

**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Shawn A. Williams  
*Supervisor of Records*

May 9, 2014  
SPR13/230

Ms. Samantha Allen  
Staff Reporter  
*The Lowell Sun*  
491 Dutton Street  
Lowell, MA 01854

Dear Ms. Allen:

In August 2013, you requested a copy of the consultant report prepared for the Town of Westford (Town) by Management Tools and Resources relating to its former Fire Chief and the Westford Fire Department, and a copy of the employment separation agreement between the Town and its former Fire Chief. In its August 9, 2013 response, the Town denied your request citing the personnel clause of Exemption (c) of the Public Records Law. You petitioned this office and an appeal was opened for you in November 2013. During our initial review of your appeal, the documents were reviewed *in camera*, and on February 10, 2014 I ordered the Town to provide you with both documents, redacted where necessary pursuant to the personnel clause of Exemption (c). The Town complied with my order and released a redacted copy of the responsive record.

In March 2014, after you received the records, you petitioned this office for a review of the redacted consultant's report. To aid in our review and determination of the redacted version of the consultant's report that you received, I ordered the Town to provide copies of both the redacted and un-redacted consultant's report for a second *in camera* review by me and an attorney on my staff. See 950 C.M.R. 32.08(6). The Town complied and provided the documents to this office, which will be returned to Demetrios M. Moschos, Esq., Special Town Legal Counsel for the Town of Westford, under separate cover. I wish to thank the Town and Attorney Moschos for their cooperation.

***Exemption (c)***

Exemption (c) serves to exempt from public disclosure:

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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

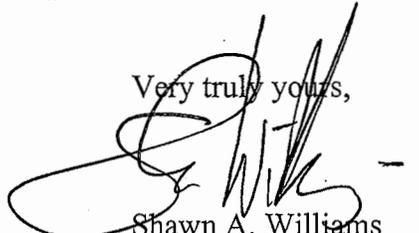
G. L. c. 4, § 7 (26)(c)

Exemption (c) contains two distinct and independent clauses, each requiring its own analysis. Globe Newspaper Co., 388 Mass. at 432-34. Only the first clause of Exemption (c) is applicable to this determination. The Supreme Judicial Court (Court) has held that personnel information which is "useful in making employment decisions regarding an employee" is sufficiently personal and may be withheld pursuant to the first clause of Exemption (c). Wakefield Teacher's Ass'n v. School Comm. of Wakefield, 431 Mass. 792, 798 (2000). The Court defined those records which may be withheld as personnel information to include, "employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee." Id. at 798.

Moreover the Superior Court's decision in District Attorney for the Northern District v. Wayland School Committee, 24 Mass. L. Rep. 251; Mass. Super LEXIS 185 (2008) also serves to properly withhold performance evaluations as personnel under Exemption (c). The Wayland court issued a ruling on an Open Meeting Law violation regarding the process for reviewing the performance evaluation of a school superintendent.

During discussions with this office while reviewing the consultant report *in camera* the Town's Special Legal Counsel stressed that the redacted portions consisted of evaluative information related to the performance of the former Fire Chief. The Town claimed that the information was used to render an employment decision on the former Fire Chief. Pursuant to the holdings in Wakefield and Wayland and our careful review of the report, I agree. The redacted portions consist of personnel information that was useful in rendering the employment decision regarding the former Fire Chief. Therefore, I find that the Town properly withheld the information that was redacted pursuant to the personnel clause of Exemption (c).

Very truly yours,



Shawn A. Williams  
Supervisor of Records

cc: Ms. Jodi Ross, Town Manager  
Mr. Demetrios M. Moschos, Esq.