



CITY OF CAMBRIDGE

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October 18, 1973

To the Honorable City Council
City Hall
Cambridge, Massachusetts

Dear Councillors:

You have requested my opinion as to whether or not departmental inspection reports, such as Health, Building and Fire are available to the public.

The answer to this question turns on the definition of the designation "public records." General Laws, Chapter 4, Section 7, provides in pertinent part, as follows:

In construing statutes, the following words shall have the meanings herein given, unless a contrary intention clearly appears:...

Twenty Sixth, "public records" shall mean any written or printed book or paper...of any... Town... in or on which any entry has been made or is required to be made by law. (emphasis supplied)

This statutory language was interpreted recently in two (2) Massachusetts Supreme Judicial Court decisions.

Town Crier, Inc., v. Chief of Police of Weston, 282 N. E 2d, 385 involved a newspaper which sought a writ of mandamus ordering the Respondent, Chief of Police of Weston, and Custodian of Police Records in the Town of Weston to make available for their examination an arrest register and daily log maintained by the Weston Police Department. The Court held that the records sought were not public records and, therefore, their public disclosure could not be forced by a writ of mandamus.

Similarly, Dunn v. Board of Assessors of Sterling concurred an individual who sought a writ of mandamus ordering the Board of Assessors to make available, for the individual's examination, filed record cards, which a private consulting firm prepared at the Board of Assessors' direction for use in making assessments. Again, the Court held that these were not public disclosure could not be forced by a writ of mandamus.

In both cases, the Court reasoned that a record kept by a public officer or employee is a public record only if the entries contained therein were made pursuant to a requirement of law.

The Court felt that the two (2) categories of records encompassed by the above definitions are:

- "(a) those in which any entry has been made...
(pursuant to a legal requirement), and
- (b) those to which any entry...is required to
be made by law..."

An example to illustrate the Court's reasoning might concern fire inspection reports. If these reports are essentially reports to another municipal agency requesting that they make a determination and do not contain a report of a violation of law, it is my opinion that since these records are not kept pursuant to a requirement of law they are not public records and not subject to forced public disclosure.

However, it should be recognized that these decisions will not shelter records maintained for enforcement or other purposes pursuant to a statute, such as General Laws, Chapter 148, Section 28.

Of course, it should be recognized that these records are subject to subpoena before the proper tribunal.

Very truly yours,


Edward D. McCarthy
Acting City Solicitor

Report from the City Solicitor re:
Departmental Inspection Reports.

In City Council,

~~October 15, 1973~~

Oct. 29, 1973

Placed on File -