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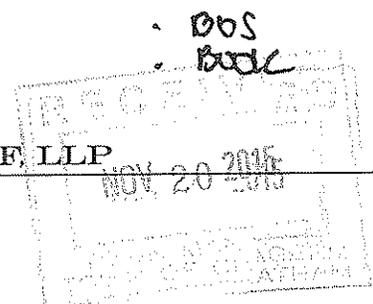
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November 18, 2015

Jill R. Goldsmith  
Town Manager  
Chatham Town Hall  
549 Main Street  
Chatham, MA 02633

**Re: Distribution of Citizen Correspondences by Members of the Board of Selectmen**

Dear Ms. Goldsmith:

The Board of Selectmen ("Board") has requested my opinion relative to the potential imposition of restrictions upon the release or distribution to individuals other than Board members of correspondences received by members of the Board from private citizens.

To properly address the status of correspondences received by members of the Board of Selectmen it must first be determined whether such correspondences fall within the definition of public records under the Massachusetts Public Records law as provided in G.L. c. 4, § 7(26). If so, the maintenance, release or distribution of said correspondences must be conducted in accordance therewith. If correspondences from members of the general public to a member of the Board do not fall within the broad definition of "public records" under said statute, they would be construed as personal correspondences which may be maintained and/or distributed as the recipient deems appropriate. The key distinction between public records and non-public records would turn on whether such correspondence was received by, and was intended to be used by, a member of the Board in his capacity as a Selectman or, alternatively, whether it was intended for his review solely as a private individual. Note that correspondence relating to a matter of public business within the Board's jurisdiction would virtually always be deemed to be a public record unless it clearly fell within one of the statutory exemptions from such classification.

The term "public records" is defined very broadly by the provision of G.L. c. 4, § 7(26) to include "all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data regardless of physical form or characteristics,

Jill R. Goldsmith  
Town Manager  
November 18, 2015  
Page 2

made or received by any officer or employee” of a Massachusetts governmental entity. There are multiple specific exemptions to this broad definition of public records. It is also significant to note that pursuant to the Massachusetts Open Meeting law, G.L. c. 31A, § 22, public bodies, such as a Board of Selectmen, are required to create and maintain accurate minutes of all meetings, which must include a list of all documents and exhibits “used” at the meeting. Accordingly, any documents, regardless of their nature, which are “used” by members of the Board of Selectmen in the course of a Board meeting are required to be kept and maintained as a public record.

Thus, to the extent that a member of the Board, in his official capacity, receives correspondence from a private citizen relative to a matter of business pending before the Board, or a Board member reads from, refers to or otherwise “uses” such correspondence during the course of a Selectmen’s meeting, such correspondence would be deemed a public record, would have to be maintained as such, and would be subject to inspection and disclosure upon issuance of a request therefor. Considering the underlying purpose and intent of the Public Record statute and Open Meeting law to promote openness and transparency in public proceedings, I do not view the *voluntary* release or distribution of such a correspondence to another private citizen to be contrary to any statute. Certainly, to the extent that such correspondence *is requested* by a member of the public pursuant to G.L. c. 66, § 10(a), it must, as a matter of law, be released.

The discussion of the Board of Selectmen at its meeting on November 2, 2015 focused on the legal authority of the Board of Selectmen to regulate or limit the right of its members to distribute correspondences received from private citizens to other citizens. It is well established that a board of selectmen may adopt such rules, regulations and policies to govern the conduct of its meetings and its members as it deems appropriate, provided that such rules, regulations or policies are not inconsistent with applicable laws. The Chatham Charter and Bylaws are silent with respect to such internal rule making authority by the Selectmen, however, Section 3-2(b) provides that “[t]he board of selectmen shall continue to have and to exercise all the powers and duties vested in boards of selectmen by the laws of the commonwealth, and such additional powers and duties authorized by the charter, by bylaw or by vote of the town...”. Accordingly, in my opinion, the Board of Selectmen does have the legal authority to adopt rules, policies or regulations relative to its members’ receipt, maintenance and/or distribution of correspondence from private citizens regarding matters of Board business, provided that said rules, policies or regulations do not conflict with any applicable statute, law or regulation.

As noted above, there is already substantial state law governing the maintenance and mandatory distribution/ release of correspondence which constitutes a “public record”, as defined by General Law. Should the Board desire to augment this regulatory scheme by limiting or

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Jill R. Goldsmith  
Town Manager  
November 18, 2015  
Page 3

restricting the voluntary distribution of Town business-related correspondence received by Board members from private citizens or requiring the submission of all such correspondences to all other Board members for their review, I believe it would have the legal authority to do so by adopting an internal Board procedural rule, regulation or policy. I have scanned several municipal codes searching for such correspondence regulations, and, frankly, I did not find much of note on this particular subject. I suspect that the dearth of such local regulations is likely due to the comprehensive scope of existing State law provisions regarding the maintenance and distribution of public records.

It was not clear from my review of the November 2, 2015 meeting minutes what specific action the Board wished to consider with respect to citizen correspondence, assuming it determined it had the authority to adopt regulations in this regard. Should the Board wish to adopt a policy, regulation or rule on citizen correspondences, please notify me of the general substance of the desired regulation/ restriction on use or distribution of citizen correspondence and I will prepare a draft regulation or policy for your review/ approval.

Please let me know if you have any further questions in this regard.

Very truly yours,

  
Patrick J. Costello

PJC