

**TOWN OF WINCHENDON
BOARD OF SELECTMEN
EMERGENCY EXECUTIVE SESSION MINUTES
TUESDAY, APRIL 1, 2014
Town Hall, 109 Front Street, Winchendon
4th Floor Robinson-Broadhurst Conference Room**

Present: Robert M. O'Keefe, Chairman
Elizabeth R. Hunt, Vice-Chairwoman
Fedor Berndt
C. Jackson Blair
Keith Barrows

James M. Kreidler, Jr., Town Manager
Linda A. Daigle, Executive Assistant

List of Documents Presented at Meeting:

- Roselli, Clark and Associates Report dated March 14, 2014
- Board of Selectmen Fraud Policy No. 410-09
- Letter from Attorney Michael Long of the Mass. Association of School Superintendent to Town Counsel, Atty. Lauren Goldberg, Kopelman and Paige, dated April 1, 2014
- Letter from School Committee's Attorney Regina William Tate to Atty. Lauren Goldberg, Kopelman and Paige dated April 1, 2014

Executive Session, under Exemption No. 5 to investigate charges of criminal misconduct or to consider the filing of criminal complaints, was called to order at 6:07 p.m.

Kreidler mentioned Board members should have received a copy of a report from Roselli, Clark and Associates, our auditing firm, in which certain findings were made out and recommendations are made. The reason it came to you is because certain suspicious things became apparent to the Town Accountant when she tried to close books to print the W2s. She determined there appeared to be some manipulation on some cell phone reimbursement payments. As a result of that inconsistency or curiosity, she had Munis in to do a further review. They were able to determine, in addition to that specific irregularity, there also appeared to be a concern of permissions and passwords to the Munis system being shared inappropriately with employees of the School Department apparently by the School Business Manager in a fashion that would subject the Town's personnel data. O'Keefe asked if it included just school employees or both town and school which would include police and fire that are supposed to be privileged and private. Kreidler confirmed it did.

Kreidler informed them that hearing of this from the Town Accountant and from the Munis Representative through the Town Accountant, it implicates the Board of Selectmen's Fraud Policy No. 410-09. He referenced the policy he highlighted and shared with them individually. It's a policy to protect revenue and information from any attempt by employees to gain by deceit financial or other benefit at the expense of the taxpayer. Town official employees must at all times comply with all applicable laws and regulations and the Town will not condone activities of officials or employees which results in violation of the law. The policy further defines fraud as "cash, inventory of our assets, corruption, fraudulent statements or other." Under cash, one of the specifics identified is "expense reimbursement schemes". Looking at the information that was presented to him by the Town Accountant regarding what was done with the cell phone reimbursements for a School Dept. employee,

in his mind that tripped that wire. Additionally, on Page 2 under similar irregularities, the definition of fraud further expands to say, “activity involving questionable behavior or business dealings by members of government employees, that put government revenue, property, information and other assets at risk of waste or abuse.”

The second issue, being the potential breach of our personnel data he believes would be an example of potential fraud, in that there was activity involved, questionable behavior of sharing of passwords specifically, done by a government employee that puts government information at risk for waste or abuse. Blair asked how far back this went. Kreidler replied that would acquire additional information but we do know it has occurred and as of last week when we officially locked down the system, it was likely to continue to occur or be able to occur. Blair asked how many people should have super access. Kreidler replied two people, the Town Accountant and the Business Manager. It has been alleged that access has been given to others and a further detail review by an additional party will be able to confirm. Blair said he was concerned more about personnel data then tax issues and wants to make certain personal data is protected.

O’Keefe asked what were the actions taken to date to lock down the system. Kreidler replied pursuant to the policy once there is an allegation or suspicion of a suspected act it triggers certain actions being required on his part as the Town Manager. It requires him cause to investigate acts of fraud or other similar irregularity. He did a partial investigation by bringing in Roselli and Clark where there were findings of irregularities regarding how the cell phone reimbursement was treated in the system for tax purposes and also super user access had been granted to those unauthorized to have it. That brought him to pursue the rest of the policy, with consultation with Town Counsel, to go to the District Attorney’s office if there are suspicions or allegations that there is reason to believe fraud or an irregularity has occurred.

Barrows asked for rough dates when all this occurred, when the irregularity was identified to the Roselli Clark report to today. Kreidler, without a calendar in front of him, answered:

- The end of January W2’s were not able to be printed with the system being flagged for an irregularity looking at withholdings against the taxable earnings in the system
- The Town Accountant looking through the Munis system was able to determine that it tied back to School Dept. related issues specifically the cell phone issue
- The next week or so in February Munis came in
- They analyzed the access being granted
- Mid to late February that information was presented to him
- He engaged Roselli and Clark which presented the information out to him a week ago
- He then forwarded it to the Selectboard

Nine users were classified as “super users.” Barrows asked if the Town Accountant and the School Business Manager were provided a copy of the policy and were they made aware of what the expectation was before we had an issue. Kreidler stated the Town Accountant was because it’s part of the new hire packets here. He believes the Fraud Policy should be attached to the School’s new hire packets but couldn’t confirm that it was. He added the law is clear that data of this nature is confidential and needs to be kept in a controlled environment. Irrespective of whether there was actual knowledge or policy in the School Department employee, at that level of position in the organization, the sharing of a super user password in a subordinate in the organization that does not have the authorization, the right to have access to full, complete data should be known.

Kreidler reported that everyone has been completely locked out with the exception of two computers both housed in the Town Accountant's office. The School payroll or payables done this week were done at a terminal in the Town Accountant's office. The Town Accountant re-authorizes the Business Manager's access and terminates it when she leaves. Munis will review both Town and School users and rebuild everyone's profile and allow appropriate access as needed in the organization. Blair stated this would suggest to me that the School knows something is going on.

Barrows questioned about the nine other users who have full access and who the Administrator is. Kreidler replied the only users empowered to give access would be the two super users, the Town Accountant and the School Business Manager. The School Business Manager gave those users super user access. The school has a computer use policy expressly stating you cannot share your password user information to others. More work needs to be done on determining what if anything has occurred during the period of time it has been open.

Barrows asked the Town Manager what action they need to take.

Kreidler, going back to the policy where the Town Manager has the responsibility to investigate all activity defined in the policy (why he took action), says it further defines in certain circumstances where there are reasonable grounds that indicate a fraud *may* have occurred, the office of the Town Manager *shall* contact the office of the District Attorney and the Winchendon Police. In an effort at avoiding the implication of criminality, there is language that also says the Town Manager, through consultation with Town Counsel, the Chairs of the Selectboard and School Board were invited to come together in a room to discuss and work together to identify a course of action prospectively. Counsel and your Chairman came Friday. The Chairman of the School Committee did not attend. He stated he couldn't make it; he had not heard back from his Counsel. Town Counsel reached out to School Committee Counsel. A conference call involving the Town Manager, Town Counsel, BOS Chairman Robert O'Keefe, School Committee Chairman Mike Niles and School Committee Counsel took place and it was agreed that night and further confirmed in emails that the School Department would hold an emergency meeting Monday, yesterday. Certain actions would be taken along the lines of mitigating any potential for future occurrences of irregular or inappropriate activity. While we could make sure the bleeding had stopped and we could mindfully and deliberately move toward the investigation phase, we would hear something on when that meeting would take place. We didn't hear anything; business was as usual in the School Department. Town Counsel reached further across the table, was there something that happened that we have not heard about, and asked to let us know by 10:00 a.m. tomorrow.

Last night he reached out to schedule this emergency meeting of the Selectboard. The reason it is an emergency is we still have an issue where an irregular activity and/or fraudulent activity has been alleged and where there is evidence that fraudulent or irregular activity has occurred and it is alleged to have been perpetrated by an individual still employed by the organization. The concern he has about the School Committee having chosen not to participate collectively, collaboratively in moving forward on this and instead apparently by all accounts having not heard anything, choosing to ignore it. He doesn't know what potential breach still exists and needed, pursuant to the policy, report it to them and keep them informed of pertinent investigative findings.

Blair asked about the involvement of the Board other than being notified. Kreidler read part of the Fraud Policy, if situation warrants additional investigation that it be coordinated with the Board. Blair interjected saying it's a mystery to him and he is not pleased with the way the School Committee is not responding, not reacting. They are a Committee of the Town. They are not a Committee serving the incumbent Superintendent. Essentially, they have set us up as the bullies. This business of not attending,

not coming, ignoring dates, he guesses they will come back to us and say “speak to our attorney.” They have caused an awful a lot of trouble. It should have been handled in the way the Town Manager had requested, people sitting down and talking. They are basically saying we are going to fight.

Kreidler replied the global thing here is the Town Manager has the obligation to look when advised or cause to have investigated these types of things. The policy is clear. If after investigation, the words are reasonable grounds may have occurred, he is obligated to take the next step. The preference would have been doing it with the school as opposed to have to do it unilaterally. But having offered and not received to do it collaboratively, he is left to do it unilaterally which then implicates the Board pursuant to the policy.

He did get a call from our Town Counsel, Attorney Lauren Goldberg this afternoon in which she shared an email, a letter received today addressed to Ms. Goldberg, Kopelman and Paige, from Long & DiPietro, LLP regarding Town of Winchendon and Dr. Salah Khelifaoui. Kreidler read the letter. They represent Massachusetts Association of School Superintendents, where Dr. Khelifaoui is a member of good standing, seeking proof from the Town that “fraud” or “criminal activity” had occurred and if not to apologize to Dr. Khelifaoui for the statements which are defamation per se.

O’Keefe questioned how the attorney received the letter dated March 14, 2014 from our Auditor. Kreidler stated he shared the letter with the School Committee Chairman Mike Niles Friday morning in anticipation of the meeting later that day. He mentioned to Mr. Niles that the letter was confidential in nature. The Board wondered how this new attorney received this letter. This was not the School Committee’s attorney.

Kreidler believes the School Committee’s attorney is Brandon Moss who they spoke with on Friday during the conference call. He informed the Board that he did get a letter via email from that firm that represents the School. She uses similar language that suggest she has advised the Business Manager and Superintendent to seek counsel of their own to contemplate defamation suits against the Town. It’s curious, as an attorney representing the Town, suggesting an agent of the Town seek personal counsel to sue the Town.

O’Keefe said looking at the verbiage just read from the Superintendent’s Counsel where he makes references to issues between the Town and the School, they need to take it out of their hands. An Auditor has already done an investigation to some extent. He feels it needs to get to a neutral party. The policy references the District Attorney; let the professional unbiased law enforcement investigate this so that there is no question of there being any political nature to it. He asked if a motion was needed. Kreidler replied he didn’t need it in a motion and wanted to hear from the rest of the Board.

Kreidler, going back to the fraud policy in place, clearly the reimbursement scheme is referenced as one of the potential types of fraud for cash, putting of information at risk of waste or abuse clearly implicates the second of the actions. The statue that is involved regarding data, puts as a breach of security, a very long definition, but one that includes putting personal information as being used in an authorize manner or further in unauthorized disclosure. Even best case if these permissions have been granted and nobody looked at anything, there is still a trip of this statue because, inarguably, as is noted by our Auditors on Page 2 they write “Even more disturbing is that the user attributes for many of these users gave them the ability to grant increased system access to other users.” The data breach of security pursuant to statue is tripped because it says the data has been made subject to further unauthorized disclosure.

Questions were being asked about how many people might be defined in this and who provided the access code. O'Keefe cautioned that we are not law enforcement and to let the District Attorney determine who did what. We do have the report from the Auditor. Berndt was concerned about the people who have access and needing to get that in control immediately. O'Keefe stated that was to be part of the meeting last Friday with the School having them involved in this process; but with the School's absence of that involvement, we have no choice but to go to the District Attorney. We don't know what people are doing, or what they are capable of. We have no ability to do anything with the School. Berndt was concerned that the School was not being up front with us, that they were choosing not to be involved and that it looks wrong.

Kreidler said he has information from a letter from the School Committee's counsel he referenced earlier that the School Committee was going to take this matter up in some fashion at their meeting on Thursday evening.

Barrows wanted to understand the cell phone reimbursement issue better wondering what was the issue, the irregularity, that presents itself allegedly as fraud. O'Keefe read bullet items 2, 3 and 4 from the March 14th letter from Roselli and Clark stating, 2) in 2012 the School was made aware from the then Town Accountant that cell phone reimbursements should be considered taxable income, 3) based on the recent review the first two payments were processed through payroll as fully taxable income, 4) the next three payments, however, were processed through payroll without any Medicare deductions, which caused the amount remitted in taxes to the IRS to be incorrect. O'Keefe added that it was paid back when the Town Accountant became aware of it. Kreidler explained, that occurred at the end of January when the W2s were being generated. Subsequent to that discussion in which those issues were discovered and rectified, the Town Accountant went back again and was able to determine in the first quarter of 2014, also noted the Superintendent's accumulated files were manually adjusted again even though a reimbursement had not yet been processed. Even after it was corrected the first time, there was another effort made by someone to go in and manually adjust the tax status by coding it non-taxable even though it had not been issued in that period of time. Berndt said this doesn't appear to be just a mistake but done maliciously and feels they should move forward with the District Attorney, the sooner the better.

Hunt said she feels absolutely in awe they have to go this far. The hope was it could have been managed, taken care of last week. She offered her frustration that changes to a payroll warrant have been changed in the system after it has been signed by her as a Board of Selectmen and also after the School Committee signed the warrant. Her signature is not respected. She hoped the School Committee will see the issues of importance here. She offered to attend the School Committee meeting to help with a resolution without the need to go in the direction they were headed. It was pointed out that this is a scheme to reduce the amount of taxes someone would pay. Just because the Town Accountant found it, it doesn't negate what happened.

Barrows explained, in his mind, if you do something unknowingly, that's one thing. This is post approval, post authorization manipulation. That's the difference. He's most disheartened about two issues. The folks involved here have a fiduciary responsibility here to the School Committee and to the taxpayers in Town. They also have a bigger responsibility and a difficult one. They are charged with protecting the public trust. This wasn't an issue baked or raised by the Town Manager as the one of the letters suggest, this was brought forward by a paid professional that we have an issue. We are not experts so called in the auditing firm that does this on a regular basis. They have presented what they believe evidence of some wrong doing; to what shade or to what grade is what we need to find out. His concern is if we have a School Committee that has been completely disengaged, the fact is, he sees

something being spun that this is a School Committee versus the Board of Selectmen, versus the Town Manager. That is not what we have here. What we have here are legitimate concerns that have been raised by an auditing firm that specializes in this type of activity and due to lack of engagement, forcing our hand in to action. He's not as hopeful an action will be taken on Thursday and doesn't think they would want to discuss this publicly. We are reaching the same conclusion, we are not law enforcement, we are not forensic experts. Something we were hoping could have been handled internally; we can only work cooperatively and collaboratively if both sides are willing to engage. Because this is not happening, we have no alternative then to turn it over so it does not get viewed as something politically charged. We have this information and evidence that is being suggested of potential wrongdoing. It needs to be vetted and investigated and a conclusion brought to this Board. We need to agree this goes to the District Attorney and brought back to us.

Blair said the Town Manager has presented letters from Town Counsel and their attorneys. This is above us. There is legal evidence but the legal opinions don't match. He stated he can't vote on and recused himself because he is a substitute teacher at the School. He had hoped for a better outcome. Decisions made by the School Committee have put a stumbling block to a possible quiet dignified solution of these ugly issues. The worst part is nine people or more had access to this information and felt the Board should not waste time.

Jim mentioned the fraud policy and statute on personal data. We have an obligation if we believe a breach has occurred to notify anyone whose data may have been breached. In addition to notifying them, there may be a need to provide some level of protection, informational awareness through credit monitoring. Absent the cost of investigation for counsel, two year credit monitoring for roughly the five hundred fifty employees, would be around \$50,000, \$60,000 for two years. Discussion was had about the Munis tracking system and being able to determine what type of activity had taken place.

Kreidler explained that under the statute, if we have reason to believe a breach had occurred, we need to notify the potentially impacted parties. Barrows said because we can't say without absolutely certainty that it wasn't. The Town proper needs to notify them but to also offer them some form of protection.

Kreidler cautioned them loudly and clearly for the record that this is Executive Session privilege material. You do not have the ability to speak about this outside of this room unless and until the privilege in which we are convened has been exhausted. O'Keefe questioned if the auditor's report should be released since it has already been improperly forwarded to the School Committee, by what it appears to have been, Mike Niles. Kreidler replied that it is a document that is part of, and largely if not nearly the basis for, the privilege under in which we meet under Exemption No. 5. A question was asked about any recourse with Mr. Niles breaching the confidentiality of this document. There is none. It's more of a trust issue.

Kreidler, toward that end what has already gone outside the circle, the letter he has and read into record from Attorney Long, copies in addition to Dr. Khelifaoui someone named Thomas Scott listed as Executive Director of the Mass. Association of School Superintendents. It's gone beyond even Mr. Long's client, the Superintendent, some other body and party beyond that. He has familiarity with Mr. Long. He was peripherally involved with Mr. Long when he represented the Winchendon Superintendent of Schools David Sandman when there was a matter that resulted in allegations of wrong doing against that then seated Superintendent which resulted in him resigning his position and a settlement was reached between him and the School. Mr. Long had represented the former Superintendent Mr. Sandman.

Kreidler offered a final parting thought that he is not suggesting that Dr. Khelfaoui or the Business Manager have committed a crime. He is suggesting merely that we have evidence and allegations contained in the four corners of the audit report and we have a policy that is tripped that requires action part of being for me to inform you. This is meant to be a pursuit of an obligation to make certain that nothing untoward has happened and not at all an effort to try and find something that had been done inappropriate.

Barrows lastly offered that he gets very frustrated and disappointed with individuals involved with this, directly or peripherally, will be the first ones to try and claim that this is politically motivated yet they are the individuals that have set this up to be extremely political. Barrows moved that this Board go on record supporting the transference of all this information be forwarded to the District Attorney's office to be investigated appropriately; Berndt seconded. By roll call vote of Hunt aye, Barrows aye, Berndt aye, O'Keefe aye and Blair abstaining, the motion carried.

Blair moved to adjourn from Executive Session back into Regular Session; Barrows seconded. By roll call vote of all aye, Executive Session reconvened into Open Session at 7:22 p.m.

Blair moved to adjourn from Open Session; Berndt seconded. By a vote of all aye, the meeting adjourned at 7:22 p.m.

Respectfully submitted,

Linda Daigle
Executive Assistant