

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

TOWN OF SOUTHBOROUGH

**IN THE MATTER OF ISSUES CONCERNING THE
CONDUCT OF VARIOUS TOWN OFFICIALS AND
TOWN PRACTICES AND POLICIES**

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EXECUTIVE SUMMARY

**EXECUTIVE SUMMARY REPORT ON INTERNAL AFFAIRS INVESTIGATION
REGARDING ISSUES CONCERNING THE CONDUCT
OF VARIOUS TOWN OFFICIALS AND TOWN PRACTICES AND POLICIES**

**INTERNAL AFFAIRS INVESTIGATION
CONDUCTED BY:**

JAMES B. LAMPKE, ESQ.

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INTRODUCTION AND STATEMENT OF ASSIGNMENT

The undersigned was designated by the Southborough Board of Selectmen (Board) to conduct an Internal Affairs Investigation or audit regarding various issues concerning the conduct of certain Town officials, Town practices and policies, described more fully below.

This Internal Affairs Investigation was done to examine in greater detail the issues and to determine, among other things, whether there is a basis for the allegations so that, if so, the Town may determine what action should be taken. In addition, the review was to examine certain Town practices and policies and make any appropriate recommendations.

During the course of this investigation, the undersigned interviewed numerous persons and reviewed many documents.

It was appropriate and necessary for the Board to undertake a review of this situation. A key management employee had come forward and expressed concerns that the employee had observed certain conduct which raised issues of whether other employees, also being key management employees, had conducted themselves in a manner that was contrary to training Town employees had received a few short months before and could create a liability situation for the Town.

Underscoring the seriousness of the matter was the fact that the incident involved a key Department Head. In particular, aside from possibly adversely impacting the effective and orderly operation of one of the Town's Departments that provides essential public service to the community, the Town was literally in the middle of the selection process for a key Department Head position. The situation was fraught with risk of, if in fact there had been inappropriate conduct, of tainting the selection process. If that had happened, not only would that have created liability to the Town, but it could have invalidated the selection process.

Members of the Board were also aware anecdotally of possible other incidents involving the way that the employee was treated.

The Town also has a Professional Conduct Policy and has held at least two management summits and/or training programs for key employees. This is relevant as the Professional Conduct Policy and the information presented at the seminars sets forth certain standards of conduct which the Town has established for employees to observe. These are designed to ensure a proper work environment and to help reduce the possibility of employees engaging in conduct which may be inappropriate and may in certain instances subject the Town to liability.

As management should do from time to time, it is good governmental practice to review local policies and procedures to determine what, if any, changes or additions should be made. Given developments in personnel practices and changes in the law, any document can benefit from period review.

Taking all of this into account, the Board was well warranted and professionally obligated to take action to review this matter.

SUMMARY OF FINDINGS

The results of this Internal Affairs investigation leads the undersigned to conclude that, while certain conduct was not appropriate or consistent with the Professional Conduct Policy or the training provided to employees, it did not rise to such a level of deficiency that any significant or other discipline is warranted. Certain policies should be reviewed and changed as needed. In addition, certain policies should be developed and implemented to better ensure the continued effective and orderly administration of the local government. The Town should take this situation and review as a learning

opportunity to examine the conduct of its employees and the practices and policies of the Town.

In addition, it would be appropriate to review certain policies, make changes where warranted and also develop new policies, as noted below.

SUMMARY OF ISSUES

As in any investigation or audit of this nature, it is necessary to identify the concerns which gave rise to the issues. This requires identifying the incidents alleged, reviewing whether the incidents did in fact occur and then determining whether the incidents if they occurred constitute inappropriate conduct. It is important to note that not every disagreement over action taken equates to inappropriate conduct and not every lack of a policy equates to a deficiency.

Furthermore, various policies of the Town which involve either directly or indirectly the other items addressed in this matter warranted examination.

The following matters have been alleged as incidents:

1. An incident at Uno's where it is alleged that various people spoke in a demeaning and inappropriate way about another Town employee;
2. An incident at Town Hall where it is alleged that various people were overheard speaking in a demeaning and inappropriate way about another Town employee;
3. Other incidents where there is alleged to have been conduct which undermined the authority of a Town employee;
4. Actions concerning the custody of a laptop use by an employee

The following policy areas were also considered:

Policies concerning Professional Conduct, meetings, communications, training and computer use and custody

ACTION BY THE TOWN

When the Town was made aware of the situation, it took appropriate action. The Town notified the employee who was the subject of certain comments of the situation

and initiated a response. Under the circumstances where the Town was informed of the Uno's incident and taking into consideration the other matters that the Board members had heard of, it was appropriate for the Town to seek to find out what happened at Uno's and develop a course of action. This was particularly appropriate because at this time employee was involved in a selection process. If there was some interference with the employee receiving fair consideration in the selection process, that could have resulted in the selection process being challenged and possibly overturned. In addition, depending on what actually happened, certain conduct if it occurred could expose the Town to liability. More importantly, it was apparent to the Board members that given the level of rumors and incidents, it was important to address this so as to better ensure an appropriate workplace for the Town employees and residents. The Town initiated an investigation into the issues. Each person involved was told that if he or she experiences any particular problems following this matter being brought forward and their participating in the audit of it, that they should notify the Town or the independent investigator immediately.

RECOMMENDED FINDINGS AND DISCUSSION

Based on the evidence reviewed and the reasonable inferences to be drawn there from, the following findings and discussion can be made.

It should be noted that these findings are made based on the evidence and information adduced as part of this Internal Investigation and are not made on a strict burden of proof basis. Thus, formal proceedings at another forum where a complaining or charging party has a burden of proof, such as a court of law or agency hearing, may result in additional evidence and different findings.

The following are the general issues involved:

1. An incident at Uno's where it is alleged that various people spoke in a demeaning and inappropriate way about an employee;
2. An incident at Town Hall where it is alleged that various people were overheard speaking in a demeaning and inappropriate way about an employee;
3. Other incidents where there is alleged to have been conduct which undermined the authority of an employee and the employee's ability to properly perform his or her duties;
4. Actions concerning the custody of a laptop fused by an employee

1. An incident at Uno's where it is alleged that various people spoke in a demeaning and inappropriate way about an employee;

It would appear that at Uno's comments were made concerning an employee and the Town Meeting. Some people interpreted these comments to be highly negative and of a demeaning nature. Not surprisingly, the person who likely said them feels that it was idle bantering and kidding and not intended to be negative, personal or demeaning.

Of note, the employee who reported this said that that this was the only incident the employee was aware of where people had been speaking inappropriately about the other employee. This employee does identify an incident where the other employee was not apparently cc'd on some emails between various employees and officials about a person's plan to propose a change to a motion at Town Meeting. But in terms of actions by others contrary to the employee, this is the only incident identified.

It should be noted that with respect to the employee allegedly not being copied on certain emails about possible changes to the motion, there are certain emails that do not show that the employee was copied. However, a review of other emails indicates that the employee was in fact copied on various other emails about this possible change.

While in certain contexts, such statements would not have been a matter of concern, here it appears that the statements were being made in the presence of non-Town employees who the subject of the comment has to deal with and also in the presence of a person who was competing for a position. There were at least 3 such persons present while these statements were being made.

Whether they heard the statements or not is not critical. The fact is that the statements appear to have been made and were critical of a key Department Head that they had to work with. Also, one of the persons was also a candidate for a position in the Town government.

In addition, a subordinate of the employee was present.

It was at best awkward for those persons to hear other key Department Heads making or laughing at derisive comments about another employee. Here key administrative officials of the Town were listening to these statements or at least appeared to some to be in a position to hear these statements. It clearly would send a wrong message to those present that other Department Heads and the administrative officials were tolerating the comments.

The comments could also be viewed as contrary to the Town's Professional Conduct Policy. That policy for example provides that "[e]mployees and officials should respect and treat each other in a professional and positive manner; maintain a constructive, creative, and practical attitude; a deep sense of social responsibility as a trusted public servant; recognize that the chief function of local government at all times is to serve the best interests of all people and seek to improve the quality and image of public service.

Speaking negatively about a fellow employee at a gathering of fellow local employees and officials, especially when there were also present citizens and more especially a subordinate of the subject of the comments and a competitor of the subject for a key position is contrary to the language, spirit and intent of the policy.

It should be noted that some of these employees have personally spoken to the other employee and appear to have made amends for any statements or conduct, made or perceived that were offensive.

It does not appear that other employees, other than appearing to enjoy the statements made, actively participated in making the statements.

The Uno's gathering led to the meeting on October 22, 2009. With few exceptions, all of the employees interviewed who were there described the meeting as very unpleasant and a surprise to them. Some apparently knew more than others as to what was going to be discussed.

In retrospect, if the meeting was going to go forward as intended, the participants should have been told that it was specifically about their actions or inactions. Recognizing that the Board was not certain at that point who said or did what, it is somewhat understandable that the Board wanted to hear from the participants.

It was inadvisable for an employee at this meeting to have criticized everyone in the room who was at Uno's. The employee did not know exactly what happened, other than what an employee said was heard. Better judgment would have warranted the employee supporting the investigation but also waiting until the results were in before commenting further.

Much of the angst over the October 22, 2009 meeting could have been avoided had appropriate administrative persons timely expressed their concerns over the purpose and scheduling of the meeting.

In summary, comments were made about an employee which was inappropriate

given the tone and presence of certain people. Others should have used better judgment than they did by not stopping the comments given the presence of others at the gathering. Others should have also advised the Chairman of the Board or other appropriate official of the concerns over the scheduling and noticing of the executive session.

The question comes down to whether those deficiencies noted above warrant disciplinary action or not or some other appropriate action. As noted below, there are recommendations suggested for overall actions the Town could take. If the Board were to feel that some disciplinary action is warranted, it should only be minimal. A perhaps better approach would be a review with the people involved so that they can see how their actions and inactions were viewed as inappropriate and hurtful and not appropriate.

2. An incident at Town Hall where it is alleged that various people were overheard speaking in a demeaning and inappropriate way about an employee;

At best, this situation again shows how talking about people in a critical fashion, in an inappropriate setting, can cause internal problems. In Southborough, given the open nature of the offices at Town Hall, with very few enclosed private offices, many discussions by staff and officials are likely to be heard by others.

It would appear that whatever was heard was likely taken out of context since it was only a small portion of a longer discussion.

The facts warrant a conclusion that more likely than not there was a discussion at least about a Town Department and budget issues, and comments dealing with budget issues and interaction with the budget process.

However, even if terms reported were in fact used, while unpleasant and not the best choice of words, it would not be legally inappropriate in a discussion between a member of the Board and administrative staff. This was a discussion at least between them.

The member of the Board and administrative staff certainly had the right, if not the obligation, to discuss the competency of other Department Heads. The issue is not just whether that discussion, critical as it may have been, was correct in what was being said, but rather whether, if such a discussion took place, it was an appropriate conversation between the Board member and administrative staff. As part of their respective obligations to the effective and orderly operation of local government, having such a discussion was not improper.

If in fact the terms used or any complaints or observations regarding employee's abilities were expressed, whether there is a valid basis for same is a separate matter. In other words, they would have had the right to engage in such a discussion even if they were wrong in their facts. Being wrong in their facts is a separate issue but does not relate to their right to have such a discussion.

It is important to note that while apparently persons outside of the administrative office could hear what was being said, the Board member and administrative staff did not engage in this conversation in a public setting, such as in the hallway or in a meeting or outside of Town Hall. It would appear that they expected that their conversation would have been private, at least not intentionally expressed to others.

Given that it was in fact overheard, it is evident that they should have taken better steps to ensure that the conversation was a private one. While it was a Town employee who overheard part of the conversations, there is nothing to have prevented a member of the public from overhearing the conversation. The fact that a person who works with the subject of the conversation overheard the comments only highlights the need for better judgment to be used by people making such statements.

In other words, more tact should have been used in such a discussion to ensure that it was a private conversation not capable of being heard by others.

In terms of the appropriateness of another Town employee not part of the Board's administrative staff being present, that would be a judgment call and depend on the circumstances of the meeting. If in fact it was a meeting discussing budget issues and the other Department was part of the discussion, there would not be anything inherently wrong with the employee being there. If however it was a meeting to discuss specifically an employee's performance or issues about an employee, it is questionable as to why the other employee would have or should have been present. It would appear that the meeting was not specifically to discuss any one particular employee. It would have been impractical to have other employee present leave the meeting just merely because another employee was mentioned in general, given the context of the meeting. To be certain, if the focus was shifting to an employee's performance, it would have been more appropriate for Board member and staff person to finish first their business with the other employee and had any discussion about another employee in private. However, the facts do not support the view that this meeting and discussion was all about any particular employee, as opposed to what the participants say it was about- budget issues.

The fact that someone heard a very small portion of the discussion, which portion was critical of someone, does not mean that the meeting was not about the budget

as claimed by the others. It is just as likely that it was in fact about the budget, and more so, given that the witness said that what was overheard was the others talking about other department and then comments about someone in particular.

In conclusion, those persons involved should have used better judgment in making statements that could and were overheard by a person who was a subordinate of the subject of those comments.

3. Other incidents where there is alleged to have been conduct which undermined the authority of an employee and the employee's ability to properly perform the duties expected;

Various sources, have cited instances where it is suggested that an employee was not treated fairly, not treated the same as other Department Heads in terms of notices of meetings and being provided with information, not being brought into the process for various matters and the like.

To be certain, there may have been some instances where this employee was not given information or kept in the loop on certain matters.

However, there is not sufficient evidence to suggest that this was part of planned and orchestrated events by the administrative staff or anyone. If it was part of such a plan, there are only a few sporadic incidents during the limited time in question; thus if it was a planned effort, it was poorly done, suggesting that there was not in fact an organized plan.

That said, it is clear, and important to note, that an employee feels that the employee was treated this way with intent.

However, neutral observers to the entire matter, other management employees, were unaware of any such incidents or any examples. They credibly spoke about how they felt and observed Department Heads working well together.

The one possible exception is a report that there was an exchange of emails between administrative staff and others over someone's plan to try to change the language a bylaw and the other employee involved not knowing about it or being cc'd on the emails. However, upon further examination of other emails, it appears that the employee was copied on various emails about this. The fact that the employee was copied on some but not all does not suggest some plan to bypass the employee. This is especially so given that the emails not received were fairly innocuous and certainly not critical in any way of the employee.

Members of the Board who had been informed of some possible incidents falling within this category could only identify a few such incidents.

There were incidents cited where the employee may not have received notice of meetings or have been cc'd on emails or otherwise provided with information that.

It is true that often times a single incident by itself is not evidence of a policy, pattern of conduct or plan, whereas the taking into consideration a number of events could be construed to evidence a policy, pattern of conduct or plan. However, as relates to the incidents cited by various people, even presuming that they occurred as described, they were so sporadic and infrequent over the length of time involved as to suggest the lack of an intentional plan.

That said, as will be noted below, the administrative operations could use more focus on ensuring that the necessary people are in the loop on notices for meetings and sharing of information.

It should also be noted that one of the incidents cited does not show any disrespect towards the employee. It appears that at a staff meeting one employee asked a question of another and a third employee offered an answer. The inquiring employee replied to the employee who answered that the question was being asked to someone else. That has been described as a sharp retort to an employee at a staff meeting merely trying to be helpful and offer an answer. It would not have been inappropriate for anyone else for that matter to offer a comment. This took place at a Department Head meeting and such discussions and exchanges are normally what makes those meetings beneficial and helpful to the attendees. If an employee wanted to have a private discussion with an administrator about a matter where others would not be present or involved, the questions could have been asked in a private meeting, not a Department Head setting.

Another incident cited is where the employee felt being undermined by a statement claimed to be made that the employee did not know what the employee was doing. The other employee denies making such a statement and no other witness heard it.

It was acknowledged that there had some discussions on various matters which related to how the employee may have handled matters. Examples of these incidents include the discussion about a grievance.

It could likely be that the employee was interpreting the statements during those discussions to mean that someone was saying that the employee did not know what to do, albeit not in those exact words. It was acknowledged that there was a discussion

with the employee as to what was felt to be appropriate procedure that should be following in those instances. That does not mean however that anyone said or implied that they did not believe the employee knew what the employee was doing. Even if the other person felt that way, it would have been a peculiar statement to have been made.

More likely than not, given the totality of the situation, the comments may have come across as criticism. Even if the comments were construed as such, that does not equate to someone undermining someone else's authority.

Another example cited was an incident where someone made some reference to the problem being the number of women around the table. An employee objected to this comment. The comment was likely inappropriate, but there is nothing to suggest that it was directed at anyone in particular or related to any effort on anyone's part to undermine anyone. It may have been idle banter and a stray remark that was inappropriate, but it does not appear to have been related to any undermining of the employee's position or authority, especially since most of the Department Heads and others at the meeting were females.

It was also alleged that someone made a statement at a Department Head meeting about sexual harassment prevention that an employee felt was not appropriate. An employee, as was within the employee's right and as was appropriate, voiced objections to the comments and expressed the view that the sexual harassment training and compliance was important. Someone supposedly said to someone words to the effect that "guess [the employee] does not like my comments".

It is unclear how objectively that may be viewed as undermining an employee. It may have been in poor taste and inappropriate, but it does not rise to the level of undermining. It does not indicate disrespect. It may have been impolite and unnecessary, but it is clear that the employee who said it has that personality where the employee is prone to make light of things which the employee does not feel is inappropriate. It could be an ill planned attempt at humor. Even if so, it does not objectively support the view that it was done to discredit or undermine anyone.

An employee also cites a project as another example where someone felt they were disrespected or undermined. In this situation, the employee wanted to advance a certain plan, for at least consideration, but another person resisted and made a comment along the lines of "people are coming in late to this process", referring to the fact that these issues had already apparently been discussed and a course of action agreed it before the employee became involved.

The employee who made the statement however had the right to make an observation, particularly one that was correct. While the other employee no doubt felt

that the comment had merit- and it did- the fact remains that this issue was apparently settled before the employee became involved. It was appropriate for the employee to raise the issue and try to convince the group to consider it. However, the fact that others in the group objected to changing course or were even not interested in reconsidering the issue does not equate to disrespect or undermining anyone's authority, anymore than an employee would be justified to feel being disrespected or having one's authority undermined because someone brought up a possible change in the direction that had already been agreed to.

The employee was not invited directly to the meeting and only attended after learning of it. As discussed below, the record is replete with emails sent to all Department Heads, including the employee, of various meetings. If however there was an attempt to specifically exclude the employee from any distribution of notices, that is, in and of itself, grossly inappropriate. The facts however do not bear that out.

When discussing with the employee whether others acted in a disrespectful manner or a manner which would have the effect of undermining authority, the employee cited several instances, discussed herein. It was made clear that there were other incidents the employee did not want to get into and the employee opted not to get into every other incident.

The employee feels that what was perceived as instances of disrespect of undermining were based on the fact that the employee was taking someone's place and that the other person was friendly with the other Department Heads. This employee now enters the scene taking the position under sad circumstances.

It is likely, from what the various witnesses stated, that the former employee did not support the new employee for the position. However, there is nothing inherently wrong with feeling that, presuming there was some legitimate basis, even if it was subjective, to feel that way. Merely because someone may not have favored someone for a position does not mean that there was undermining of authority or being disrespectful.

The employee suggest that not being included in the loop on information and was not notified of meetings and other things. Even if that did occur, the real question is whether it was done by design or inadvertence or for reasons that can not be explained with any sense of definiteness.

Even if that is so in certain instances, the facts do not indicate that it was done more than a few times in the approximately one year period of November of 2008 through November of 2009.

The few instances that have been identified by various people as instances where the employee was not told of meetings amount to maybe 5 instances. Five times over 365 days and countless numbers of meetings where there might have been notice of a meeting, even if that did occur, is, in the absence of facts to suggest that it was done as part of a plan, hardly evidence an attempt to undermine anyone. If it was part of a plan- and there are insufficient facts to suggest that it was- it was a poorly executed plan and not a very effective one.

In fact, the documents reviewed suggest that the employee was notified of meetings and was kept in the loop on most, if not all, matters.

A selective review for example of the literally 1000's of emails provided or made available, show countless times shortly after the employee assumed a new position where there was inclusion on the distribution list of emails on various matters.

For example, in reviewing selective emails of one Department Head, it appears that for the period of January 2009 through November 2009 there were well over 140 emails that included the employee either as a direct recipient, cc recipient or sender. These were on a variety of subjects. This suggests that the employee was generally kept in the loop on matters and was notified of various meetings.

Also, in terms of Department Head meetings, once the employee assumed the new position, the employee appears to have been included on the distribution list for the regular Department Head meetings. For example, notices of those meetings for the selected period of December, 2008 through November 2009 show at least 13 such emails.

The employee appears to have also been included in the distribution list of a series of emails about the September 29, 2009 Special Town Meeting.

The employee was sent along with various Department Heads, an email advising that the Board of Selectmen was going to be meeting on July 29, 2009 to set a date for a fall Special Town Meeting.

On July 6, 2009, the employee wrote to an administrative employee advising that they may have 2 bylaw articles for the warrant. The administrative employee wrote back the same day, less than an hour later, and suggested that the employee confer with Town Counsel on the articles.

On that same date, July 6, 2009, the employee wrote back to the administrator as having already been in touch with Town Counsel. The employee also advised that the Board of Selectmen had said a particular request could be put on the warrant for a

special tow meeting. The administrator wrote back that same day and told the employee that the matter had been scheduled for the agenda for the July 28, 2009 meeting. The employee responded with a thank you email.

A notice had gone out from the Board's office on July 29, 2009 to others, including the employee, advising that the Board of Selectmen have called for a Special Town Meeting for September 29, 2009 and that the warrant was open for articles until August 11, 2009.

An email had also gone out the September 8, 2009 advising employees that the Board would be discussing the Town Meeting.

If the employee maintains not receiving these emails, further research and review would be warranted to determine if there is perhaps an email problem or other problem.

Suggestions that the employee was not regularly included in other necessary emails that other Department Heads were are not borne out by the facts. To be certain, it is problematic to be able to show that someone was not sent an email, unless one has emails that went to other Department Heads but not that employee. However, the record shows that the employee was in the same group of emails on various matters that other Department Heads were.

To be certain, the employee was in the new position most difficult circumstances. The employee rose to the occasion and assumed responsibility. This was a time of great emotion for the community in general.

Human nature being what it is, there were no doubt some who still felt the pain and loss of another employee. As the person expected, at least at that time on an interim basis, to replace that person, the employee's appointment and performance was bound to be met with mixed emotions.

Overall, there is not sufficient evidence to warrant a conclusion that there was an effort or actions to discredit an employee or undermine the employee's authority.

4. Actions concerning the laptop used by an employee

A Department Head had a laptop computer which was used while outside of the Town buildings. Following the end of that Department Head's administration, the Town retrieved the laptop. There are those who are concerned that the laptop should have been returned to the employee's Department and that it was not promptly returned. The concern that it should have been returned to the Department

appears predicated on two points- that it contained information that the new Department Head needed or could use and that it “belonged” to that Department. Tangent to this is a concern that information may have been removed from the laptop.

An objective review of the facts however does not support the concern that information from the laptop that may have been useful to the new Department Head was withheld, that the laptop “belonged” to the Department or that material on it may have been removed.

As best as can be done, a time line can be developed as follows:

<u>Event</u>	<u>Comment</u>
Employee’s administration ends	
XX is requested to make arrangements for employee’s laptop to be returned to the Town	
XX requests Department to retrieve laptop	It is unclear who actually said what to whom. XX believes XX took care of this. XX believes XX spoke to XX. XX does not recall

	being so requested by XX.
Laptop is brought to the Department;	Unclear who did this; <ul style="list-style-type: none"> - XX states did not - XX sates did not - XX states did not - XX states did not - XX is not sure but does not believe XX did - XX may have done so when items brought to the Department; not sure
XX picks up laptop at Department and brings it to Town Hall	Laptop comes under the control of the Town's IT Department
XX has laptop in IT Department; performs normal work on it; uploading files to server, leaving computer without date on it, etc.	
XX meets with XX and XX	

to discuss Department IT needs for coming fiscal year; part of budget process	
Laptop returned to Department by XX	

There does not appear to be any formal policy in terms of computer use and status when an employee ceases working for the Town.

However, as clearly established by a consultant, there is a process that he follows with respect to an employee's computer when an employee ceases working for the Town.

That process involves the IT Department taking possession of the computer. IT does an examination of the computer. It uploads to the Town file server all data files that may be on the computer. It cleans up the computer and reinstalls software. The computer is then kept at the IT Department for future assignment to a Town Department, employee or official, or it is used for parts.

If the successor to the former employee does not have a computer at his or her office, it is likely that the computer that has been cleaned by IT is given to the successor for his or her use.

If the person already has a computer, there is generally not a need for the person to have his or her predecessor's computer.

The IT Department takes the view that all computers, regardless of what Department or person may have been using them, belong to the Town as a single entity. Thus, although this particular laptop was assigned to an employee and used by that employee in carrying out duties, the laptop, as the consultant viewed it, did not belong to the Department but rather was a laptop belonging to the Town and subject to possible re-assignment elsewhere other than that Department.

The laptop itself is a piece of equipment. There did not appear to be anything

special about this laptop that made it unique to the Department.

The data on the laptop is what is important, not the physical item itself. That data was uploaded to the Town's file server where it remains at present and where it has always been available to anyone who had a legitimate need for it.

This is so even though one would readily recognize and concede that data from this Department's computer would have a greater degree of confidentiality and sensitivity than a computer from any other Department. It should be noted that confidential information on a computer is not limited to Department related matters. G.L. c. 93H and c. 93I impose obligations on holders of information from computers.

While one would logically expect that the data on the laptop could have been of use to the new Department Head, the fact remains that the data was always available. Once the consultant uploaded it to the Town's file server, it remained there for use.

It may be that the new Department Head was not aware that the data was available for use on the Town's file server. However, the fact remains that under the ordinary process, the laptop would be "cleaned" and the data would be available to anyone with a need to access it. Upon inquiry of the consultant for the data, he would have assisted them in getting access to it.

The new Department Head already had a Town issued laptop that had been assigned. As the data that was on the other employee's laptop was available through the Town's file server, there was not a specific reason to have been given that laptop. It would be logical that the new Department Head would want the data and that data was available.

The consultant emphatically states that he did nothing different with this laptop than he does with any other computer under similar circumstances. He took custody of it, uploaded the data to the Town's file server, "cleaned" it and added it to the IT inventory.

When the Department asked for the physical laptop to be turned to it, he treated the request as he does any other request. He sought justification from the Department for the need for the computer. His explanation that he must be judicious in distributing computers is logical and well intended. He asked for justification for the transfer of this laptop to the Department and other than being advised that it "belonged" to the Department, he did not receive any justification as to why it was needed.

It was not until an administrative employee instructed him to return the laptop to the Department did he do so. That person was his supervisor and if that person wanted

it returned to the Department, that was logically sufficient for him.

There is no evidence that anyone did anything to delay or prevent the return of the laptop to the Department. Similarly, there is no evidence that they did anything to prevent the new Department Head or Department from getting access to the data which was now and still is on the Town's file server.

In the absence of some clear policy to the contrary, there is no basis for the Department claiming "ownership" of the laptop. If the Town wants to adopt such a policy, it is certainly free to do so. However, under the present facts there was nothing upon which to base the Department's claim that it "owned" the laptop and that it had to be returned to it. As part of the efficient and orderly public administration of the Town, it has a central IT Department and such matters are logically handled by it.

It may very well have been that Department personnel were unaware of the accessibility of the data from the laptop on the Town's file server. Perhaps that was not made clear to them. If that is the case, it is unfortunate and serves as a reason for clear policies and protocols to be adopted. It is not clear that it was sufficiently communicated to the Town administration that the Department needed or wanted data from the laptop.

With respect to whether any emails or other data was inappropriately removed from the laptop, there is no present evidence to support this suspicion. While it is possible that some data, including emails, could have been removed- as there was a period of time from when the laptop was initially returned to the Department until when the consultant picked up the laptop at the Department during which the custody and status of the laptop is less than clear- there is no evidence to suggest that was done.

In fact, even if it was done, it would likely have been a futile exercise. While laptop was "cleaned" and email and data removed, no forensic cleaning was done which would have permanently removed and deleted data and emails. Thus, in the sectors of the hard drive any data and emails that were on the computer while it was in the custody of the other Department Head most likely remains. If the Town wants to have that area of the laptop accessed, it can be done by the IT Department. The work would be done at the rate of \$150.00 per hour and it is expected that it would between four and six hours of time for the IT Department to do so. The only way that the true hard drive data, including emails, could have been removed is if it was "forensically" cleaned.

Thus, it does not appear to have been the result of anyone's inappropriate conduct, and certainly not the administrative employees, that the laptop was not returned sooner or the data otherwise made available to the new Department Head.

The consultant appears to have been in control of that situation. He was never made aware of any need by the new Department Head or Department for access to the data that had been removed from the laptop. It remains as available at present as it was at that time.

FURTHER DISCUSSION AND RECOMMENDATIONS

The following recommendations are made:¹

1. It is recommended that the Town remind all officials and personnel of the prohibitions on sexual harassment, retaliation and other inappropriate conduct. To its credit, the Town does have a Professional Conduct Policy which should be reviewed and perhaps expanded on and re-issued. While privacy considerations dictate that specifics of this matter not be identified in such a reminder, it is important for any employer or institution to remind those associated with it of the rules of appropriate conduct. A necessary component of any institution's activities to prevent harassment and other inappropriate conduct is to periodically remind those associated with it of the prohibition and procedure for reporting such conduct. Training programs for management and for other employees should be undertaken. Periodic reminders of the policy should also be issued. Such action would further reflect the Town's commitment to make the workplace one open to all persons.
2. Given the emotions occurring among key management employees, as well as support staff, serious consideration should be given to bringing in a professional facilitator to work with those involved to get everyone back on track of serving the community. All the employees and officials interviewed displayed many positive attributes and a strong devotion to the community. The community has made an investment in these employees and officials. To maximize its investment and to better serve the public, it is important that the workforce- both management and staff support- recognize the positive role they play in the community and that they be in a setting where they can effectively work. Hard feelings have developed but in view of the genuine interest of the various employees and officials to best serve the community, these hard feelings may be able to be re-molded towards a positive result. In other words, the Town and all involved in this matter should look at this situation as a learning opportunity on how one's conduct can both be positive

¹ This list is not intended to be all inclusive, but rather illustrative of some things that can and should be implemented.

and negative.

3. The Town should periodically check with the employees involved in this matter to see if they feel that there are any circumstances which are causing anyone to believe that they are being disrespected or their authority being undermined. This is not to suggest that those feelings are necessarily accurate. However, it is important for the Town to promptly understand what there may be that any employee feels is inappropriate so that the Town may appropriately address the matter with the appropriate persons. If the circumstances support someone's belief, the matter needs to be addressed. If the circumstances do not, the matter still needs to be addressed in terms of working with the employee to enable him or her to understand how the situation is not what they are viewing it as and how to effectively deal with such situations.
4. A protocol should be developed to address the procedure to be followed when a new employee is hired or promoted to a new position so that the employee is welcomed to the workforce and is also instructed in the Town's procedures as relevant to the employee's duties. An employee not familiar with the Town Meeting or budget process could have benefited from more assistance from the Town's administration. To be certain, any Town employee should be asked for assistance; however it is sometimes difficult to ask for assistance when one may not even know what to ask about.
5. More effective communication has to be made among the Town's key managerial personnel. So much that happens in one Department may affect another Department that it is important that people know what is going on elsewhere within the Town government that may affect their area of responsibility. For example, the agenda for the Selectmen's meetings should be distributed to all key Department Heads and certainly any Department which may be discussed at a meeting. It is not realistic to presume that Department Heads would take the time or even have the ability to check the local cable channel to see what is on the agenda. The same is true about checking the website of the Town. Effective July 1, 2010 meeting notices will now have to list all items which the Chair reasonably expects will be discussed at the meeting. See c. 28 of the Acts of 2009, G.L. c. 30A, section 20(b). This will not only provide more information to the public but will also provide helpful information to Department Heads as to what will be discussed at the Board of Selectmen meeting.
6. The Town should prepare and distribute to all Department Heads and support staff, and make available to the public, a Town Meeting guide setting forth an

explanation of the Town Meeting process and in particular how articles are prepared, listed on the warrant, reviewed by various local boards and acted on at Town Meeting. Such guides are available and could be easily adapted to Southborough's governmental process. This would provide additional assistance to members of the Town government- and the public as well- as to the Town Meeting process. It is also incumbent on the key administrative officials of the Town- the Town Administrator and Assistant Town Administrator- to reach out to Department Heads, particularly new ones, to be sure they are thoroughly familiar with the budget and Town Meeting process. The consequences of there being an error due to a lack of familiarity of the process are too significant to leave anything to chance.

7. A protocol should be developed so that employees who believe a problem exists in the way the Town administration functions can address the concerns in a prompt way, and on a local level. This process need not be elaborate and could be as simple as encouraging employees to discuss with designated and trained employees problems they feel exist. For example, if such a process was in effect, an employee could have used it to address what he or she felt were incidents that undermined their authority.
8. Managerial employees should be provided with the opportunity to learn how to address and avoid the creation of conflicts within the workplace. Part of this training would include understanding how things said or done, or not said or not done, depending on the situation, can adversely affect others. Better judgment could have been exercised by the employees who made statements or listened approvingly to such statements, especially given the fact that the statements about certain employee(s), albeit intended to be lighthearted, were inappropriate in that context. Present were citizens who would be expected to work with that employee, a subordinate of that employee and a person in competition with that employee for another position. These comments, even if they would have been appropriate in a different setting, were ill timed and should not have been made given those in attendance. Having friends among one's co-workers is expected and can be a healthy aspect of the workplace and one's personal life. However, care in the workplace must be taken to avoid other employees not feeling marginalized or excluded. Cliques that may have existed in high school have no place there or in the real world.
9. Employees need to be trained on the appropriate use of the technologies available to them. In particular, proper email use and retention requirements within the parameters of the law needs to be explained to employees. Emails are in most instances public records.

10. The relationship between certain Departments and the general government (i.e. Town Hall) needs to be improved. There was a definite sense that each "house" is looked at as not being part of the same team. This may not be intended, but efforts need to be made to address this perception on the part of various employees.

CONCLUSION

The undersigned has sought to reasonably and appropriately determine the facts as to what happened and whether the conduct complained of constitutes inappropriate behavior on the part of Town employees. In addition, policies were examined with a view towards seeing if they needed to be changed, or if new policies should be implemented.

The Executive Summary has been transmitted to the Board of Selectmen for such action as is deemed appropriate.

Respectfully submitted,
James B. Lampke
JAMES B. LAMPKE, ESQ.

Date: May 4, 2010