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The following material on the **OPEN MEETING LAW, CONFLICT OF INTEREST LAW**, and the **PUBLIC RECORDS LAW** has been prepared for distribution to all elected and appointed officials and members of committees, commissions and boards.

In your capacity as a member of a governmental body of the Town of Winchester, whether you are elected or appointed, paid or unpaid, you should be familiar with these important laws governing meetings, conduct and public records.

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THE OPEN MEETING LAW
MASSACHUSETTS GENERAL LAWS
CHAPTER 39, SECTION 23A
(as amended through 12/94)

Section 23A. Meetings of Governmental Bodies; Definitions.

The following terms as used in sections twenty-three B and twenty-three C shall have the following meanings:

"Deliberation", a verbal exchange between a quorum of members of a governmental body attempting to arrive at a decision on any public business within its jurisdiction.

"Emergency", a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

"Executive session", any meeting of a governmental body which is closed to certain persons for deliberation on certain matters.

"Governmental body", every board, commission, committee or subcommittee of any district, city, region or town, however elected, appointed or otherwise constituted, and the governing board of local housing, redevelopment or similar authority; provided, however, that this definition shall not include a town meeting.

"Made public", when the records of an executive session have been approved by the members of the respective governmental body attending such session for release to the public and notice of such approval has been entered in the records of such body.

"Meeting", any corporal convening and deliberation of a governmental body for which a quorum is required in order to make a decision at which any public business or public policy matter over which the governmental body has supervision, control, jurisdiction or advisory power is discussed or considered; but shall not include any on-site inspection of any project or program.

"Quorum", a simple majority of a governmental body unless otherwise defined by constitution, charter, rule or law applicable to such governing body.

Section 23B. Meetings of Governmental Bodies; Procedure; Enforcement.

All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by this section.

No quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided by this section.

No executive session shall be held until the governmental body has first convened in an open session for which notice has been given, a majority of the members have voted to go into executive session and the vote of each member is recorded on a roll call vote and entered into the minutes, the presiding officer has cited the purpose for an executive session, and the presiding officer has stated before the executive session if the governmental body will reconvene after the executive session.

Nothing except the limitation contained in this section shall be construed to prevent the governmental body from holding an executive session after an open meeting has been convened and a recorded vote has been taken to hold an executive session. Executive sessions may be held only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual involved in such executive session has been notified in writing by the governmental body, at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(a) to be present at such executive session during discussions or considerations which involve that individual.

(b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.

(c) to speak in his own behalf.

(2) To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual, provided that the individual involved in such executive session pursuant to this clause has been notified in writing by the governmental body at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(a) to be present at such executive session during discussions or considerations which involve that individual.

(b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation.

(c) to speak in his own behalf.

(3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the governmental body, to conduct strategy sessions in preparation for negotiations with nonunion personnel, to conduct collective bargaining sessions or contract negotiations with nonunion personnel.

(4) To discuss the deployment of security personnel or devices.

(5) To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.

(6) To consider the purchase, exchange, lease or value of real property, if such discussions may have a detrimental effect on the negotiating position of the governmental body and a person, firm or corporation.

(7) To comply with the provisions of any general or special law or federal grant-in-aid requirements.

(8) To consider and interview applicants for employment by a preliminary screening committee or a subcommittee appointed by a governmental body if an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee or a subcommittee appointed by a governmental body, to consider and interview applicants who have passed a prior preliminary screening.

(9) To meet or confer with a mediator, as defined in section twenty-three C of chapter two hundred and thirty-three, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or body, provided that (a) any decision to participate in mediation shall be made in open meeting session and the parties, issues involved and purpose of the mediation shall be disclosed; and (b) no action shall be taken by any governmental body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open meeting after such notice as may be required in this section.

This section shall not apply to any chance meeting, or a social meeting at which matters relating to official business are discussed so long as no final agreement is reached. No chance meeting or social meeting shall be used in circumvention of the spirit or requirements of this section to discuss or act upon a matter over which the governmental body has supervision, control, jurisdiction, or advisory power.

Except in an emergency, a notice of every meeting of any governmental body shall be filed with the clerk of the city or town in which the body acts, and the notice or a copy thereof shall, at least forty-eight hours, including Saturdays but not Sundays and legal holidays, prior to such meeting, be publicly posted in the office of such clerk or on the principal official bulletin board of such city or town. The secretary of a regional school district committee shall be considered to be its clerk and he shall file the notice of meetings of the committee with the clerk of each city or town within such district and

each such clerk shall post the notice in his office or on the principal official bulletin board of the district. If the meeting shall be of a regional or district governmental body, the officer calling the meeting shall file the notice thereof with the clerk of each city and town within such region or district, and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or town.

The notice shall be printed in easily readable type and shall contain the date, time and place of such meeting. Such filing and posting shall be the responsibility of the officer calling such meeting.

A governmental body shall maintain accurate records of its meeting setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions. The records of each meeting shall become a public record and be available to the public; provided, however, that the records of any executive session may remain secret as long as publication may defeat the lawful purposes of the executive session, but no longer. All votes taken in executive sessions shall be recorded roll call votes and shall become a part of the record of said executive sessions. No votes taken in open session shall be by secret ballot.

A meeting of a governmental body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction or by means of videotape equipment fixed in one or more designated locations determined by the governmental body except when a meeting is held in executive session; provided, that in such recording there is no active interference with the conduct of the meeting.

Upon qualification for office following an appointment or election to a governmental body, as defined in this section, the member shall be furnished by the city or town clerk with a copy of this section. Each such member shall sign a written acknowledgment that he has been provided with such a copy.

The district attorney of the county in which the violation occurred shall enforce the provisions of this section.

Upon proof of failure by any governmental body or by any member or officer thereof to carry out any of the provisions for public notice or meetings, for holding open meetings, or for maintaining public records thereof, any justice of the supreme judicial court or the superior court sitting within and for the county in which such governmental body acts shall issue an appropriate order requiring such governmental body or member or officer thereof to carry out such provisions at future meetings. Such order may be sought by complaint of three or more registered voters, by the attorney general, or by the district attorney of the county in which the city or town is located.

The order of notice on the complaint shall be returnable no later than ten days after the filing thereof and the complaint shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders with respect to any of the matters referred to in this section may be issued at

any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of this section.

In the hearing of such complaint the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by section eleven A 1/2 of chapter thirty A, by section nine G of chapter thirty-four or by this section.

All processes may be issued from the clerk's office in the county in which the action is brought and, except as aforesaid, shall be returnable as the court orders.

Such order may invalidate any action taken at any meeting at which any provision of this section has been violated, provided that such complaint is filed within twenty-one days of the date when such action is made public.

Any such order may also, when appropriate, require the records of any such meeting to be made public, unless it shall have been determined by such justice that the maintenance of secrecy with respect to such records is authorized. The remedy created hereby is not exclusive, but shall be in addition to every other available remedy. Such order may also include reinstatement without loss of compensation, seniority, tenure or other benefits for any employee discharged at a meeting or hearing held in violation of the provisions of this section.

Such order may also include a civil fine against the governmental body in an amount no greater than one thousand dollars for each meeting held in violation of this section.

The rights of an individual set forth in this section relative to his appearance before a meeting in an executive or open session, are in addition to the rights that an individual may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements, and the exercise or nonexercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

Section 23C. Meetings of Governmental Bodies; Permission to Address Meeting; Removal of Disorderly Persons.

No person shall address a public meeting of a governmental body without permission of the presiding officer at such meeting, and all persons shall, at the request of such presiding officer, be silent. If, after warning from the presiding officer, a person persists in disorderly behavior, said officer may order him to withdraw from the meeting, and, if he does not withdraw, may order a constable or any other person to remove him and confine him in some convenient place until the meeting is adjourned.

Section 24. Limited Effect of Chapter; Application to Districts.

The provisions of this chapter shall be in force only so far as they are not inconsistent with the express provisions of any general or special law; and, so far as apt. shall apply to districts as defined in section one A of chapter forty.

EXECUTIVE SESSION CHECKLIST

- 1. A quorum is present
- 2. The meeting convened in open session and:
 - A. Notice and posting of the meeting was given, or
 - B. The meeting is an emergency meeting
- 3. A roll call vote was taken to go into executive session
- 4. After the executive session the meeting:
 - A. Will reconvene
 - B. Will not reconvene
- 5. The purpose or purposes of this executive session is/are:
 - A. To deliberate upon matters involving an individual where the individual involved has been notified in writing of the meeting and has not requested an open meeting, and regarding:
 - 1) The reputation and character of the individual individual.
 - 2) The discipline or dismissal of a public officer, employee, staff member or individual.
 - 3) A complaint or charge brought against a public officer, employee, staff member or individual.
 - B. To deliberate upon matters which, if done in open meeting could detrimentally affect the position of the Town, and regarding:
 - 1) Collective bargaining.
 - 2) Strategy with respect to collective bargaining.
 - 3) Strategy with respect to litigation.
 - 4) The purchase, exchange, lease or value of real property.
 - C. To deliberate matters regarding:
 - 1) The deployment of security personnel or devices.
 - 2) Allegations of criminal misconduct.
 - D. To comply with provisions of a General Law or special law or Federal Grant-in-Aid requirement, the specific law being:_____.
 - E. To consider and interview preliminary applicant(s) for employment.
 - F. To meet or confer with a mediator with respect to any litigation or decision on any public business involving another party, group or body.

**MIDDLESEX COUNTY DISTRICT ATTORNEY'S OFFICE
MARTHA COAKLEY, DISTRICT ATTORNEY**

**OML GUIDELINES ON USE OF E-MAIL
(Oct 1996)**

INTRODUCTION

In light of the proliferation in the use of personal computers in recent years, it has become more common for persons, both at home and at work, to communicate through electronic mail, commonly known as "e-mail." In order to assist members of governmental bodies to comply with the Open Meeting Law in their use of this new technology, the following guidelines have been prepared. As every case will present its own set of circumstances, these guidelines must be considered general in nature. Specific questions concerning the proper use of e-mail, or other questions concerning the Open Meeting Law, may be directed to the District Attorney's Open Meeting Law Team at (617) 679-6500 ext. 6559.

DISCUSSION

The Open Meeting Law requires that "all meetings of a governmental body shall be open to the public" and that "no quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided by this section." G.L. c.39, §23B. "Meetings" covered by the Law include discussion or consideration by a quorum of "any public business or public policy matter over which the governmental body has supervision, control, jurisdiction, or advisory power." G.L. c.39, § 23A.

Thus, no substantive discussion by a quorum of members of a governmental body about public business within the jurisdiction of the governmental body is permissible except at a meeting held in compliance with the requirements of the Open Meeting Law. Like private conversations held in person or over the telephone, e-mail conversations among a quorum of members of the governmental body that relate to public business violate the Open Meeting Law, as the public is deprived of the opportunity to attend and monitor the e-mail "meeting."

Members of governmental bodies should also be cautious about communicating via e-mail on an individual basis. This is because private, serial conversations may reach a quorum of members without the knowledge of all participants. Private, serial discussions of public business involving a quorum violate the Open Meeting Law regardless of the knowledge or intent of the parties.

Certain housekeeping matters may, of course, be communicated outside of a meeting. Questions concerning meeting cancellations and scheduling often must be discussed outside of a meeting. Similarly, requests to put items on the agenda, as long as no substantive discussion occurs, are properly communicated outside a meeting. Other proper uses of e-mail may be to permit members of a governmental body to communicate

with town department heads or staff. Both members of governmental bodies and town employees, however, must take care not to utilize such communications to poll board members or otherwise engage in deliberations.

Additionally, whenever an e-mail message is sent or received by a member of a governmental body, it is the recommendation of this office that a hard copy be created and immediately placed in a central file, where it can be provided as a public record on request.

CONCLUSION

Despite the convenience and speed of communication by e-mail, its use by members of a governmental body carries a high risk of violating the Open Meeting Law. Not only do private e-mail communications deprive the public of the chance contemporaneously to monitor the discussion, but by excluding non-participating members such communications are also inconsistent with the collegial character of governmental bodies. For these reasons, e-mail messages among members of governmental bodies are best avoided except for matters of a purely housekeeping or administrative nature.

PROCEDURES FOR MULTIPLE-MEMBER BODIES

WINCHESTER HOME RULE CHARTER

Section 7-10 Procedures of Multiple-member Bodies

- (a) **Meetings** - All multiple member bodies of the town, whether elected, appointed or otherwise constituted, shall meet regularly at such times and places within the town as they may, by their own rules, prescribe. Special meetings of any multiple-member body shall be held on the call of the respective chairman, or by a majority of the members thereof by suitable written notice delivered to the residence or place of business of each member at least twenty-four hours in advance of the time set. A copy of said notice shall also be posted on the town bulletin boards. All meetings of all multiple-member bodies shall, at all times, be open to the public and to the press, except as may otherwise be authorized by law.
- (b) **Rules and Journal** - Each multiple-member body shall determine its own rules and order of business unless otherwise provided by the charter or by by-law, and shall provide for keeping a journal of its proceedings. These rules and journals shall be a public record kept available in a place convenient to the public at all reasonable times, and copies shall be kept available in the library.
- (c) **Voting** - Except on procedural matters, all votes of all multiple-member bodies shall be taken by voice or roll call vote, the results of which shall be recorded in the journal.
- (d) **Quorum** - A majority of the members of the multiple-member body shall constitute a quorum, but a smaller number may adjourn from time to time.

CONFLICT OF INTEREST LAW

MASSACHUSETTS GENERAL LAWS

CHAPTER 268A

(as amended through 5/98)

268A:1. Definitions.

Section 1. In this chapter the following words, unless a different meaning is required by the context or is specifically prescribed, shall have the following meanings:

- (a) "Compensation", any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.
- (b) "Competitive bidding", all bidding, where the same may be prescribed by applicable sections of the General Laws or otherwise, given and tendered to a state, county or municipal agency in response to an open solicitation of bids from the general public by public announcement or public advertising, where the contract is awarded to the lowest responsible bidder.
- (c) "County agency", any department or office of county government and any division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder.
- (d) "County employee", a person performing services for or holding an office, position, employment, or membership in a county agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis.
- (e) "Immediate family", the employee and his spouse, and their parents, children, brothers and sisters.
- (f) "Municipal agency", any department or office of a city or town government and any council, division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder.
- (g) "Municipal employee", a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution.
- (h) "Official act", any decision or action in a particular matter or in the enactment of legislation.
- (i) "Official responsibility", the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action.
- (j) "Participate", participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.
- (k) "Particular matter", any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by

the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property.

(l) "Person who has been selected", any person who has been nominated or appointed to be a state, county or municipal employee or has been officially informed that he will be so nominated or appointed.

(m) "Special county employee", a county employee who is performing services or holding an office, position, employment or membership for which no compensation is provided; or who is not an elected official and (1) occupies a position which, by its classification in the county agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, provided that disclosure of such classification or permission is filed in writing with the State Ethics Commission and the office of the county commissioners prior to the commencement of any personal or private employment, or (2) in fact does not earn compensation as a county employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special county employee shall be in such a status on days for which he is not compensated as well as on days on which he earns compensation.

(n) "Special municipal employee", a municipal employee who is not a mayor, a member of the board of aldermen, a member of a city council, or a selectman in a town with a population in excess of ten thousand persons and whose position has been expressly classified by the city council, or board of aldermen if there is no city council, or board of selectmen, as that of a special employee under the terms and provisions of this chapter; provided, however, that a selectman in a town with a population of ten thousand or fewer persons shall be a special municipal employee without being expressly so classified. All employees who hold equivalent offices, positions, employment or membership in the same municipal agency shall have the same classification; provided, however, no municipal employee shall be classified as a "special municipal employee" unless he occupies a position for which no compensation is provided or which, by its classification in the municipal agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, or unless he in fact does not earn compensation as a municipal employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special municipal employee shall be in such status on days for which he is not compensated as well as on days on which he earns compensation. All employees of any city or town wherein no such classification has been made shall be deemed to be "municipal employees" and shall be subject to all the provisions of this chapter with respect thereto without exception.

(o) "Special state employee", a state employee:

(1) who is performing services or holding an office, position, employment or membership for which no compensation is provided, or

(2) who is not an elected official and

(a) occupies a position which, by its classification in the state agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, provided that disclosure of such classification

or permission is filed in writing with the state ethics commission prior to the commencement of any personal or private employment, or

(b) in fact does not earn compensation as a state employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special state employee shall be in such a status on days for which he is not compensated as well as on days on which he earns compensation.

(p) "State agency", any department of a state government including the executive, legislative or judicial, and all councils thereof and thereunder, and any division, board, bureau, commission, institution, tribunal or other instrumentality within such department, and any independent state authority, district, commission, instrumentality or agency, but not an agency of a county, city or town.

(q) "State employee", a person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis, including members of the general court and executive council. No construction contractor nor any of their personnel shall be deemed to be a state employee or special state employee under the provisions of paragraph (o) or this paragraph as a result of participation in the engineering and environmental analysis for major construction projects either as a consultant or part of a consultant group for the commonwealth. Such contractors or personnel may be awarded construction contracts by the commonwealth and may continue with outstanding construction contracts with the commonwealth during the period of such participation; provided, that no such contractor or personnel shall directly or indirectly bid on or be awarded a contract for any construction project if they have participated in the engineering or environmental analysis thereof.

268A:17. Municipal employees; gift or receipt of compensation from other than municipality; acting as agent or attorney.

Section 17. (a) No municipal employee shall, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the city or town or municipal agency in relation to any particular matter in which the same city or town is a party or has a direct and substantial interest.

(b) No person shall knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly give, promise or offer such compensation.

(c) No municipal employee shall, otherwise than in the proper discharge of his official duties, act as agent or attorney for anyone other than the city or town or municipal agency in prosecuting any claim against the same city or town, or as agent or attorney for anyone in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest.

Whoever violates any provision of this section shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

A special municipal employee shall be subject to paragraphs (a) and (c) only in relation to a particular matter (a) in which he has at any time participated as a municipal employee, or (b) which is or within one year has been a subject of his official responsibility, or (c) which is pending in the municipal agency in which he is serving. Clause (c) of the preceding sentence shall not apply in the case of a special municipal employee who serves on no more than sixty days during any period of three hundred and sixty-five consecutive days.

This section shall not prevent a municipal employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary or other personnel administration proceedings with respect to those proceedings.

This section shall not prevent a municipal employee, including a special employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting members of his immediate family or any person for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary except in those matters in which he has participated or which are the subject of his official responsibility; provided, that the official responsible for appointment to his position approves.

This section shall not prevent a present or former special municipal employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the city or town; provided, that the head of the special municipal employee's department or agency has certified in writing that the interest of the city or town requires such aid or assistance and the certification has been filed with the clerk of the city or town. The certification shall be open to public inspection.

This section shall not prevent a municipal employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

This section shall not prevent a municipal employee from applying on behalf of anyone for a building, electrical, wiring, plumbing, gas fitting or septic system permit, nor from receiving compensation in relation to any such permit, unless such employee is employed by or provides services to the permit-granting agency or an agency that regulates the activities of the permit-granting agency.

268A:18. Former municipal employee; acting as attorney or receiving compensation; from other than municipality; partners.

Section 18. (a) A former municipal employee who knowingly acts as agent or attorney for or receives compensation, directly or indirectly from anyone other than the same city or town in connection with any particular matter in which the city or town is a party or has a direct and substantial interest and in which he participated as a municipal employee while so employed, or

(b) a former municipal employee who, within one year after his last employment has ceased, appears personally before any agency of the city or town as agent or attorney for

anyone other than the city or town in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and which was under his official responsibility as a municipal employee at any time within a period of two years prior to the termination of his employment, or

(c) a partner of a former municipal employee who knowingly engages, during a period of one year following the termination of the latter's employment by the city or town, in any activity in which the former municipal employee is himself prohibited from engaging by clause (a), or

(d) a partner of a municipal employee who knowingly acts as agent or attorney for anyone other than the city or town in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and in which the municipal employee participates or has participated as a municipal employee or which is the subject of his official responsibility, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

If a partner of a former municipal employee or of a special municipal employee is also a member of another partnership in which the former or special employee has no interest, the activities of the latter partnership in which the former or special employee takes no part shall not thereby be subject to clause (c) or (d).

Notwithstanding the provisions of clause (b), a former town counsel who acted in such capacity on a salary or retainer of less than two thousand dollars per year shall be prohibited from appearing personally before any agency of the city or town as agent or attorney for anyone other than the city or town only in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and in which he participated while so employed.

This section shall not prevent a present or former special municipal employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the city or town; provided that the head of the special municipal employee's department or agency has certified in writing that the interest of the city or town requires such aid or assistance and the certification has been filed with the clerk of the city or town. The certification shall be open to public inspection.

268A:19. Municipal employees, relatives or associates; financial interest in particular matter.

Section 19. (a) Except as permitted by paragraph (b), a municipal employee who participates as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

(b) It shall not be a violation of this section

- (1) if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee, or
- (2) if, in the case of an elected municipal official making demand bank deposits of municipal funds, said official first files with the clerk of the city or town, a statement making full disclosure of such financial interest, or
- (3) if the particular matter involves a determination of general policy and the interest of the municipal employee or members of his immediate family is shared with a substantial segment of the population of the municipality.

268A:20. Municipal employees; financial interest in contracts; holding one or more elected positions.

Section 20. (a) A municipal employee who has a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the city or town is an interested party of which financial interest he has knowledge or has reason to know, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

This section shall not apply if such financial interest consists of the ownership of less than one percent of the stock of a corporation.

This section shall not apply:

(a) to a municipal employee who in good faith and within thirty days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest, or

(b) to a municipal employee who is not employed by the contracting agency or an agency which regulates the activities of the contracting agency and who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made after public notice or where applicable, through competitive bidding, and if the municipal employee files with the clerk of the city or town a statement making full disclosure of his interest and the interest of his immediate family, and if in the case of a contract for personal services

(1) the services will be provided outside the normal working hours of the municipal employee,

(2) the services are not required as part of the municipal employee's regular duties, the employee is compensated for not more than five hundred hours during a calendar year,

(3) the head of the contracting agency makes and files with the clerk of the city or town a written certification that no employee of that agency is available to perform those services as part of their regular duties, and

(4) the city council, board of selectmen or board of aldermen approve the exemption of his interest from this section, or

(c) to a special municipal employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the clerk of the city or town a statement making full disclosure of his interest and the interests of his immediate family in the contract, or

(d) to a special municipal employee who files with the clerk of the city, town or district a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the city council or board of aldermen, if there is no city council, board of selectmen or the district prudential committee, approve the exemption of his interest from this section, or

(e) to a municipal employee who receives benefits from programs funded by the United States or any other source in connection with the rental, improvement, or rehabilitation of his residence to the extent permitted by the funding agency, or

(f) to a municipal employee if the contract is for personal services in a part time, call or volunteer capacity with the police, fire, rescue or ambulance department of a fire district, town or any city with a population of less than thirty-five thousand inhabitants; provided, however, that the head of the contracting agency makes and files with the clerk of the city, district or town a written certification that no employee of said agency is available to perform such services as part of his regular duties, and the city council, board of selectmen, board of aldermen or district prudential committee approve the exemption of his interest from this section or

(g) to a municipal employee who has applied in the usual course and is otherwise eligible for a housing subsidy program administered by a local housing authority, unless the employee is employed by the local housing authority in a capacity in which he has responsibility for the administration of such subsidy programs, or

(h) to a municipal employee who is the owner of residential rental property and rents such property to a tenant receiving a rental subsidy administered by a local housing authority, unless such employee is employed by such local housing authority in a capacity in which he has responsibility for the administration of such subsidy programs.

This section shall not prohibit an employee or an official of a town from holding the position of selectman in such town nor in any way prohibit such an employee from performing the duties of or receiving the compensation provided for such office; provided, however, that such selectman shall not, except as hereinafter provided, receive compensation for more than one office or position held in a town, but shall have the right to choose which compensation he shall receive; provided, further, that no such selectman may vote or act on any matter which is within the purview of the agency by which he is employed or over which he has official responsibility; and, provided further, that no such selectman shall be eligible for appointment to any such additional position while he is still a member of the board of selectmen or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by any municipal agency in any matter shall be grounds for avoiding, rescinding or canceling the action on such terms as the interest of the municipality and innocent third

parties may require.

This section shall not prohibit any elected official in a town, whether compensated or uncompensated for such elected position, from holding one or more additional elected positions, in such town, whether such additional elected positions are compensated or uncompensated.

This section shall not prohibit an employee of a municipality with a city or town council form of government from holding the elected office of councillor in such municipality, nor in any way prohibit such an employee from performing the duties of or receiving the compensation provided for such office; provided, however, that no such councillor may vote or act on any matter which is within the purview of the agency by which he is employed or over which he has official responsibility; and provided, further, that no councillor shall be eligible for appointment to such additional position while a member of said council or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by a municipal agency in any matter shall be grounds for avoiding, rescinding or canceling such action on such terms as the interest of the municipality and innocent third parties require. No such elected councilor shall receive compensation for more than one office or position held in a municipality, but shall have the right to choose which compensation he shall receive.

This section shall not prohibit an employee of a housing authority in a municipality from holding any elective office, other than the office of mayor, in such municipality nor in any way prohibit such employee from performing the duties of or receiving the compensation provided for such office; provided, however, that such elected officer shall not, except as otherwise expressly provided, receive compensation for more than one office or position held in a municipality, but shall have the right to choose which compensation he shall receive; provided further that no such elected official may vote or act on any matter which is within the purview of the housing authority by which he is employed; and provided further that no such elected official shall be eligible for appointment to any such additional position while he is still serving in such elective office or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by the housing authority in any matter shall be grounds for avoiding, rescinding, or canceling the action on such terms as the interest of the municipality and innocent third parties may require.

This section shall not prohibit an employee in a town having a population of less than three thousand five hundred persons from holding more than one appointed position with said town, provided that the board of selectmen approves the exemption of his interest from this section.

268A:21. Municipal agency; unfair advantage in relation to particular matter; additional remedies; civil action for damages.

Section 21. (a) In addition to any other remedies provided by law, any violation of sections two, three, eight, or sections fifteen to twenty, inclusive, which has substantially influenced the action taken by any municipal agency in any particular matter shall be grounds for avoiding, rescinding or cancelling the action on such terms as the interest of

the municipality and innocent third persons require.

(b) The state ethics commission, the district attorney for that district, or the city or town or state may bring a civil action against any person who has acted to his economic advantage in violation of said sections two, three, eight and fifteen to twenty, inclusive, and may recover damages for the city or town in the amount of such economic advantage or five hundred dollars, whichever is greater. If there has been no final criminal judgment of conviction or acquittal of the same violation, the state ethics commission, the district attorney or the city or town or state may in the discretion of the court recover additional damages for the city or town in an amount not exceeding twice the amount of the economic recovery or five hundred dollars, whichever is greater, and a judgment for such damages shall bar any criminal prosecution for the same violation.

268A:21A. Members of municipal commission or board; restrictions on appointments to certain positions.

Section 21A. Except as hereinafter provided, no member of a municipal commission or board shall be eligible for appointment or election by the members of such commission or board to any office or position under the supervision of such commission or board. No former member of such commission or board shall be so eligible until the expiration of thirty days from the termination of his service as a member of such commission or board.

The provisions of this section shall not apply to a member of a town commission or board, if such appointment or election has first been approved at an annual town meeting of the town.

268A:21B. Prospective municipal appointees; demanding undated resignations prohibited.

Section 21B. No mayor, city manager, or town manager shall require a prospective appointee to a board, commission or position under his jurisdiction to submit as a condition precedent to said appointment an undated resignation from said board, commission or position. Whoever violates the provisions of this section shall be punished by a fine of not more than five hundred dollars.

268A:22. Opinions of corporation counsel, city solicitor or town counsel.

Section 22. Any municipal employee shall be entitled to the opinion of the corporation counsel, city solicitor or town counsel upon any question arising under this chapter relating to the duties, responsibilities and interests of such employee. All requests for such opinions by a subordinate municipal employee shall be made in confidence directly to the chief officer of the municipal agency in which he is employed, who shall in turn request in confidence such opinion of the corporation counsel, city solicitor or town counsel on behalf of such subordinate municipal employee, and all constitutional officers and chief officers or heads of municipal agencies may make direct confidential requests for such opinions on their own account. The town counsel or city solicitor shall file such opinion in writing with the city or town clerk and such opinion shall be a matter of public record; however, no opinion will be rendered by the town counsel or city solicitor except upon the submission of detailed existing facts which raise a question of actual or prospective violation of any provision of this chapter.

268A:23. Supplemental provisions; standards of conduct.

Section 23. (a) In addition to the other provisions of this chapter, and in supplement thereto, standards of conduct, as hereinafter set forth, are hereby established for all state, county and municipal employees.

(b) No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

- (1) accept other employment involving compensation of substantial value, the responsibilities of which are inherently incompatible with the responsibilities of his public office;
- (2) use or attempt to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals;
- (3) act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

(c) No current or former officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

- (1) accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority;
- (2) improperly disclose material or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were acquired by him in the course of his official duties nor use such information to further his personal interest.

(d) Any activity specifically exempted from any of the prohibitions in any other section of this chapter shall also be exempt from the provisions of this section. The state ethics commission, established by chapter two hundred and sixty-eight B, shall not enforce the provisions of this section with respect to any such exempted activity.

(e) Where a current employee is found to have violated the provisions of this section, appropriate administrative action as is warranted may also be taken by the appropriate constitutional officer, by the head of a state, county or municipal agency. Nothing in this section shall preclude any such constitutional officer or head of such agency from establishing and enforcing additional standards of conduct.

(f) Upon qualification for office following an appointment or election to a municipal agency, such appointed or elected person shall be furnished by the city or town clerk with a copy of this section. Each such person shall sign a written acknowledgement that he has been provided with such copy.

268A:23A. Trustees of public institutions of higher learning; prohibited positions.

Section 23A. No trustee of any public institution of higher education operated by the commonwealth shall be eligible to be appointed to or hold any other office or position with said institution for a period of three years next after the termination of his services as such trustee, or in the case of an elected student trustee at said institution, for a period of one year next after the termination of his services as such trustee; provided, however, that any such elected student trustee may accept and hold part-time employment at said institution while a student thereat, and provided further, that a trustee may be appointed to or hold an unpaid office or position with said institution after his services as such trustee.

268A:24. Disclosure and certifications; form; public inspection.

Section 24. All disclosures and certifications provided for in this chapter and made in accordance with its provisions shall be made in writing and, unless otherwise specifically provided in this chapter, shall be kept open to inspection by the public by the official with whom such disclosure has been filed.

TOWN OF WINCHESTER PUBLIC RECORDS LAW AND PROCEDURES

Following is a summary of the Public Records Law for the Commonwealth of Massachusetts, to which all Town of Winchester departments, boards, and committees shall adhere. For further information, see “A Guide to the Massachusetts Public Records Law”, published by the Secretary of State’s Office, copy of which is available in the Town Clerk’s Office.

Also included in this handout, is the Town’s current Records Management Procedures, administered by the Town Clerk’s Office.

PUBLIC RECORDS LAW

What is a Public Record?

Every record made or received by a government entity is presumed to be a public record, unless it is subject to an exemption. This includes all records generated, received or maintained by any officer or employee of any municipality or agency of the Commonwealth, regardless of physical form or characteristics, unless the record falls under a specific statutory exemption (see below).

Procedure for Requesting/Responding

Requests should be made to the specific department or board that is custodian of the record(s). Please see attached Public Record Request Form. Such requests may be made either verbally or in writing. A custodian has up to ten (10) calendar days to respond to such requests by either providing a copy of the requested record(s), an explanation of how long it will take to respond and what it will cost the requesting party, or an explanation of why it is not public.

The Public Records Law only applies to records that are in existence and in the custody of a government agency. A custodian is not required to create records in response to a request. A custodian may create a record in response, but s/he is not required to do so. Appeals of a denial may be directed to the Supervisor of Public Records, One Ashburton Place, Room 1719, Boston, MA 02108.

Fees

The Town of Winchester will maintain a current schedule of relevant fees for media by which public records are provided (such as photocopies, microfilm copies and computer printouts). The actual cost incurred by the custodian may be charged for records “not susceptible to ordinary means of reproduction.” In cases where the request is for a record not readily available, a custodian may also charge for the time it takes to search for the records, remove any exempt data, photocopy the record, and re-file it. The charge for this process must be the prorated hourly wage of the lowest paid employee capable of performing the task. A custodian should provide a written good faith estimate for the cost of complying with a request where the total cost is expected to exceed \$10.

Minutes of Meetings

Minutes of open meetings become public upon creation. There is no requirement that these minutes be approved before they are made available to the public. A board/committee is advised to mark copies of minutes not yet approved as “draft” minutes. If the minutes are not transcribed at the time a request is made, there is no requirement that the board transcribe those minutes in response to a request. However, the audiotape of the meeting or any notes taken by the recording secretary (including shorthand notes) are public records.

Reason for the Request

A custodian cannot ask a requester why s/he wants specific records or what s/he plans to do with the records once received.

Exemptions

The following records are considered exempt under the Public Records Statute:

- a) specifically or by necessary implication exempted from the disclosure by statute;
- b) related solely to internal personnel rules and practices of the governmental unit, provided, however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding;
- c) 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; **in any event, all requests for employee information shall be referred to the Town Manager’s Office for appropriate action.**
- d) Inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this sub clause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based;
- e) Notebooks and other materials prepared by an employee which are personal to him/her and not maintained as part of the files of the governmental unit; (Note: If such materials are physically stored in a municipal office or on Town property, they are considered to be files of the government unit).
- f) Investigatory materials necessarily compiled out of the public view by law enforcement or any investigatory officials, the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest;
- g) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this sub clause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit;
- h) Proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened

publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications is made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person;

- i) Appraisals of real property or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired;
- j) The names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant Ch. 140, or any firearms identification cards issued pursuant to said Ch. 140 and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefore, as defined in said Ch. 140 and the addresses on said licenses or cards;
- k) (Note: this exemption was deleted in 1988)
- l) Questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument, provided, however, that such materials are intended to be used for another test, examination or assessment instrument;
- m) Contracts for hospital or related health care services between (i) any hospital, clinic or other health care facility operated by the town; and (ii) a health maintenance organization arrangement approved under Ch. 176I, a nonprofit hospital service corporation or medical service corporation, a health insurance corporation, or any legal entity that is self insured and provides health care benefits to its employees.

All questions regarding exemptions or any other area of the Public Records Law should be referred, via the department head or designee, to the Town Clerk or the Public Records Division of the Secretary of State's Office.

RECORDS MANAGEMENT PROCEDURES

State law requires all committees to keep accurate written records of its public meetings. All committees, commissions, boards, sub-committees and ad-hoc committees shall appoint a clerk/secretary who will be responsible for posting meeting notices, taking minutes of all meetings, and serving as records custodian.

The records of each meeting are public records, and a copy of all non-executive session minutes must be available for public inspection. Records of any executive session remain closed to the public only as long as publication may defeat the purposes of the executive session. Minutes of meetings should include the following information:

- Date, time and place of the meeting
- Members present
- Any actions taken at the meeting, including executive sessions

- Assignments to committee members
- Statements of topics discussed
- Exact wording of all motions, including who made and seconded the motion
- The vote of each member. Those members present and not participating in the vote should be recorded as abstentions.
- Votes in executive session must be recorded in the minutes by a roll call.

Minutes may include summaries of discussions and a schedule of future meetings. Once minutes are accepted by committee vote, they become the official record of the meeting and become a permanent public record. Any secretarial notes, if not destroyed once the official minutes are accepted, are considered a public document under the public record law.

What to do with Approved Minutes

The Town of Winchester began a practice many years ago of filing meeting minutes at the Winchester Public Library. The reference desk will accept copies of approved minutes. The Town Clerk recommends that boards and commissions continue with this practice.

A courtesy copy of the minutes should also be kept on file in the office of the appointing authority, i.e., Board of Selectmen minutes, housed in Town Manager's Office, Zoning Board of Appeal, housed in the Building Office.

What about other committee records?

Besides minutes, it's important to retain other documents that will be helpful to the town and/or committee members in future years. In particular, it is important to retain supporting documents and correspondence for events or decisions that are of major significance to the committee or town. These documents should be turned over periodically to the Town Clerk for placement in the town vault.

Dissolution of a Committee

Upon dissolution of a board, committee or commission, the records should be for reviewed for storage. The Town Clerk's Office is available to assist any department or committee to determine what is permanent based on the State Record Retention Schedule. These should be organized in a reasonable and understandable manner and submitted to the Town Clerk for placement in the town vault. Should space be at a premium, the Town Clerk will transfer to the State Library Archives.

PUBLIC RECORDS GUIDELINES FOR ELECTED AND APPOINTED OFFICIALS

- All records created or received by elected and appointed officials, departments, commissions and committees are public records and must be stored according to state guidelines.ⁱ
- Public records include all documentary materials or data that are made or received by any officer or employee of the Town of Winchester, regardless of physical form or characteristics.ⁱⁱ Public records include correspondence, audio tapes, video tapes, email, etc. that are created as part of your official duties.
- Upon the expiration of your term of office or retirement, you must deliver records in your custody to your successor.ⁱⁱⁱ
- You must permit all public records within your custody to be inspected or copied by any person during regular business hours. If you do not have daily business hours, you should post a written notice in a conspicuous location listing the name, position, address and telephone number of the contact person for public record access.^{iv}
- You must comply with public record requests as soon as practicable and within ten days.^v
- Public record requests may be verbal or written. It is recommended that the record requester provides a written request, in case it needs to be appealed.^{vi}
- The record requestor does not have to disclose the reasons for requesting access to or copying public records. You cannot require proof of identity prior to complying with public record requests.^{vii}
- Records may be withheld in whole or in part if they fall under one or more of the twelve exemptions in 950 CMR 32.00.^{viii} If you are unsure whether a record or a portion of it is exempt, contact the Public Records Division.¹ To request an official advisory opinion from the Public Records Division, you must make a written request.
- Minutes must be maintained in written format. Audio tape and video tape are not a stable preservation medium.^{ix}
- Meeting records are public records at the moment of their creation. This includes stenographic notes, longhand notes, audio tapes, and video tapes from public meetings.^x Meeting records, with the exception of executive session records, are subject to disclosure upon request.^{xi}
- Once the minutes have been written and accepted by the board or commission, notes and audio/video tapes may be erased or re-recorded without the prior permission of the Supervisor of Public Records, provided that there is no outstanding public records request or litigation.^{xii}
- Records that are used in private offices or homes must be stored in fire resistant devices and safes.^{xiii}
- If you cannot insure fire resistant storage outside the municipal building, then you may not remove original records. If you work at a private home or office, you should make copies of the records.^{xiv}
- If original records are created outside of municipal offices, they must be transferred on a regular and frequent basis to secure storage in the municipal building.^{xv} This includes electronic records.

¹ Secretary of the Commonwealth, Public Records Division, One Ashburton Place, Room 1719, Boston, Massachusetts 02108, Phone 617-727-2832, Fax 617-727-5914

i	MGLc66 s13
ii	MGL c4 s7(26)
iii	MGL c66 s14 and Supervisor Public Records Bulletin 4-94, 5-94
iv	950 CMR 32.00
v	950 CMR 32.00
vi	950 CMR 32.08(2)
vii	950 CMR 32.00
viii	950 CMR 32.00
ix	MGL c66 s56 (1990 edition) and Supervisor of Public Records Bulletin 2-92
x	MGL c4 s7(26) (1990 edition)
xi	MGL c39 s23B (1990 edition)
xii	Supervisor of Public Records Bulletin 2-92
xiii	Supervisor of Public Records Bulletin 4-94
xiv	Supervisor of Public Records Bulletin 4-94
xv	Supervisor of Public Records Bulletin 4-94