

Dear Ms. Eaton:

In your request, you seek copies of the following records: all audio recordings and all approved minutes of any executive sessions conducted the Board of Selectmen between July 1, 2016 and February 26, 2017, the date of your request.

Please be advised that the Town's duty to respond to records requests extends only to records that are in existence and in the custody of the Town at the time that the Town receives the request, and it is under no obligation to create records in response to your request.

I have reviewed your request and there are records responsive to your request. Where permitted or required by law, however, such records or material contained therein may be withheld or redacted under any of the exemptions to the Public Records Law, other applicable provisions of law, and/or common law privileges, such as the attorney-client privilege. See, e.g., G.L. c. 4, §7(26); *Suffolk Construction Co. v. Div. of Capital Asset Mgmt.*, 449 Mass. 444, 449-450 (2007); 950 CMR 32.06(3). The Town reserves the right to identify and assert any other applicable exemptions that may be discovered. In accordance with G.L. c. 66, §10(b)(iv), nothing herein shall limit the Town's ability to redact or withhold information in accordance with state or federal law.

In response, the Board of Selectmen have not approved any sets of final versions of responsive executive session minutes. You are further advised that once a final version of minutes, open or executive session, has been prepared and approved by the Board, any drafts including recordings or handwritten or typed drafts are disposed of. The Supervisor of Records has consistently ruled that once final minutes are approved, all drafts and/or recordings may be destroyed immediately unless there is a pending request for the drafts.

You are further advised that there is only one audio recording of a Board of Selectmen executive session since July 1, 2016. That recording is exempt from disclosure, however, pursuant to "exemption (a)" as the purpose of said executive session has not yet been completed. See below.

There are draft minutes (handwritten) from executive sessions that are responsive to your request, but which are exempt from disclosure at this time. General Laws c.4, §7, clause 26(a) (so-called "Exemption a") exempts from disclosure records that are "specifically or by necessary implication exempt from disclosure by statute." In this case, the Open Meeting Law provides at G.L. c.30A, §22(f) as follows:

(f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

The Board is entitled, therefore, to withhold any draft or final executive session minutes as long as the purpose of the session has not been completed. There are certain minutes and draft minutes that are responsive to your request but that will be withheld as exempt under exemption (a). At such time as the purpose is completed, the Board will approve and release such minutes, subject to any exemptions that may apply to all or portions of them. Such exemptions may be applicable to the single recording of an executive session that exists as well, but such portions that are not exempt may be provided at that time.

You are further advised that when such executive session minutes and/or drafts may be released, one or more of the following exemptions may apply and such portions may be redacted:

- Exemption (c) – personnel and medical files or information, or materials related to a specific individual, the disclosure of which may be an unwarranted invasion of personal privacy.
- Exemption (f) – investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials.
- Exemption (a) – criminal offender record information, G.L. c.6, §167
- Attorney-Client privilege.

In summary, there are public records that are responsive to your request and those have been attached to this email. There are other records that are responsive but which are exempt in their entirety pursuant to Exemption (a) of the Public Records Law and the Open Meeting Law, G.L. c.30A, §22(f). You may appeal this response to the Supervisor of Public Records pursuant to 950 CMR 32.08(1)(d). By law, the Supervisor is required to respond within 10 business days of receipt of your appeal. You may also seek judicial review of an unfavorable response by commencing a civil action in the superior court, under G.L. c. 66, §10A(c).

Sincerely,

James M. Kreidler
Town Administrator
Town of Townsend
272 Main Street
Townsend, MA 01469
(978) 597-1700
jkreidler@townsend.ma.us

If this email is received by a multi-member public board, commission or committee please take care to never “respond to all” as you may inadvertently create a violation of the open meeting law.

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message. In Massachusetts, the term "public record" is broadly defined to include all documentary materials or data created or received by any officer or employee of any governmental unit, regardless of physical form or characteristics unless it falls under one of the statutory exemptions to the Public Records Law MGL Chapter 4, Section 7(26). Consequently, email is subject to the disclosure, retention and maintenance provisions as required by law. MGL Chapter 66

-----Original Message-----

From: jae67@cox.net [<mailto:jae67@cox.net>]

Sent: Sunday, February 26, 2017 3:46 PM

To: jkreidler@townsend.ma.us; kmerril@townsend.ma.us; kspofford@townsend.ma.us; csmart@townsend.ma.us

Subject: Public Records Request

Importance: High

Pursuit to Massachusetts Public Records Law (M.G.L. Chapter 66, Section 10), I am making the following public records request to the Town of Townsend. I am requesting the following:

All audio recordings of the Townsend Board of Selectmen's Executive Session meetings from July 1, 2016 to present.

All approved minutes of the Board of Selectmen's Executive Session meetings from July 1, 2016 to present.

According to Townsend's Town Administrator, James M. Kreidler, Jr. all of the Board of Selectmen's Executive Session meetings are audio taped and once the Executive Sessions are transcribed into minutes and approved by the Board of Selectmen the audio tapes are destroyed. Since the Board of Selectmen have not approved any of the above meeting minutes since 2015 there should be no reason why this request can not be filled in it's entity. The destruction of public records is a serious matter and something that one would think you would not do.

To reduce the cost or if necessary, I am able and willing to provide any electronic storage media that may be necessary for the transfer of the requested data.

Jean A. Eaton
(401) 231-1016

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