



December 19, 2022

Re: Transparency in the Governor's Office

Dear Gov.-elect Healey,

On behalf of the Massachusetts Newspaper Publishers Association, the New England Newspaper & Press Association, and the New England First Amendment Coalition, we offer congratulations on your historic election as governor.

As organizations representing the news media in Massachusetts, we are strongly committed to promoting government transparency in the state through robust public records and open meetings laws. As attorney general, you have expressed your shared commitment to transparency.

As you know, Massachusetts stands nearly alone in retaining one significant obstacle to government transparency – a blanket exemption from the public records law that has been claimed by the governor's office during the last several administrations. As you prepare to take office as governor, you have an historic opportunity to remedy this situation.

We recognize and appreciate that you are already on record in favor of placing the governor's office under the public records law. As your spokesperson told WBUR earlier this year, "AG Healey has long supported updating the public records law to cover the Governor's Office in the interest of transparency and accountability."

Thus, as you step into the role of our state's chief executive, we ask that you act to fulfill this commitment in two ways:

- File and support legislation to amend the public records law to make clear that it applies to the governor's office in the same way and to the same extent that it applies to other executive branch entities.
- Immediately upon taking office issue an executive order subjecting your office to the provisions of the law and appointing a public records officer to implement and supervise your office's compliance with the parameters of the public records law.

Background

Massachusetts is one of only two states – Michigan the other – where the governor has a blanket exemption from the public records law, either by statute or through practice. That is true even though it is not clear that the legislature ever intended to create an exemption for the governor. The definition of

“public records” in G. L. c. 4, § 7(26) is expansive and appears on its face to include the governor in its coverage of “any officer or employee of any agency, *executive office*, department, board, commission, bureau, division or authority of the commonwealth” (*Emphasis added.*)

Confusion over the governor’s coverage under the law followed the Supreme Judicial Court’s decision, *Lambert v. Judicial Nominating Council*, 425 Mass. 406 (1997). Every governor since *Lambert*, starting with Paul Cellucci, has invoked it as a blanket exemption from the public records law. But *Lambert* dealt only with a very specific issue: whether the public should have access to questionnaires completed by applicants for judicial appointments and submitted to the Judicial Nominating Council.

As a matter of public policy, there is no reason to give the governor’s office a blanket exemption from the law. No doubt, there are certain documents within the governor’s office that should be excluded from public view. But the *existing exemptions* to the public records law – such as those related to policy development and personal privacy – fully cover these situations and protect the governor’s office to the same extent that they protect any other state or local official performing an executive function.

Therefore, even though the existing statute does not carve out the governor’s office from the public records law, the long practice of Massachusetts governors excusing themselves from the law’s requirements leads us to conclude that the law should be amended to make clear that it applies to the governor’s office in the same way and to the same extent that it applies to other executive branch entities. Specifically, we propose that G.L. Chapter 4, Section 7, Clause Twenty-sixth, be amended as follows:

"Public records" shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, **including the governor’s office**, or of any political subdivision thereof

Conclusion

You have the singular opportunity to reverse 25 years of an ill-conceived policy that has allowed the governor’s office to operate under a level of secrecy that is unimaginable in 48 of 50 U.S. states. We respectfully ask that you act in your first days in office to remedy this wrong through an executive order and then seek to permanently memorialize the change through legislation.

Sincerely,

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