and limited to the appeals process. G. L. c. 66, § 10(b) (1992 ed.) (if custodian fails to comply with written request, requester may petition the Supervisor of Public Records for a determination of whether the record requested is public); see also 950 C.M.R. 32.05(3) (requester should make written request if contemplating an appeal to Supervisor of Public Records). The requirement does not extend to Section 10(a), the mandatory disclosure provision of the law. See G. L. c. 66, § 10(a) (1992 ed.) (custodian shall permit public records to be inspected and examined by any person).


It is anomalous to suggest that at the very instant in which the Legislature sought to broaden access to public records, it would also choose to require written requests for records, especially when oral requests had sufficed for over one hundred years. Indeed, had the Legislature meant to change the longstanding practice in 1973, it could have done so by appropriately amending Section 10(a). To reiterate, this was not accomplished. Attempts to qualify the plain language of the Public Records Law by introducing into it conditions which are neither expressed, nor necessary to give effect to the main purpose of the law, are inappropriate. Direct-Mail Service, 296 Mass. at 356.

Russell B. Higley
Page Four
July 27, 1994

SPR94/227

Accordingly, in response to your inquiry, I find that the ordinance directly conflicts with spirit and intent of the Public Records Law.

Very truly yours,


JAMES W. IGOE
Supervisor of Public Records

cc: Michael Brandon

In order to comply with the July 27, 1994 opinion of the Supervisor of Public Records, Cambridge City Code §2.118.020(C) may be amended as follows:

C. Make the list of municipal officials and statements of interests filed with the Election Commission pursuant to this chapter available upon written request of any individual for public inspection and copying during regular office hours and make photocopying facilities available at a charge not to exceed the actual cost; ~~the Election Commission shall forward a copy of the request to the individual whose statement has been examined;~~ provided, however, that such requests from the Attorney General of the Commonwealth of Massachusetts, the District Attorney of Middlesex County, or the State Ethics Commission shall be confidential;



CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139
Tel. (617) 349-4121
Fax. (617) 349-4134

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Legal Counsel

Birge Albright
Gail S. Gabriel
Arthur J. Goldberg
Linda A. Stamper
Deborah R. Cautela
Nancy E. Glowa

January 6, 1995

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

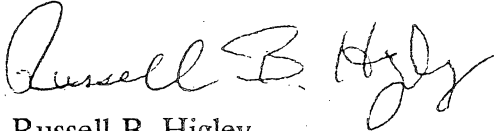
Re: *Access to Financial Disclosure Forms*

Dear Mr. Healy:

I am enclosing a copy of a letter dated August 12, 1994 which referenced an opinion from the Supervisor of Public Records concerning the City's financial disclosure ordinance, Chapter 2.118.

Evidently a copy of my letter never reached the Election Commission despite the fact that the letter indicates they were to receive a copy. My staff has advised the Executive Secretary of the Election Commission to cease requiring written identification, and I am forwarding a copy of this correspondence to the Election Commission.

Very truly yours,


Russell B. Higley

cc. Election Commission



CITY OF CAMBRIDGE

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139
Tel. (617) 349-4121
Fax. (617) 349-4134

Legal Counsel

Birge Albright
Gail S. Gabriel
Arthur J. Goldberg
Linda A. Stamper
Deborah R. Cautela
Nancy E. Glowa

August 12, 1994

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Access by public to financial disclosure forms

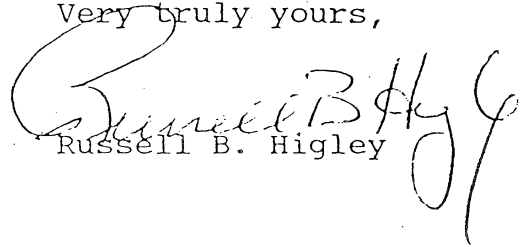
Dear Mr. Healy:

Enclosed is an opinion dated July 27, 1994 from the Supervisor of Public Records concerning the City's financial disclosure ordinance, Chapter 2.118. In essence, the opinion finds that because the financial disclosure forms are public records, they must be produced to any individual requesting them and no written request or identification may be required of the requester as a condition of production by the City. The effect of this ruling is to invalidate the implied requirement of ordinance §2.118.020.C that a written request identifying the requester be filed prior to production of the financial disclosure forms for inspection. The ordinance provided that a copy of the written inspection request be forwarded to the individual whose statement had been examined.

The City Council should be informed of the opinion of the Supervisor of Public Records because of its effect on the City ordinance. I am informing the Election Commission by copy of this

letter that until further notice they should cease to require a written request or the production of identification from any person requesting access to, or copies of, the financial disclosure forms on file.

Very truly yours,


Russell B. Higley

cc. Election Commission

13.



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

January 23, 1995

To The Honorable, The City Council:

In response to Awaiting Report Item No. 18, please find attached a report from City Solicitor Russell B. Higley.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert W. Healy".

Robert W. Healy
City Manager

RWH/mev
attachment

Consent Agenda # 13

0-2

Response to Awaiting Report Item
Number Eighteen regarding unlawful
provisions of Financial Disclosure
Ordinance.

IN City Council,

January 23, 1995

*Charter Right Exercised
by Councillor
Girotto fellow
1/30/95 No action taken
Placed on file under
Rule Nineteen*