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January 20, 2015

Chief Michael Spera,
Dept. of Police Services
6 Custom Drive
Old Saybrook, Ct. 06475

Re: Grant re Marine Patrol Boat

Dear Chief Spera:

This is a follow-up to an office conference we had last Saturday afternoon. You have asked my legal opinion regarding a response to an FOI request to release copies of the Federal grant giving Old Saybrook the sum of \$271,177.00. My opinion is as follows:

This document was issued with a specific warning that the document contains security sensitivity information that is restricted for public inspection under the provisions of Federal Statute Title No. 49 CFR part 15. Under that Federal law, the distribution of this document, and the information contained therein, is restricted to those persons who are qualified as "need to know" under the Federal statute. Under Section 15-11 of the statute, persons with a "need to know" are specifically defined and set forth. A copy of said section is attached hereto and made a part hereof as 'Exhibit A'.

Under this classification, you, as Police Chief in the Town, certainly meet the qualification, either under subparagraph 1 or subparagraph 3 of that section. That definition also, in my opinion, applies to Carl Fortuna, who as First Selectman, is the designated military leader of our community. I, as Town Attorney, would appear to be included under paragraph 4 of that section.

In my opinion, for you to respond to an FOI request, and to release this document with any sensitive information contained in it to any persons, would be in serious violation of Federal law.

This issue is addressed under the provisions of Section 1-210 of the General Statutes of Connecticut entitled "Access to Public Records – Exempt Records". Subparagraph (a) of that statute states that all records are public

records unless ".....otherwise provided by any Federal law.....". In this instance, clearly Federal law would, generally speaking, take precedence over State statutes which prohibits the release of this record.

I called the State of Connecticut FOI Commission and confirmed directly with them that my interpretation of the State and Federal law on this issue is correct.

At your request, I personally examined the grant document referred to above. Although I cannot discuss its contents with any non-exempt person, I can state what it does not contain. The question has come up with regard to the purchase of the police boat as to whether or not accepting these Federal funds will burden the Town with new and/or costly requirements or duties which would not otherwise be imposed on the Town had it not accepted the grant. I can categorically state that the provisions of this grant do not impose any new or additional responsibilities or costs upon the Town, other than that which is generally required of the Town in the performance of its public policies, duties, and responsibilities. The grant is to help the Town to defray the cost of the purchase of a new police boat. It is nothing more or less than that.

If you have any questions regarding this, please call.

Very truly yours,



Michael E. Cronin, Jr.

MEC:nl
Enc.

c.c. Hon. Carl Fortuna, First Selectman, Town of Old Saybrook, Town Hall,
Old Saybrook, Ct. 06475

- (1) Take reasonable steps to safeguard SSI in that person's possession or control from unauthorized disclosure. When a person is not in physical possession of SSI, the person must store it a secure container, such as a locked desk or file cabinet or in a locked room.
 - (2) Disclose, or otherwise provide access to, SSI only to covered persons who have a need to know, unless otherwise authorized in writing by TSA, the Coast Guard, or the Secretary of DOT.
 - (3) Refer requests by other persons for SSI to TSA or the applicable component or agency within DOT or DHS.
 - (4) Mark SSI as specified in Sec. 15.13.
 - (5) Dispose of SSI as specified in Sec. 15.19.
- (b) Unmarked SSI. If a covered person receives a record containing SSI that is not marked as specified in Sec. 15.13, the covered person must--
- (1) Mark the record as specified in Sec. 15.13; and
 - (2) Inform the sender of the record that the record must be marked as specified in Sec. 15.13.
- (c) Duty to report unauthorized disclosure. When a covered person becomes aware that SSI has been released to unauthorized persons, the covered person must promptly inform TSA or the applicable DOT or DHS component or agency.
- (d) Additional requirements for critical infrastructure information. In the case of information that is both SSI and has been designated as critical infrastructure information under section 214 of the Homeland Security Act, any covered person who is a Federal employee in possession of such information must comply with the disclosure restrictions and other requirements applicable to such information under section 214 and any implementing regulations.

Sec. 15.11 Persons with a need to know.

- (a) In general. A person has a need to know SSI in each of the following circumstances:
- (1) When the person requires access to specific SSI to carry out transportation security activities approved, accepted, funded, recommended, or directed by DHS or DOT.
 - (2) When the person is in training to carry out transportation security activities approved, accepted, funded, recommended, or directed by DHS or DOT.
 - (3) When the information is necessary for the person to supervise or otherwise manage individuals carrying out transportation security activities approved, accepted, funded, recommended, or directed by the DHS or DOT.
 - (4) When the person needs the information to provide technical or legal advice to a covered person regarding transportation security requirements of Federal law.
 - (5) When the person needs the information to represent a covered person in connection with any judicial or administrative proceeding regarding those requirements.
- (b) Federal employees, contractors, and grantees. (1) A Federal employee has a need to know SSI if access to the information is necessary for performance of the employee's official duties.
- (2) A person acting in the performance of a contract with or grant from DHS or DOT has a need to know SSI if access to the information is necessary to performance of the contract or grant.
- (c) Background check. The Secretary of DOT may make an individual's access to the SSI contingent upon satisfactory completion of a security background check and the imposition of procedures and requirements for safeguarding SSI that are satisfactory to the Secretary.
- (d) Need to know further limited by the DHS or DOT. For some specific SSI, DHS or DOT may make a finding that only specific persons or classes of persons have a need to know.