



City of Cambridge

1.

IN CITY COUNCIL

March 30, 1993

VICE MAYOR CYR

ORDERED: That the City Council be recorded as approving the Employment Agreement between the City Council and the City Manager, Robert W. Healy, attached to this Order and incorporated herein, with a term ending June 30, 1995.

In City Council March 30, 1993.

Adopted by a yea and nay vote:-

Yeas 6; Nays 3; Absent 0.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

D. Margaret Drury
D. Margaret Drury
City Clerk

AN EMPLOYMENT AGREEMENT BETWEEN THE CITY COUNCIL
OF CAMBRIDGE AND THE CITY MANAGER

Whereas, the Massachusetts General Court has adopted Chapter 279 of the Acts of 1982, which permits an Employment Agreement between the Appointing Authority and the City Manager; and,

Whereas, the City desires to have such an Employment Agreement in order to spell out the remuneration and benefits of the City Manager; and,

Whereas, the City Manager is the Chief Executive Officer, Chief Administrative, and Chief Conservator of the Peace for the City of Cambridge in accordance with Chapter 43, Section 93 to 108 of the Massachusetts General Laws, (Plan E Charter),

Now, therefore, be it agreed by Robert W. Healy, Jr., City Manager, hereinafter referred to as "Employee", and the City of Cambridge, hereinafter referred to as "Employer", that the employment relationship between the City and the Manager shall be governed by the following provisions:

This agreement, made and entered this 30th day of March, 1993 by and between the City of Cambridge, a municipal corporation and Robert W. Healy, Jr., City Manager, and expire on June 30, 1995.

Whereas, the City desires to employ the service of Robert W. Healy, Jr., as City Manager of the City of Cambridge in accordance with Chapter 43, Sections 93 to 108 of the Massachusetts General Laws; and

Whereas, it is the desire of the Cambridge City Council to provide certain benefits, establish certain conditions of employment, and to set working conditions of said employee; and

Whereas, it is the desire of the Cambridge City Council to (1) secure and retain the services of Robert W. Healy, Jr. and to provide inducement for him to remain in such employment, (2) to make possible full work productivity by assuring employee's morale and peace of mind with respect to future security, (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of the employee, and (4) to provide a just means for terminating employee's services at such time as he may be unable to fully discharge his duties due to age or disability; and

Now, therefore, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1. Duties

Employer hereby agrees to employ said Robert W. Healy, Jr. as City Manager of the City of Cambridge to perform the functions and duties specified in Chapter 43, Section 93 to 10E, and the Ordinances of the City of Cambridge, and to perform other legally permissible and proper duties and functions as the City Council may from time to time assign.

Section 2. Term

A. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of the said employee at any time, subject only to the provisions set forth in Section 3, Paragraph A, of this agreement.

B. In the event written notice is not given by either party to this agreement to the other sixty days prior to the termination date as hereinabove provided, this agreement shall be extended on the terms and conditions as herein provided for a period of one year. Said agreement shall continue thereafter for one-year periods unless either party hereto gives sixty days' written notice to the other party that the party does not wish to extend this agreement for an additional one-year term.

Section 3. Termination

A. The City Council upon a vote of a majority of its membership in accordance with Chapter 43, Section 103, of the Massachusetts General Laws, may terminate this agreement, and provide further that the City Council agrees to pay the City Manager 50% of the financial obligations, or six months salary, which ever is greater, and 100% of any accrued sick leave, vacation, holidays, compensatory time accrued during the term of this contract, retirement benefits, or other accrued benefits owed to the City Manager for the remaining term of the agreement. The payment provisions are voided in the event the Employee is convicted of a felony or malfeasance in office, other than those earned benefits such as accrued sick leave, vacation, compensatory time and retirement. In the event of termination at the expiration of this contract the Employee shall be entitled to six months' severance pay.

Section 4. Disability

A. If Employee is permanently disabled, or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four successive weeks beyond any accrued sick leave, Employer or Employee shall have the option to terminate this agreement subject to the conditions in Section 3. Employee shall be compensated for any accrued sick leave, vacation, holiday, compensatory time or other accrued benefits. For the purpose of this Section, the Employee, inasmuch as he is the City Conservator of the Peace of the City of

Cambridge, shall be provided retirement benefits in accordance with Chapter 32, Section 3, paragraph f, as if a member of Group 4.

B. Employer agrees to put into force the Employee insurance policies for accident, sickness and disability income benefits.

Section 5. Compensation

A. The City Manager shall be paid an annual salary in accordance with Chapter 2.62 of the Cambridge Municipal Code on the salaries of Department Heads of the City of Cambridge.

B. The City Manager shall be covered by an insurance policy in the amount of \$120,000 payable to the beneficiaries named by the City Manager. This insurance may include "whole life, paid up, or cash value" insurance at the discretion of the City Manager.

C. The City Manager shall be entitled to all medical, dental, hospital, life insurance, and other benefits available to other personnel employed by the City.

D. The City Manager shall be entitled to twenty-five working days of annual vacation, exclusive of legal holidays. It is the intention of these parties that these vacation days be taken annually, but in no event may the Employee carry forward more than five days' vacation in any one year during the term of this agreement. The City Manager may be compensated for up to ten unused vacation days per year to be paid at the prevailing salary.

Section 6. Evaluation of Goals

A. The Council shall review and evaluate the performance of the Employee at least once annually in advance of the adoption of the annual operating budget. Said review and evaluation shall be in accordance with specific criteria developed jointly by Employer and Employee.

B. Annually, in January, the Council and Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the City and in the attainment of the Council's policy objectives and shall further establish a relative priority among those various goals and objectives. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

Section 7. Hours of Work

A. It is recognized that the Employee must devote a great deal of time outside the normal office hours of the Employer, and to that end the Employee will be allowed to take compensatory time off.

Section 8. Automobile

A. Employee's duties require that he have the unrestricted use of an automobile provided by the Employer which shall be replaced on the schedule previously established for the Mayor's automobile.

Section 9. Retirement

A. The City Council agrees that the City Manager as Chief Conservator of the Peace of the City of Cambridge shall be provided retirement benefits in the same formula as those employees in Group 4 of Chapter 32, Section 3, paragraph f, of the Massachusetts General Laws.

Section 10. Indemnification

A. Employer shall defend, save harmless, and indemnify employee against any tort, professional liability claim or demand or other legal action whether groundless or otherwise, arising out of an alleged act or omission occurring in the Employee's performance of his duties as City Manager.

Section 11. General Provisions

A. The text herein contained shall constitute the entire agreement between the parties.

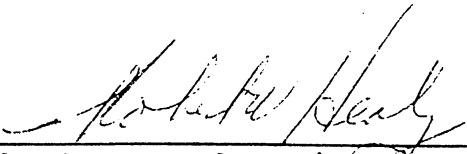
B. This agreement shall be binding upon the inure to the benefit of the heirs at law and executors of the Employee.

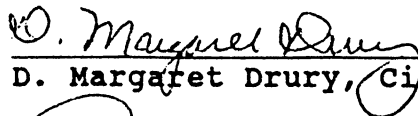
C. This agreement shall become effective July 1, 1993.

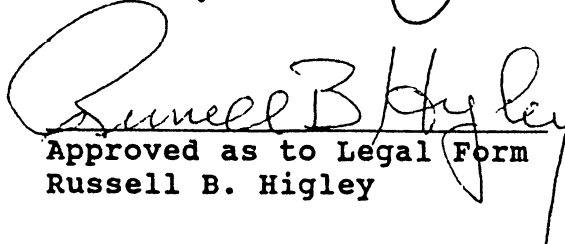
D. If any provision, or any portion thereof, contained in this agreement are held unconstitutional, the remainder of the agreement shall be deemed severable, and shall not be affected and shall remain in full force and effect.

In Witness Whereof, the City Council of the City of Cambridge has voted that this agreement be entered into as duly attested by its City Clerk, and the Employee has signed and executed this agreement this 26th day of April, 1993.

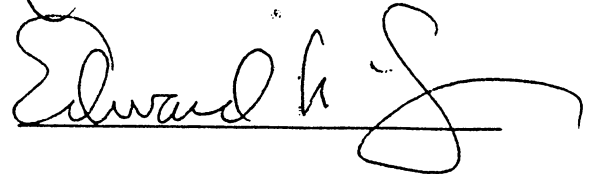
City Councillors:

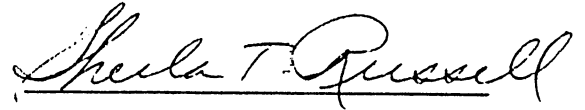

Robert W. Healy, City Manager

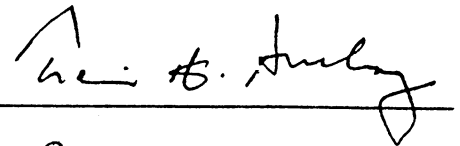

D. Margaret Drury, City Clerk

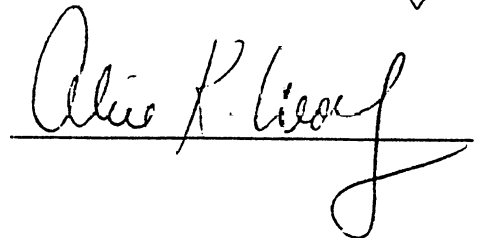

Approved as to Legal Form
Russell B. Higley

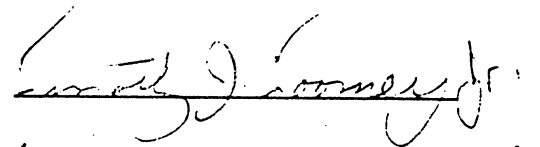

Kenneth E. Reeves

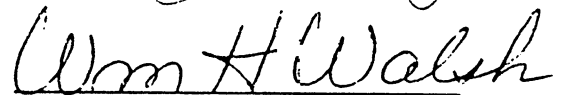

Edward H. [unclear]

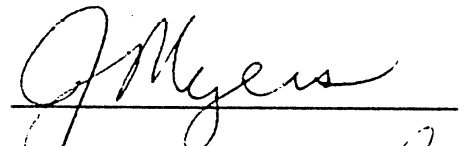

Sheila T. Russell

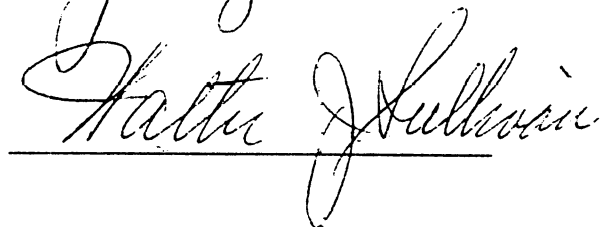

[unclear]


Alice K. [unclear]


[unclear]


Wm H. Walsh


J. Myers


Katherine J. Sullivan

AN EMPLOYMENT AGREEMENT BETWEEN THE CITY COUNCIL
OF CAMBRIDGE AND THE CITY MANAGER

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Whereas, the City desires to have such an Employment Agreement in order to spell out the remuneration and benefits of the City Manager; and,

Whereas, the City Manager is the Chief Executive Officer, Chief Administrative, and Chief Conservator of the Peace for the City of Cambridge in accordance with Chapter 43, Section 93 to 108 of the Massachusetts General Laws, (Plan E Charter),

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This agreement, made and entered this ____ day of _____, 1993 by and between the City of Cambridge, a municipal corporation and Robert W. Healy, Jr., City Manager, and expire on June 30, ~~1998~~ 1995.

C. Cyp amend

Roll call

Whereas, the City desires to employ the service of Robert W. Healy, Jr., as City Manager of the City of Cambridge in accordance with Chapter 43, Sections 93 to 108 of the Massachusetts General Laws; and

Whereas, it is the desire of the Cambridge City Council to provide certain benefits, establish certain conditions of employment, and to set working conditions of said employee; and

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B. In the event written notice is not given by either party to this agreement to the other sixty days prior to the termination date as hereinabove provided, this agreement shall be extended on the terms and conditions as herein provided for a period of one year. Said agreement shall continue thereafter for one-year periods unless either party hereto gives sixty days' written notice to the other party that the party does not wish to extend this agreement for an additional one-year term.

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accrued during the term of this contract RHP call

Chapter 32, Section 3, paragraph f, as a member of Group 4.

B. Employer agrees to put into force the Employee insurance policies for accident, sickness and disability income benefits.

Section 5. Compensation

A. The City Manager shall be paid an annual salary in accordance with ~~Ordinance Number 2-191~~ the Department Heads of the City of Cambridge. *Ch. 2.62 of the Municipal Ordinance for*

UV/9-0

B. The City Manager shall be covered by an insurance policy in the amount of \$120,000 payable to the beneficiaries named by the City Manager. This insurance may include "whole life, paid up, or cash value" insurance at the discretion of the City Manager.

C. The City Manager shall be entitled to all medical, dental, hospital, life insurance, and other benefits available to other personnel employed by the City.

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uv/g-0
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Section 11. General Provisions

A. The text herein contained shall constitute the entire agreement between the parties.

B. This agreement shall be binding upon the issue to the benefit of the heirs at law and executors of the Employee.

C. This agreement shall become effective July 1, 1993.

D. If any provision, or any portion thereof, contained in this agreement are held unconstitutional, the remainder of the agreement shall be deemed severable, and shall not be affected and shall remain in full force and effect.

City of Cambridge

MASSACHUSETTS

In City Council 3/30 1993

V.M. Cyr motion:

2 yr contract to

	YEA	NAY	ABSENT	PRESENT	
Mr. Ed Cyr	✓				
Mr. Francis H. Duehay		✓			
Mr. Jonathan S. Myers		✓			
Mrs. Sheila T. Russell	✓				
Mr. Walter J. Sullivan	✓				
Mr. Timothy J. Toomey, Jr.	✓				
Mr. William H. Walsh	✓				
Ms. Alice K. Wolf		✓			
Mayor Kenneth E. Reeves	✓				

6 3

WS MS UV/9-0

WS MR
RF ~~UV/9~~ Roll Cms

City of Cambridge

MASSACHUSETTS

In City Council 3/30 1993

Wolf amend

*to Cyr amend
Camp Time only accrues during this contract*

	YEA	NAY	ABSENT	PRESENT	
Mr. Ed Cyr	✓				
Mr. Francis H. Duehay	✓				
Mr. Jonathan S. Myers	✓				
Mrs. Sheila T. Russell	✓				
Mr. Walter J. Sullivan				✓	
Mr. Timothy J. Toomey, Jr.		✓			
Mr. William H. Walsh				✓	
Ms. Alice K. Wolf	✓				
Mayor Kenneth E. Reeves				✓	

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City of Cambridge

W.S.

MASSACHUSETTS

Moved

In City Council

3/30

1993

Reconsideration

	YEA	NAY	ABSENT	PRESENT	
Mr. Ed Cyr		✓			
Mr. Francis H. Duehay	✓				
Mr. Jonathan S. Myers	✓				
Mrs. Sheila T. Russell		✓			
Mr. Walter J. Sullivan		✓			
Mr. Timothy J. Toomey, Jr.		✓			
Mr. William H. Walsh		✓			
Ms. Alice K. Wolf	✓				
Mayor Kenneth E. Reeves		✓			
	3	6	0	0	

In Witness Whereof, the City Council of the City of Cambridge has voted that this agreement be entered into as duly attested by its City Clerk, and the Employee has signed and executed this agreement this _____ day of _____, 199

City Councillors:

Robert W. Healy, City Manager

D. Margaret Drury, City Clerk



CITY OF CAMBRIDGE

Office of the City Solicitor
City Hall

795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Tel. (617) 349-4121

Fax. (617) 349-4307

Diane Wynshaw-Boris
Legal Counsel

Laura H. Yager
Legal Counsel

Linda A. Stamper
Legal Counsel

Arthur J. Goldberg
Legal Counsel

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Eirge Albright
Legal Counsel

Gail S. Gabriel
Legal Counsel

December 30, 1992

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

Re: Public Record status of City Manager evaluations

Dear Mr. Healy:

This opinion is given in response to questions posed by the City Council. The Council is proposing to solicit written evaluations of the City Manager's job performance from Cambridge citizens. Forms for the evaluations would be provided by the City Clerk. The evaluations would have to be signed. The forms would be considered by the Council during its evaluation of the City Manager.

The questions posed are:

- 1) Would the signed evaluation forms submitted by citizens be subject to disclosure under the state public records laws?; and
- 2) Would the City Manager have the right to obtain the signed forms that are submitted?

The closest precedent on the first issue is Connolly v. Bromery, 15 Mass.App.Ct. 661 (1983). In Connolly, the Court held that written evaluations by students of the performance of faculty

members at a public university are not subject to disclosure. The Court found applicable G.L.c.4, s.7(c), which provides that otherwise public records are not subject to disclosure if they are:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.

The Court wrote:

Raw data appraising the job performance of individuals...is particularly personal and volatile....[W]e have no difficulty concluding that the student evaluations of teachers are personnel information and, as such, outside the category of a public record. Studies which digest raw data and which deal with departmental, rather than individual, performance might fall into a different category. Id. at 664.

Cases under the analogous federal public records law (5 U.S.C. §552(b)(6)) also hold that performance evaluations of public employees are not public records subject to disclosure because they are personnel information. See, e.g., Ripskis v. Department of Housing and Urban Development, 746 F.2d 1 (1984).

There are of course factual distinctions between students evaluating their teachers and citizens evaluating their city's chief executive as part of a public process of information gathering by the Council. Informal conversations with staff attorneys in the office of the state Supervisor of Public Records were inconclusive on whether the Connolly case would govern this situation. The staff attorneys stated that they could not know how their office might officially rule on this issue. They suggested that the issue be presented to them for a formal opinion which they would try to issue within 1 to 2 weeks of submission. I have requested a formal opinion from them.

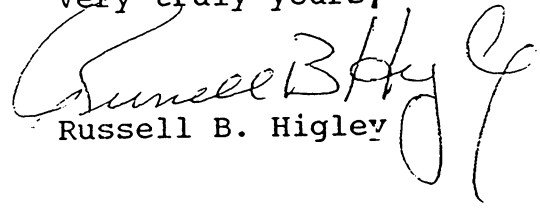
If the Connolly case governs here, then the evaluations from citizens would not be public records available to the general public. If the Connolly case does not govern and the evaluations are available to the public, it is likely that the names of the citizens who sign the evaluations could not be redacted prior to public disclosure.

On the second question, it appears that the City Manager would have a right to see the unedited signed evaluations whether they are public records or not. Generally, an employee has a right of access to his or her own personnel records, which would include documents that could affect the employee's employment. See, G.L.c.149, s.52C; G.L.c.66A, ss.1 et seq.

The issue of the rights that the citizen evaluator would have to have his or her name exempted from disclosure is one that is addressed formally in the opinion request to the Supervisor of Public Records. Such rights are probably not particularly weighty in this situation, but they have not been defined in precedent. In Globe Newspaper Co. v. Boston Retirement Board, 388 Mass. 427, 442 fn.24 (1983), the Supreme Judicial Court explicitly reserved a similar issue for future decision.

If the notices and questionnaires are sent out prior to receipt of the opinion from the Supervisor of Public Records, citizens should be advised that it is possible that their signed evaluations will be subject to public disclosure.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Russell B. Higley". The signature is written in dark ink and is positioned above the printed name.

Russell B. Higley

cc. Margaret Drury, City Clerk



CITY OF CAMBRIDGE

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Diane Wynshaw-Boris
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Laura H. Yager
Legal Counsel

Linda A. Stamper
Legal Counsel

Arthur J. Goldberg
Legal Counsel

January 11, 1993

James W. Igoe
Supervisor of Public Records
Office of the State Secretary
1 Ashburton Place
Room 1719
Boston, MA 02108

Re: Public Record status of City Manager evaluations

Dear Mr. Igoe:

I am requesting an expedited formal opinion from you concerning the public record status of City Manager evaluation forms. This opinion is requested in response to questions posed by the Cambridge City Council. The Council is proposing to solicit written evaluations of the City Manager's job performance from Cambridge citizens. Forms for the evaluations would be provided by the City Clerk. The evaluations would have to be signed. The forms would be considered by the Council during its evaluation of the City Manager.

The questions posed are:

- 1) Would the signed evaluation forms submitted by citizens be subject to disclosure under the state public records laws?;

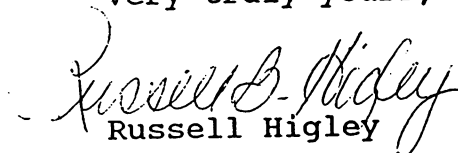
2) Would the City Manager have the right to obtain the signed forms whether or not they are public records?; and,

3) Do the citizen evaluators have rights to have their names redacted from the evaluations prior to their release to the City Manager or to the public?

Enclosed is a copy of the preliminary opinion I have issued on these issues.

Thank you for your assistance.

Very truly yours,


Russell Higley



CITY OF CAMBRIDGE

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City Hall

795 Massachusetts Avenue
Cambridge, Massachusetts 02139

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Linda A. Stamper
Legal Counsel

Arthur J. Goldberg
Legal Counsel

February 9, 1993

Margaret Drury
City Clerk
City Hall
Cambridge, MA 02139

Re: *Public Records Opinion Regarding City Manager Evaluations*

Dear Ms. Drury:

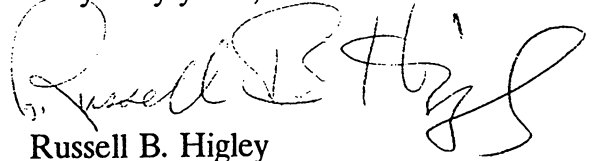
I am attaching a copy of the opinion rendered by James W. Igoe, Supervisor of Public Records. You will recall that on December 30, 1992 I sent you an opinion on this same matter in which I indicated that the question should be presented to the Supervisor for a formal opinion.

The Supervisor's opinion concludes that the evaluations constitute information that is "personal" to the employee (City Manager) and would not ordinarily be public records. The opinion clearly indicates that unless the evaluator has included information in the evaluation which contains "intimate details of a highly personal nature" (to the evaluator), the City Manager is entitled to see all of the evaluations. Finally, if the evaluations were substantively discussed in an open session of the City Council, the evaluations would become public.

Given this opinion of the Supervisor it is my opinion that you are required to determine whether or not there is any information in the evaluations that contains "intimate details of a highly personal nature" to the evaluators, and if you conclude there is none then all of the evaluations should be available to the City Manager at his request. Since it is my understanding that the City Manager does not object to any of the evaluations being made public, and since the Supervisor concludes that the evaluators cannot have a reasonable

expectation of privacy in their identities, the evaluations must be viewed as public records that do not fall within any of the limited exceptions to the public records law.

Very truly yours,

A handwritten signature in black ink, appearing to read "Russell B. Higley". The signature is stylized with large, sweeping loops and a prominent "H".

Russell B. Higley

Russell B. Higley



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

February 8, 1993
SPR93/010

Russell Higley
City Solicitor
City of Cambridge
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. The Cambridge City Council proposes to solicit written evaluations of the City Manager's job performance from Cambridge citizens. These evaluations are to be signed by the citizen evaluator and used by the City Council during its evaluation of the City Manager. You question the public records status of the written evaluations. Specifically, you ask whether:

1. the signed evaluation forms submitted by citizens are subject to mandatory disclosure under the Public Records Law;
2. the City Manager may have access to the evaluation materials regardless of their public records status; and
3. if the evaluations are subject to mandatory disclosure, may the citizen evaluators have their names redacted from the evaluations prior to disclosure.

Russell Higley
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"Public records" is broadly defined to include all documentary materials or data made or received by any officer or employee of any city in the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26)(a)-(m) (1990 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). Public records, and any non-exempt, segregable portions thereof, are subject to mandatory disclosure upon request. G. L. c. 66, § 10(a) (1990 ed.); Reinstein v. Police Commissioner of Boston, 378 Mass. 281, 289-90 (1979) (the statutory exemptions are not blanket in nature).

Evaluation Materials

You state that the completed evaluation forms will contain evaluative material relating to the City Manager's job performance. Therefore, the privacy exemption merits consideration. It applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.

G. L. c. 4, § 7(26)(c) (1990 ed.).

The privacy exemption contains two distinct and independent clauses, each requiring separate analysis. Globe Newspaper Company v. Boston Retirement Board, 388 Mass. 427, 432-34 (1983). Both clauses are relevant to this opinion. Under the first clause, which is analyzed objectively, personnel information which is of a "personal nature" and which relates to a specifically named individual is absolutely exempt. Brogan v. School Committee of Westport, 401 Mass. 306, 368 (1987); Globe Newspaper Company, 388 Mass. at 438. The performance evaluations constitute personnel information relating to a specifically named individual. Therefore, the remaining inquiry is whether the information is of a "personal nature".

Information which is subjective or evaluative constitutes "personal" information. See Connolly v. Bromery, 15 Mass. App. Ct. 661, 664 (1983) (student evaluations of teachers appraising job performance is personal and volatile). Consequently, the evaluations submitted by Cambridge citizens which contain their personal evaluations of the City Manager would be exempt from mandatory disclosure pursuant to the first clause of the privacy exemption in most circumstances. However, discussion of the evaluations in open session will affect their public records status.

Russell Higley
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Disclosure to City Manager

You ask whether the City Manager may have access to the evaluations despite operation of the privacy exemption. The privacy exemption is designed to protect against invasions of an individual's personal privacy. An individual, however, is not capable of invading his own privacy. Therefore, the first clause of the privacy exemption may not be used to withhold the evaluations from the City Manager.

It should also be noted that details in an evaluation which if disclosed could identify the author may be exempt if the author has a reasonable expectation of confidentiality with respect to the content of the evaluation. See Attorney General v. School Committee of Northampton, 375 Mass. 127, 129 (1978); Torres v. Attorney General, 391 Mass. 1, 9 (1984); Ackerly v. Ley, 420 F. 2d 1336, 1339-40 n.3 (D.C. Cir. 1969). However, it is my understanding that individuals received the evaluations with the knowledge that they may be read and discussed in open sessions of the City Council. Therefore, as a general rule, these individuals cannot have a reasonable expectation of privacy in their identities. Thus, in most instances, the City Manager will have access to the identities of the citizen evaluators.

However, there may be special circumstances in which disclosure of the identities of the evaluators will result in an unreasonable invasion of the privacy interests of those citizens. A subjective analysis under the second clause of the privacy exemption is required in those instances. The second clause requires a balancing of the competing interests of the public's right to know against the privacy interest which may be harmed by disclosure. See Real Property Department, 380 Mass. at 625; Torres, 391 Mass. at 9. Therefore, application of the second clause can only be determined on a case by case basis.

The privacy exemption only protects "intimate details of a highly personal nature." See Real Property Department, 380 Mass. at 625. Marital status, legitimacy of children, paternity, medical condition, government assistance, substance abuse, family disputes and reputation are examples of the kind of information the privacy exemption is designed to protect. Id. at 626 n.2. Since the Public Records Law favors disclosure, the exemption will only apply where the privacy interest of the individual outweighs the public interest in disclosure. See Attorney General v. Collector of Lynn, 377 Mass. 151, 156 (1979).

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Without knowing the contents of each evaluation, it is impossible to render an opinion as to the potential application of the second clause of the privacy exemption. Where, however, in the course of completing an evaluation, an individual has disclosed "intimate details" such as the examples listed above about her personal life, the individual's privacy interest must be weighed against the public interest in disclosure of the evaluator's identity. If the privacy interest outweighs such public interest, the second clause of the privacy exemption will provide a basis to withhold the identity of the evaluator from the City Manager. Alternatively, the individual's identity may be disclosed upon the redaction of the exempt information. See G. L. c. 66, § 10(a) (1990 ed.) (custodian has duty to segregate exempt information from otherwise public record).

Discussion of Evaluations in Open Meeting

It is my understanding that the Council operates under the provisions of the Open Meeting Law. See G. L. c. 39, § 23B (1990 ed.) (requiring that governmental bodies conduct meetings, with certain exceptions, in open session and that a record of the proceedings be created). Therefore, discussion of the evaluations in an open session of the Council will effect their public records status. I am informed that the City Council intends to so discuss the evaluations in order to assist in its appraisal of the City Manager's job performance.

The legislation which codified the current statutory definition of "public records" contains a grandfather provision which prohibits the application of any of the 1973 exemptions to materials which would have been public under previous definitions. 1973 Mass. Acts c. 1050, § 6. One such previous definition of public records provided that all records referred to in the minutes of a meeting are public records.¹ 1969 Mass. Acts c. 831, § 1; see also Open Meeting Law Guidelines, Scott Harshbarger, District Attorney, Middlesex District, p. 14 (December, 1989 ed.) (providing that minutes should contain a reference to any issue raised and considered, even if no vote is taken).

¹. The 1969 definition of public records provides that all records referred to in the minutes of an open meeting are public records. Such definition refers only to those documents which are openly deliberated upon by the government. Where documents are referred to in open meeting minutes simply to comply with Open Meeting Law procedures, the 1969 definition as applied through the grandfather provision of the current definition of public records will not operate to make those documents public.

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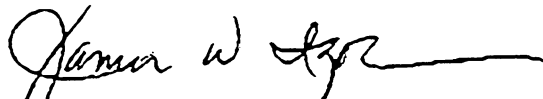
The intent of the General Court in enacting the 1973 definition of public records was to expand the disclosure of records and ensure that governmental activities are open to public examination. Hastings & Sons Publishing Company v. City Treasurer of Lynn, 374 Mass. 812, 816 (1978). The Open Meeting Law similarly provides for public participation in the operations of government. In the absence of the 1969 requirement making public all documents referenced in meeting minutes, meaningful participation would be precluded. Therefore, any evaluations referenced in the minutes of the Council's open meetings will become public in their entirety, including the identities of the evaluators, despite application of the privacy exemption.

Conclusion

Therefore, you are hereby advised that the completed evaluation forms may be withheld from public disclosure pursuant to the first clause of the privacy exemption. However, the first clause does not provide a basis to withhold the evaluations from the City Manager, since he cannot invade his own privacy. Under certain circumstances, the identities of some evaluators may be withheld from the City Manager if those evaluators included information of a sufficiently personal nature to warrant application of the second clause of the privacy exemption. Finally, if the evaluations are substantively discussed in an open session of the City Council, neither clause of the privacy exemption will apply and the evaluations become public records in their entirety.

Please contact this office if you have questions regarding this opinion.

Very truly yours,



JAMES W. IGOE
Supervisor of Public Records



City of Cambridge

AGENDA # 17

IN CITY COUNCIL

NOVEMBER 9, 1992

VICE MAYOR CYR

ORDERED: That this City Council go on record requesting the Board of Election Commissioners to reschedule a training session for members of the City Council regarding the City's Ethics Ordinance; and be it further

ORDERED: That His Honor the Mayor be and hereby is requested to call a Special Meeting for Thursday, November 19th at 4:00 P. M. in the Sullivan Chamber for the purpose of discussing the evaluation process to be used regarding the City Manager's Performance; and be it further

ORDERED: That said process be completed within thirty days, if possible.

In City Council November 9, 1992.
Adopted by the affirmative vote of nine members.
Attest:- D. Margaret Drury, City Clerk.

A true copy; *D. Margaret Drury*

ATTEST:-

D. Margaret Drury
City Clerk



City of Cambridge

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City of Cambridge

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A true copy;

D. Margaret Drury

ATTEST:-

D. Margaret Drury
City Clerk

City of Cambridge

CM Evaluative process
w/ 30 days
"If possible"

MASSACHUSETTS

In City Council

11/9

1992

YEA	NAY	ABSENT	PRESENT	
✓				Mr. Ed Cyr
✓				Mr. Francis H. Duehay
✓				Mr. Jonathan S. Myers
✓				Mrs. Sheila T. Russell
✓				Mr. Walter J. Sullivan
✓				Mr. Timothy J. Toomey, Jr.
✓				Mr. William H. Walsh
✓				Ms. Alice K. Wolf
✓				Mayor Kenneth E. Reeves
9	0	0	0	



OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 349-4260

FAX (617) 349-4307

D. MARGARET DRURY
CITY CLERK

JOHN E. FLYNN
DEPUTY CITY CLERK

November 10, 1992

TO: THERESA NEIGHBOR, EXECUTIVE DIRECTOR
ELECTION COMMISSION

FROM: ^{DMD} D. MARGARET DRURY
CITY CLERK

SUBJECT: TRAINING SESSION

Attached you will find a copy of an order which was adopted the City Council at the City Council meeting of November 9, 1992.

As you will note, the City Council has requested that the Board reschedule a training session for the members of the City Council regarding the Ethics Ordinance.

Would you kindly forward this request to the Election Commission Board members.

Thank you for your cooperation in this regard.



City of Cambridge

AGENDA # 17

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NOVEMBER 9, 1992

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ATTEST:-

D. Margaret Drury
City Clerk



17.

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

November 9, 1992

To The Honorable, The City Council:

In accordance with my contractual agreement with the City of Cambridge, I hereby submit my goals for the City Administration for 1993. These goals reflect the many policy discussions which we have engaged in, and are responsive to the quality of life and needs of our citizens. Although the goals are separated by program area, many of these activities will be accomplished through collaborative efforts: departments working collaboratively together, and the City working collaboratively with residents of Cambridge.

As we reflect on our many accomplishments of the past decade (attached) we should all be proud of this impressive list. Cambridge, during the 1980's enjoyed unprecedented growth in its tax base through a well planned energetic program of economic development. During this time many new programs were developed, the quality and level of service improved dramatically, and an unprecedented level of infrastructure improvement took place. The City responded appropriately in many areas where the federal and state governments began to retreat from their commitment to supporting many social programs.

In reviewing the following goals, we must work jointly to focus on our community's needs and to do so in an era of shrinking financial resources. The many policy initiatives and decisions made by the Council must compete for funding within a more competitive arena. Jointly, we can work together to put forth a City Budget which sets out a work plan for City Officials to carry out the Council's goals and meet the needs of our citizens.

Very truly yours,

Robert W. Healy
City Manager

RWH/mev
attachments

CONSENT AGENDA ITEM #17

S-153-a

Awaiting Report item No. 5 regarding
goals and objectives of the City
Manager.

In City Council,

November 9, 1992

*Referred to the City
manager's evaluation
process.*

Order adopted.

*Copy of order sent to
mayor 11/10/92 @*

1993 GOALS & OBJECTIVES

FINANCE

- Establish a City of Cambridge Scholarship Fund for which all Cambridge residents who attended a Cambridge high school will be eligible.
- Maintain the City's tax levy below the legal limit.
- Maintain the annual revaluation of real and personal property.
- Enhance the preparation and management of the annual budget through increased utilization of automated systems.
- Update the City's five-year annual financial projections.
- Increase the amount of delinquent tax collection by 20%.
- Arrange financing and credit for the City's capital improvement projects.
- Put City in position to move to quarterly tax billing if cash flow requires.
- Investigate the implementation of a city-wide geographic information system.
- Work with City Clerk's Office in automating its functions, including implementation of an automated Resident Information Service.

HUMAN RESOURCE DEVELOPMENT

- Establish a Staff Development Capabilities Program in order to develop and implement a comprehensive program for staff training and development, which will include a variety of capacity building efforts, and a system of performance evaluation.
- Implement the City's Affirmative Action Plan, including the continued reduction of underrepresentation among women and minorities in all sectors of City employment, particularly among officials and administrators and among generally underrepresented groups such as Asians and Hispanics.
- Convert the health insurance coverage of employees and retirees currently receiving first dollar indemnity health insurance coverage at 99% City pay, to a new HMO plan with an out-of-network option, with a 10% employee pay, thereby helping to stabilize growing employee and retiree health insurance costs.
- Convert the 10% employee share of health insurance premiums for groups accepting the new HMO plan to a pre-tax basis and establish Flexible Spending Accounts and

Dependent Care Assistance Plans, thereby reducing the out-of-pocket impact of the increasing health care contributions.

- Reach agreement with unionized employee groups with expired or expiring labor contracts that provide for a fair and consistent wage increase, in return for conversion of the health insurance coverage and at least one or two additional significant productivity gains.
- Train all managers and supervisors to recognize and eliminate sexual harassment in the work place.
- Implement a fair and affordable Early Retirement Program that permanently reduces the overall City workforce.
- Increase voluntary participation in the Employee Assistance Program.
- Implement health coverage for domestic partners consistent with law and collective bargaining.
- Implement pilot programs to better recognize outstanding employee contributions to the City.

Library

- Identify library and service priorities and develop an implementation plan to include online electronic databank extensions to branch and school libraries.
- Explore the use of the Cable Institutional Network as a means of extending the databanks to all public agencies in Cambridge.
- Continue emphasis on multi-cultural and ethnically diverse programs at the Library.
- Increase recruitment efforts to develop greater staff diversity.
- Increase collaboration and coordination of programming with all Elementary and Secondary Schools.

PUBLIC SAFETY

- Implement a computer-aided dispatch system, which will replace the Electrical Department's Communications Center and the 911 Center at the Police Department with a single Communications Center, which will include enhanced 911, serving all emergency response organizations in the City.

- Civilianization of the Police Department and other productivity reforms - including the reduction of the average annual sick day usage - to increase sworn police visibility.
- Conclude the process to evaluate the Police Department space requirements and look at the economic feasibility of a new facility.
- Increase police/neighborhood communication efforts through continued involvement with and expansion of neighborhood crime watch groups, the Drug Abuse Resistance Education (DARE) program, youth dialogues, and other collaborative efforts.
- Develop an integrated response system to domestic violence and abuse which, among other things, utilizes a standardized approach by all members of the Cambridge Police Department and formally links the Police Department with community-based advocacy and counseling programs for victims and abusers.
- Take steps to implement fire study steering committee goals to enhance fire incident and emergency medical response. An integral component of this implementation is the computer assisted dispatch function in the centralized communications center.
- Implement the plan of the Cambridge Local Emergency Planning Committee (LEPC) for responding to and controlling hazardous material incidents in the City.

COMMUNITY MAINTENANCE AND DEVELOPMENT

- Complete a broad based planning process including a Growth Policy for the City and the Alewife Master Plan. Continue the Neighborhood Planning process throughout the City.
- Initiate and implement the first year of the bio-medical technician training program in cooperation with Boston University and Just-A-Start.
- Develop new financing programs to assist in the retention, expansion and attraction of business, including the federal Section 108 Loan Program to provide lab space for growing bio-tech companies.
- Continue to support and assist programs to improve Central Square, including the Cambridge Business Development Center and the Mayor's Commission on Central Square.
- Develop and implement a marketing strategy designed to attract businesses to Cambridge, particularly emerging technology and light manufacturing firms, and to strengthen the City's tourism industry.
- Provide technical assistance and support in refocussing and strengthening the City's employment programs, including the construction jobs program.

- Improve communication between City administration and residents/neighborhood groups around City initiatives.
- Lead coordination activities among City departments, Cambridge Housing Authority and housing nonprofits related to affordable housing through the Housing Cabinet and the Affordable Housing Trust.
- Identify resources to ensure continuation of housing activities including: the Home Improvement Program, the Delead Program, the Small Property Owners Program, Neighborhood Apartment Housing Services Multi-Family Loan Program, the Housing Services Program, Fair Housing Activities, Expiring Use activities, administration of \$1.2 million in federal HOME funds and work with local lenders.
- Assist in development of new affordable housing opportunities for low-and-moderate income households including seventy-five units of mixed-income housing at University Park, and rehabilitation of 129 SRO's at the YMCA and other development projects comprising approximately twenty-five units. Resources dedicated to this include: City staff, and money from the Affordable Housing Trust Fund, Federal HOME Program and CDBG funds.
- Direct staff efforts to continue to develop approach, identify resources and design programs which preserve both the conditions and affordability of the City's multi-family stock.
- Reorganize the Inspectional Services Department to increase the effectiveness of that department.

Public Works Department

- Reduce overtime, sick leave and vehicular accidents.
- Complete roadway improvements and add additional grave space to the Cambridge Cemetery.
- Inventory and survey all streets, sidewalks, bus stops and pedestrian ramps.
- Increase miscellaneous sidewalk repairs by 25%.
- Increase by two miles the amount of street sweeping per month by sweeping one side of the residential streets on the off days at the end of each month.
- Install at least 40 new permanent wrought iron litter baskets throughout the City.
- Install a new irrigation system and grass infield at the Tobin and Donnelly Fields.

- Develop a computerized inventory program for the survey of the new and 3,000 existing public shade trees.
- Complete the installation of water conservation devices in City buildings.
- Continue the catch basin cleaning program throughout the City.
- Develop a contract administration procedure and standardize the format for the preparation of all DPW contracts.

HEALTH & HUMAN SERVICES

Human Services

- Enhance services to the elder population, through the development of a citywide senior center. The new facility will allow for the coordination of health, nutrition, transportation, recreation and education services in a one-stop shopping approach.
- Substantially increase English as a Second Language (ESL) resources by establishing collaborative relationships between the Community Learning Center and organizations and institutions in the community who have already expressed a willingness to provide ESL.
- Work with foundations and the business community to establish a tuition assistance fund for Cambridge families. In collaboration with the Kids Council and the Child Care Resource Center, the Department of Human Services is seeking to establish a citywide child care tuition assistance fund. The City has been a leader in its commitment to providing financial support for its child care programs.
- In its commitment to providing the youth of Cambridge with quality programs and services in the community, the City will soon be opening a new youth center in Area IV. The new center is the third such public construction project in the past eight years targeted for youth.
- Increase outreach in multiple languages to persons who may be eligible for public benefits (i.e. Food Stamps, WIC, SSI, Earned Income Tax Credits), and enhance employment and training opportunities for Multi-Service Center clients in the coming year.

Department of Health and Hospitals

- To protect and improve the health of the Cambridge community utilizing all units of the Department including the Cambridge Hospital, the Neighborhood Health Centers, the Neville Manor and all the units of the Health Department. To work with policy input from the Health Policy Board. To develop optimal coordination with the resources of other City departments, the Kid's Council, the Health of the City Project, the Substance Abuse Task Force and the other important Task Forces within the City.
- Completion of the APEX Project, the Assessment Protocol for Excellence in Public Health. This project examines, through community input and statistical profiles, health status and needs in Cambridge and establishes priorities.
- Increase effective care within minority populations with efforts from greater prenatal care to decreased morbidity and mortality in older age groups in coordination with the Men of Color Task Force of the Health and the City Project.
- Increase the percentage of preschool children in the age group 18 months to 5 years who have appropriate immunizations to at least 70% in the next 4 years enlisting the efforts of the Kid's Council and the Healthy Children Task Force.
- Expand the efforts of the Department within the Cambridge/Boston Coalition, Project Assist, to decrease cigarette smoking especially in the adolescent group.
- Continue and increase support to the efforts for identification and treatment of the increasing numbers of people with tuberculosis to limit and decrease the spread of tuberculosis in the City.
- Maintain and increase the resources for the Cambridge AIDS Task Force in their widespread efforts in education and prevention of HIV infection as well as their effective coordination of the current resources in the care and treatment of patients with the infection.

The Cambridge Hospital

- Play a leadership role in structuring the new hospital financing mechanisms, particularly for Medicaid and uncompensated care pool services.
- Develop key clinical services to include expansion of the hospital's patient geographic base and market share in Somerville.

- Develop improved capacity to compete in a managed care environment through improved productivity, reduced costs, and tighter utilization management.
- Finalize program development, feasibility analysis, determination of need process, other approval processes, and architect selection for Facilities Master Plan.
- Continue development of institution-wide marketing and customer service orientation with particular focus on City employees and managed care entities.
- Strengthen hospital's corporate ability to respond in a competitive environment by forming a not-for-profit Physician/Hospital Organization (PHO).
- Prepare Hospital staff and facility to insure a successful triennial survey by the Joint Commission on the Accreditation of Healthcare Organizations.
- Initiate the development of a comprehensive program for the treatment of substance abuse at the Cambridge Hospital.
- Continue the implementation of the Cambridge Hospital Affirmative Action Program.
- Implement the intensive training stage of the Continuous Quality Improvement (CQI) program and commence utilization of CQI tools and teams on a controlled basis throughout the hospital.

Neville Manor

- Collaboratively develop a statement of mission, vision and values for Neville Manor.
- Install new windows and a roof to improve environmental quality.
- Reorganize the nursing department, by instituting a nurse manager position for each unit. This position will have 24-hour responsibility for the unit, increasing accountability.
- Install additional software programs in both financial and resident care areas to improve efficiency.
- Implement a program of continuous quality improvement, which will involve extensive education of employees and their involvement in decisions that affect and improve their work environment.
- Reduce overtime costs by 70% by hiring sufficient numbers of persons to fill positions on a regular time basis; reduce sick time usage by 25% and institute other changes in staffing policies.

EDUCATION

- Working in cooperation with the Superintendent and the School Committee, continue the implementation of the Cambridge Public Schools strategic plan with emphasis on:
 - Student progress and achievement;
 - Student and family support services;
 - Curriculum and staff support; and
 - Organizational development.
- Support the "Shared Vision" plan of the Cambridge Partnership for Public Education.

ENVIRONMENTAL ISSUES

- Implement the Cambridge Environmental Program, which includes the following major activities: formalize and expand coordination of environmental services, planning and response among City departments through the Environmental Coordinating Council and the Environmental Program; establish an environmental information and technical assistance clearing house; coordinate implementation of the Vehicle Trip Reduction Ordinance; and establish an environmental review process for City sponsored projects.
- Implement clean air initiatives, which includes the following major activities: initiate a bicycle and pedestrian mobility program building on the work of the bicycle committee; begin implementation of commuter mobility program for Cambridge employees; study alternatives for a pilot clean fuels program for City vehicles; continue to work with State and Federal regulators on proposals to amend the State Implementation Plan for the Clean Air Act; work with neighborhoods and State Transportation Officials to improve transit services within the City; continue to implement computerization of traffic signals throughout the City to improve congestion management; and establish HOV priority parking in City garages.
- Implement Solid Waste Management Initiatives, including: work with businesses to implement commercial recycling; implement a source reduction program affecting every City employee; increase total recyclables to 19% of solid waste collected; assume responsibility for oil recycling program initiated as a pilot program by MWRA; develop long range plan to relocate and expand recycling drop off; develop, in cooperation with neighboring communities, a permanent household hazardous waste collection program; and initiate a recycled products purchasing program for the City.

- Central Artery Project Coordination, which includes: continued participation in evaluation and environmental review of Charles River Crossing design; assisting the Central Artery project in assessing the traffic impacts during and after construction of the project; and working closely with the project to ensure implementation of environmental and traffic mitigation.
- Protect Water Resources, which includes the following activities: enhance environmental management at Fresh Pond through development of a Master Plan for the reservation; enhance protection of the Cambridge water supply through continued participation in the Cambridge Watershed Advisory Committee; continue to work closely with the MDC to coordinate protection and management of wetlands and waterways in the City; and implement revised snow and ice management program to reduce salt runoff per lane mile/per incident.

Water Department

- Develop future water treatment plant recommendations for the City Council.
- Complete interim water treatment plant improvements.
- Evaluate feasibility of applying for Increased Water Withdrawal Permit.
- Secure Water Exchange Agreement with MWRA.
- Develop lead water service replacement program.
- Develop watershed environmental education program.
- Pilot test telephone meter reading system.
- Enhance customer service information function which includes issueing quarterly newsletters for residents, and the development of "Customer Advisories" on commonly asked questions.
- Expand Cross Connection Control Program.
- Implement residuals disposal program.
- Participate in the development of water policy and regulation by the State and the MWRA.

CAPITAL IMPROVEMENTS

Over the past decade, the City has had a very aggressive capital improvements program. Due to fiscal constraints at the present time and in the foreseeable future, it will be difficult to maintain as aggressive a capital improvements program. The City's capacity to maintain pay-as-you-go capital projects is lacking. The focus over the next five years will be on the following projects, none of which will be supported by tax revenue:

- An appropriate and financially viable expansion of the Cambridge Hospital, to be supported by Hospital revenues and bond proceeds, the debt service of which will be paid by Hospital revenues;
- Sewer Separation Project, to be supported by sewer revenues and a State loan program;
- Replacement of the Water Treatment Plant, to be supported by water revenues; and
- Street reconstruction, to be supported by the Commonwealth's Chapter 90 funds.

ACCOMPLISHMENTS

Capital Spending

A total of more than \$200 million spent to improve the Cambridge infrastructure over the past ten years, including:

- Reconstruction of 44 miles of streets and sidewalks (1/3 of all those in the City).
- A 25% increase in the amount of City-owned green space.
- Two teen centers rehabilitated totally and one newly-built.
- Renovation of four schools.
- Renovation of three fire stations including headquarters.
- A rebuilt and automated city-wide communication system that substantially increased and enhanced police communications.
- The \$13 million renovation and rebuilding of the City reservoir in Belmont, insuring the integrity of the City water system for the next 100 years. Allows the City to avoid costly MWRA water use.
- A \$11 million transformation of the old city dump into the 50-acre Danchy Park and the contiguous five-acre St. Peter's Field and Garden Street Glen.
- Renovation of the Macht Building at the Cambridge Hospital.
- A new hospital boiler plant and heating and air conditioning system--improvements of more than \$8 million that reduced oil consumption by 50%.
- New health centers built in North Cambridge, at the High School, at Riverside and on Massachusetts Avenue.
- Creation of 30 long-term care nursing home beds at the renovated Neville Manor.
- Planting of more than 5,000 trees and the improvement care and maintenance by hiring the first professional City Arborist.
- Renovation of the Department of Public Works garage.

- Systematic program for reconstruction of all tot lots and athletic fields.
- Construction of City parking garages.
- In conjunction with Harvard University, construction of the new Observatory Hill Branch Library.
- Continuing program for historical restorations.
- Annual water system capital improvement program.
- Computerized traffic signalization.

Financial Management

In 1981, the City was facing a \$1.9 million budget deficit, the need to borrow \$47.5 million in short term notes just to meet operating expenses, a suspended credit rating, the newly-added fiscal constraints of Proposition 2 1/2, and a halt to all capital improvement plans.

Over the past ten years, the City has:

- Moved from a \$1.9 million deficit to a \$22.5 million General Fund balance.
- Added staff in Human Services and at the Hospital, while reducing the total number of City employees by 204 (8%).
- Kept the City's cash position so strong as to make short-term borrowing of cash unnecessary in each of the last five years.
- Developed annual equipment replacement programs for the Police, Fire and Public Works Departments, making it possible to provide a modern fleet with minimal maintenance problems.
- Purchased and installed a modern \$3 million data and information processing system that has saved the City hundreds of thousands of dollars in outside service fees.
- Managed to allocate funds to supplement or fully take over services once offered by state or federal governments.
- Received national awards for financial management of a municipality.
- Successfully managed a \$319 million annual operating budget.

- Negotiated Payment in Lieu of Taxes agreements with Harvard and MIT, bringing the City more than \$2 million per year, and making Cambridge the nation's leader in obtaining cash support from major universities
- Fully maintained the main library and seven branches, extending hours and services while other communities have substantially reduced or eliminated library services.

Health & Human Services

Managing a city government in an era of Proposition 2 1/2 when coupled with cuts in local contributions by both state and federal governments, has required a commitment to maintaining and increasing service levels, along with the challenge of finding innovative and creative ways to finance those services.

Accomplishments for the City during the last ten years are the following:

- City supplemental support of \$500,000 for mental health and substance abuse programs formerly funded by the state.
- Creation of a national recognized model of comprehensive care for the homeless that coordinates services from public agencies, the City, the City hospital and non-profit groups like CASPAR.
- A shelter and meal program that guarantees the homeless in Cambridge a place to sleep and two meals a day.
- Designation of a City owned house for the transitional use by homeless families and teenagers.
- Cooperation with the YMCA and YWCA to procure funds to provide single room occupancy unites.
- Creation of a child care system that services 350 families with 500 children, allowing parents to hold jobs, supported by a city-wide tuition assistance program.
- Creation of a national municipal model for AIDS prevention and treatment programs, including appointment of the Cambridge AIDS Task Force, a health coordinator to identify and obtain grants, and a hospital program, that treats 280 HIV positive people with AIDS symptoms.
- Funding of job training for those seeking employment in the bio-tech field.

- Support for English as a Second Language training programs held in conjunction with private companies for adult workers.

Other Achievements

- Creation of ambitious recycling program that will eventually reduce the City's solid waste disposal by 15 to 20%.
- Awarding and supervision of the City's first cable television license.
- Appointment of the City's first police commissioner.
- Improvement of business/government relations.
- Increase of minority representation on City payroll by 69%.



City of Cambridge

AGENDA # 17

IN CITY COUNCIL

NOVEMBER 9, 1992

VICE MAYOR CYR

ORDERED: That this City Council go on record requesting the Board of Election Commissioners to reschedule a training session for members of the City Council regarding the City's Ethics Ordinance; and be it further

ORDERED: That His Honor the Mayor be and hereby is requested to call a Special Meeting for Thursday, November 19th at 4:00 P. M. in the Sullivan Chamber for the purpose of discussing the evaluation process to be used regarding the City Manager's Performance; and be it further

ORDERED: That said process be completed within thirty days, if possible.

In City Council November 9, 1992.
Adopted by the affirmative vote of nine members.
Attest:- D. Margaret Drury, City Clerk.

A true copy; *D. Margaret Drury*

ATTEST:-

D. Margaret Drury
City Clerk



CITY OF CAMBRIDGE

Office of the City Solicitor
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February 9, 1993

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Re: *Public Records Opinion Regarding City Manager Evaluations*

Dear Ms. Drury:

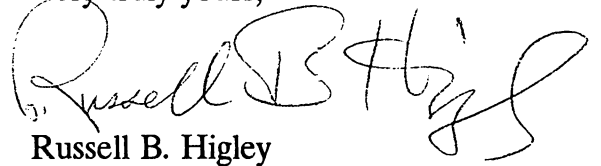
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The Supervisor's opinion concludes that the evaluations constitute information that is "personal" to the employee (City Manager) and would not ordinarily be public records. The opinion clearly indicates that unless the evaluator has included information in the evaluation which contains "intimate details of a highly personal nature" (to the evaluator), the City Manager is entitled to see all of the evaluations. Finally, if the evaluations were substantively discussed in an open session of the City Council, the evaluations would become public.

Given this opinion of the Supervisor it is my opinion that you are required to determine whether or not there is any information in the evaluations that contains "intimate details of a highly personal nature" to the evaluators, and if you conclude there is none then all of the evaluations should be available to the City Manager at his request. Since it is my understanding that the City Manager does not object to any of the evaluations being made public, and since the Supervisor concludes that the evaluators cannot have a reasonable

expectation of privacy in their identities, the evaluations must be viewed as public records that do not fall within any of the limited exceptions to the public records law.

Very truly yours,

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Russell B. Higley



The Commonwealth of Massachusetts

Office of the Secretary of State
Michael Joseph Connolly, Secretary

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February 8, 1993
SPR93/010

Russell Higley
City Solicitor
City of Cambridge
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Cambridge, Massachusetts 02139

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1. the signed evaluation forms submitted by citizens are subject to mandatory disclosure under the Public Records Law;
2. the City Manager may have access to the evaluation materials regardless of their public records status; and
3. if the evaluations are subject to mandatory disclosure, may the citizen evaluators have their names redacted from the evaluations prior to disclosure.

Russell Higley
Page Two
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personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.

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The privacy exemption contains two distinct and independent clauses, each requiring separate analysis. Globe Newspaper Company v. Boston Retirement Board, 388 Mass. 427, 432-34 (1983). Both clauses are relevant to this opinion. Under the first clause, which is analyzed objectively, personnel information which is of a "personal nature" and which relates to a specifically named individual is absolutely exempt. Brocan v. School Committee of Westport, 401 Mass. 306, 368 (1987); Globe Newspaper Company, 388 Mass. at 438. The performance evaluations constitute personnel information relating to a specifically named individual. Therefore, the remaining inquiry is whether the information is of a "personal nature".

Information which is subjective or evaluative constitutes "personal" information. See Connolly v. Bromery, 15 Mass. App. Ct. 661, 664 (1983) (student evaluations of teachers appraising job performance is personal and volatile). Consequently, the evaluations submitted by Cambridge citizens which contain their personal evaluations of the City Manager would be exempt from mandatory disclosure pursuant to the first clause of the privacy exemption in most circumstances. However, discussion of the evaluations in open session will affect their public records status.

Russell Higley
Page Three
February 8, 1993

SPR93/010

Disclosure to City Manager

You ask whether the City Manager may have access to the evaluations despite operation of the privacy exemption. The privacy exemption is designed to protect against invasions of an individual's personal privacy. An individual, however, is not capable of invading his own privacy. Therefore, the first clause of the privacy exemption may not be used to withhold the evaluations from the City Manager.

It should also be noted that details in an evaluation which if disclosed could identify the author may be exempt if the author has a reasonable expectation of confidentiality with respect to the content of the evaluation. See Attorney General v. School Committee of Northampton, 375 Mass. 127, 129 (1978); Torres v. Attorney General, 391 Mass. 1, 9 (1984); Ackerly v. Ley, 420 F. 2d 1336, 1339-40 n.3 (D.C. Cir. 1969). However, it is my understanding that individuals received the evaluations with the knowledge that they may be read and discussed in open sessions of the City Council. Therefore, as a general rule, these individuals cannot have a reasonable expectation of privacy in their identities. Thus, in most instances, the City Manager will have access to the identities of the citizen evaluators.

However, there may be special circumstances in which disclosure of the identities of the evaluators will result in an unreasonable invasion of the privacy interests of those citizens. A subjective analysis under the second clause of the privacy exemption is required in those instances. The second clause requires a balancing of the competing interests of the public's right to know against the privacy interest which may be harmed by disclosure. Real Property Department, 380 Mass. at 625; Torres, 391 Mass. at 9. Therefore, application of the second clause can only be determined on a case by case basis.

The privacy exemption only protects "intimate details of a highly personal nature." Real Property Department, 380 Mass. at 625. Marital status, legitimacy of children, paternity, medical condition, government assistance, substance abuse, family disputes and reputation are examples of the kind of information the privacy exemption is designed to protect. Id. at 626 n.2. Since the Public Records Law favors disclosure, the exemption will only apply where the privacy interest of the individual outweighs the public interest in disclosure. Attorney General v. Collector of Lynn, 377 Mass. 151, 156 (1979).

Russell Higley
Page Four
February 8, 1993

SPR93/010

Without knowing the contents of each evaluation, it is impossible to render an opinion as to the potential application of the second clause of the privacy exemption. Where, however, in the course of completing an evaluation, an individual has disclosed "intimate details" such as the examples listed above about her personal life, the individual's privacy interest must be weighed against the public interest in disclosure of the evaluator's identity. If the privacy interest outweighs such public interest, the second clause of the privacy exemption will provide a basis to withhold the identity of the evaluator from the City Manager. Alternatively, the individual's identity may be disclosed upon the redaction of the exempt information. See G. L. c. 66, § 10(a) (1990 ed.) (custodian has duty to segregate exempt information from otherwise public record).

Discussion of Evaluations in Open Meeting

It is my understanding that the Council operates under the provisions of the Open Meeting Law. See G. L. c. 39, § 23B (1990 ed.) (requiring that governmental bodies conduct meetings, with certain exceptions, in open session and that a record of the proceedings be created). Therefore, discussion of the evaluations in an open session of the Council will effect their public records status. I am informed that the City Council intends to so discuss the evaluations in order to assist in its appraisal of the City Manager's job performance.

The legislation which codified the current statutory definition of "public records" contains a grandfather provision which prohibits the application of any of the 1973 exemptions to materials which would have been public under previous definitions. 1973 Mass. Acts c. 1050, § 6. One such previous definition of public records provided that all records referred to in the minutes of a meeting are public records.¹ 1969 Mass. Acts c. 831, § 1; see also Open Meeting Law Guidelines, Scott Harshbarger, District Attorney, Middlesex District, p. 14 (December, 1989 ed.) (providing that minutes should contain a reference to any issue raised and considered, even if no vote is taken).

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Russell Higley
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SPR93/010

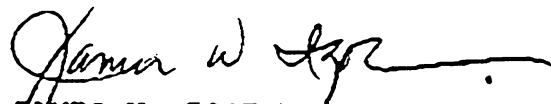
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Conclusion

Therefore, you are hereby advised that the completed evaluation forms may be withheld from public disclosure pursuant to the first clause of the privacy exemption. However, the first clause does not provide a basis to withhold the evaluations from the City Manager, since he cannot invade his own privacy. Under certain circumstances, the identities of some evaluators may be withheld from the City Manager if those evaluators included information of a sufficiently personal nature to warrant application of the second clause of the privacy exemption. Finally, if the evaluations are substantively discussed in an open session of the City Council, neither clause of the privacy exemption will apply and the evaluations become public records in their entirety.

Please contact this office if you have questions regarding this opinion.

Very truly yours,



JAMES W. IGOE
Supervisor of Public Records



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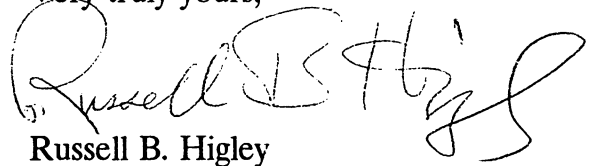
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The Commonwealth of Massachusetts

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February 8, 1993
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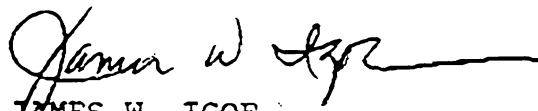
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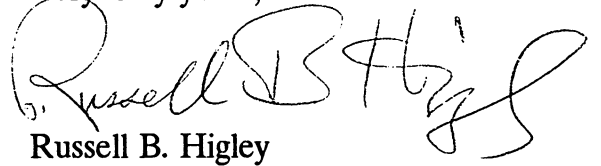
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G. L. c. 4, § 7(26)(c) (1990 ed.).

The privacy exemption contains two distinct and independent clauses, each requiring separate analysis. Globe Newspaper Company v. Boston Retirement Board, 388 Mass. 427, 432-34 (1983). Both clauses are relevant to this opinion. Under the first clause, which is analyzed objectively, personnel information which is of a "personal nature" and which relates to a specifically named individual is absolutely exempt. Brogan v. School Committee of Westport, 401 Mass. 306, 368 (1987); Globe Newspaper Company, 388 Mass. at 438. The performance evaluations constitute personnel information relating to a specifically named individual. Therefore, the remaining inquiry is whether the information is of a "personal nature".

Information which is subjective or evaluative constitutes "personal" information. See Connolly v. Bromery, 15 Mass. App. Ct. 661, 664 (1983) (student evaluations of teachers appraising job performance is personal and volatile). Consequently, the evaluations submitted by Cambridge citizens which contain their personal evaluations of the City Manager would be exempt from mandatory disclosure pursuant to the first clause of the privacy exemption in most circumstances. However, discussion of the evaluations in open session will affect their public records status.

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Disclosure to City Manager

You ask whether the City Manager may have access to the evaluations despite operation of the privacy exemption. The privacy exemption is designed to protect against invasions of an individual's personal privacy. An individual, however, is not capable of invading his own privacy. Therefore, the first clause of the privacy exemption may not be used to withhold the evaluations from the City Manager.

It should also be noted that details in an evaluation which if disclosed could identify the author may be exempt if the author has a reasonable expectation of confidentiality with respect to the content of the evaluation. See Attorney General v. School Committee of Northampton, 375 Mass. 127, 129 (1978); Torres v. Attorney General, 391 Mass. 1, 9 (1984); Ackerly v. Ley, 420 F. 2d 1336, 1339-40 n.3 (D.C. Cir. 1969). However, it is my understanding that individuals received the evaluations with the knowledge that they may be read and discussed in open sessions of the City Council. Therefore, as a general rule, these individuals cannot have a reasonable expectation of privacy in their identities. Thus, in most instances, the City Manager will have access to the identities of the citizen evaluators.

However, there may be special circumstances in which disclosure of the identities of the evaluators will result in an unreasonable invasion of the privacy interests of those citizens. A subjective analysis under the second clause of the privacy exemption is required in those instances. The second clause requires a balancing of the competing interests of the public's right to know against the privacy interest which may be harmed by disclosure. See Real Property Department, 380 Mass. at 625; Torres, 391 Mass. at 9. Therefore, application of the second clause can only be determined on a case by case basis.

The privacy exemption only protects "intimate details of a highly personal nature." See Real Property Department, 380 Mass. at 625. Marital status, legitimacy of children, paternity, medical condition, government assistance, substance abuse, family disputes and reputation are examples of the kind of information the privacy exemption is designed to protect. Id. at 626 n.2. Since the Public Records Law favors disclosure, the exemption will only apply where the privacy interest of the individual outweighs the public interest in disclosure. See Attorney General v. Collector of Lynn, 377 Mass. 151, 156 (1979).

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Without knowing the contents of each evaluation, it is impossible to render an opinion as to the potential application of the second clause of the privacy exemption. Where, however, in the course of completing an evaluation, an individual has disclosed "intimate details" such as the examples listed above about her personal life, the individual's privacy interest must be weighed against the public interest in disclosure of the evaluator's identity. If the privacy interest outweighs such public interest, the second clause of the privacy exemption will provide a basis to withhold the identity of the evaluator from the City Manager. Alternatively, the individual's identity may be disclosed upon the redaction of the exempt information. See G. L. c. 66, § 10(a) (1990 ed.) (custodian has duty to segregate exempt information from otherwise public record).

Discussion of Evaluations in Open Meeting

It is my understanding that the Council operates under the provisions of the Open Meeting Law. See G. L. c. 39, § 23B (1990 ed.) (requiring that governmental bodies conduct meetings, with certain exceptions, in open session and that a record of the proceedings be created). Therefore, discussion of the evaluations in an open session of the Council will effect their public records status. I am informed that the City Council intends to so discuss the evaluations in order to assist in its appraisal of the City Manager's job performance.

The legislation which codified the current statutory definition of "public records" contains a grandfather provision which prohibits the application of any of the 1973 exemptions to materials which would have been public under previous definitions. 1973 Mass. Acts c. 1050, § 6. One such previous definition of public records provided that all records referred to in the minutes of a meeting are public records.¹ 1969 Mass. Acts c. 831, § 1; see also Open Meeting Law Guidelines, Scott Harshbarger, District Attorney, Middlesex District, p. 14 (December, 1989 ed.) (providing that minutes should contain a reference to any issue raised and considered, even if no vote is taken).

¹. The 1969 definition of public records provides that all records referred to in the minutes of an open meeting are public records. Such definition refers only to those documents which are openly deliberated upon by the government. Where documents are referred to in open meeting minutes simply to comply with Open Meeting Law procedures, the 1969 definition as applied through the grandfather provision of the current definition of public records will not operate to make those documents public.

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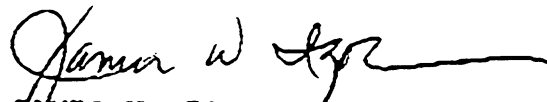
The intent of the General Court in enacting the 1973 definition of public records was to expand the disclosure of records and ensure that governmental activities are open to public examination. Hastings & Sons Publishing Company v. City Treasurer of Lynn, 374 Mass. 812, 816 (1978). The Open Meeting Law similarly provides for public participation in the operations of government. In the absence of the 1969 requirement making public all documents referenced in meeting minutes, meaningful participation would be precluded. Therefore, any evaluations referenced in the minutes of the Council's open meetings will become public in their entirety, including the identities of the evaluators, despite application of the privacy exemption.

Conclusion

Therefore, you are hereby advised that the completed evaluation forms may be withheld from public disclosure pursuant to the first clause of the privacy exemption. However, the first clause does not provide a basis to withhold the evaluations from the City Manager, since he cannot invade his own privacy. Under certain circumstances, the identities of some evaluators may be withheld from the City Manager if those evaluators included information of a sufficiently personal nature to warrant application of the second clause of the privacy exemption. Finally, if the evaluations are substantively discussed in an open session of the City Council, neither clause of the privacy exemption will apply and the evaluations become public records in their entirety.

Please contact this office if you have questions regarding this opinion.

Very truly yours,



JAMES W. IGOE
Supervisor of Public Records

City of Cambridge

MASSACHUSETTS

*C. Sullivan
Motion to Execute
3 yrs contract*

In City Council 3/30 19993

	YEA	NAY	ABSENT	PRESENT
Mr. Ed Cyr		✓		
Mr. Francis H. Duehay		✓		
Mr. Jonathan S. Myers		✓		
Mrs. Sheila T. Russell	✓			
Mr. Walter J. Sullivan	✓			
Mr. Timothy J. Toomey, Jr.	✓			
Mr. William H. Walsh	✓			
Ms. Alice K. Wolf		✓		
Mayor Kenneth E. Reeves		✓		

4 5 0 0

failed of adoption

City of Cambridge

C. Duehay

MASSACHUSETTS

Amend to Sec 5 A of Proposed Contract

In City Council

3/30

1993

City Mgr's salary^{+ benefit} shall be that in effect at beginning of term

	YEA	NAY	ABSENT	PRESENT	
Mr. Ed Cyr	✓				
Mr. Francis H. Duehay	✓				
Mr. Jonathan S. Myers	✓				
Mrs. Sheila T. Russell				✓	
Mr. Walter J. Sullivan				✓	
Mr. Timothy J. Toomey, Jr.		✓			
Mr. William H. Walsh				✓	
Ms. Alice K. Wolf	✓				
Mayor Kenneth E. Reeves		✓			

4

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failed of adoption

3 yr cont.
On C. Sullivan ~~done~~ pay

City of Cambridge

MASSACHUSETTS

C. Duehay
motion to Delek p. 10 In City Council 3/30 1993
to pay "5870 ~~for Sec 7A~~ of the financial obligations" which is greater from Sec 3A
~~To allow for~~

	YEA	NAY	ABSENT	PRESENT
Mr. Ed Cyr	✓			
Mr. Francis H. Duehay	✓			
Mr. Jonathan S. Myers		✓		
Mrs. Sheila T. Russell				✓
Mr. Walter J. Sullivan				✓
Mr. Timothy J. Toomey, Jr.		✓		
Mr. William H. Walsh				✓
Ms. Alice K. Wolf	✓			
Mayor Kenneth E. Reeves	NO	✓		

3 3 0 3

failed of adyph

As pertained to 2 yr contract

City of Cambridge

MASSACHUSETTS

Mr Cyr

In City Council 3/30 1997

Delete "50% of the fence obly" "when is speak"

	YEA	NAY	ABSENT	PRESENT
Mr. Ed Cyr	✓			
Mr. Francis H. Duehay	✓			
Mr. Jonathan S. Myers	① ✓	① ✓		
Mrs. Sheila T. Russell				✓
Mr. Walter J. Sullivan				✓
Mr. Timothy J. Toomey, Jr.		✓		
Mr. William H. Walsh				✓
Ms. Alice K. Wolf	✓			
Mayor Kenneth E. Reeves	.			✓

① 3 2 0 4
 ② 4 1 0

Failed

City of Cambridge

MASSACHUSETTS

C. Myers amend

In City Council 3/30 1993

to 3 mos severance in event of ten or more

	YEA	NAY	ABSENT	PRESENT
Mr. Ed Cyr		✓		
Mr. Francis H. Duehay		✓		
Mr. Jonathan S. Myers	✓			
Mrs. Sheila T. Russell		✓		
Mr. Walter J. Sullivan		✓		
Mr. Timothy J. Toomey, Jr.		✓		
Mr. William H. Walsh	✓			
Ms. Alice K. Wolf		✓		
Mayor Kenneth E. Reeves		✓		

2 7 0 0

failed of adopt



City of Cambridge

1.

IN CITY CCUNCIL

March 30, 1993

VICE MAYOR CYR

ORDERED: That the City Council be recorded as approving the Employment Agreement between the City Council and the City Manager, Robert W. Healy, attached to this Order and incorporated herein, with a term ending June 30, 1995.

In City Council March 30, 1993.

Adopted by a yea and nay vote:-

Yeas 6; Nays 3; Absent 0.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

D. Margaret Drury
D. Margaret Drury
City Clerk

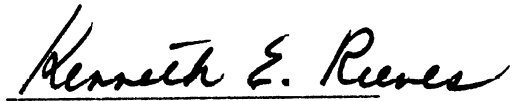
City of Cambridge

March 26, 1993

Dear Councillor:

You are hereby notified to attend a **SPECIAL MEETING** of the City Council for Tuesday, March 30, 1993 at 5:30 p. m. in the Sullivan Chamber.

By order of His Honor the Mayor.



Kenneth E. Reeves
Mayor

The purpose of this meeting is to discuss with the City Manager, Robert W. Healy, his current contract and the possibility of a future contract. A vote of the City Council on a new contract may take place at this meeting.

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