

February 16, 2017

David C. Jenkins
djenkins@k-plaw.com

BY FACSIMILE (617) 660-4613
AND BY FIRST CLASS MAIL

James F. Slater, III, Commissioner/
FBI CJIS Systems Officer
Commonwealth of Massachusetts
Executive Office of Public Safety & Security
Department of Criminal Justice
Information Services
200 Arlington Street, Suite 2200
Chelsea, MA 02150

Re: Town of Townsend Police Department

Dear Mr. Slater:

Please let me introduce myself as Town Counsel for the Town of Townsend. In November 2016, I was directed by the Board of Selectmen (the "Board") of the Town of Townsend to investigate concerns regarding the Police Department's use of the CJIS System. The authority for the Board to designate me as an investigator of this matter is derived from G.L. c. 41, §23B, as well as the Townsend Town Charter, Section 3-2(e). At the initiation of the investigation, I informed Chief Robert M. Eaton that I was to conduct this investigation and that he was not to conduct a separate inquiry into this matter. Over the last several weeks, I repeatedly advised Chief Eaton that he was not to conduct a separate inquiry into this matter.

I am in receipt of your letter to Chief Eaton dated February 8, 2017. That correspondence finds that the inquiry concerning a Town employee as directed by [redacted] on September 27, 2017 was unlawful. You concluded: "The DCJIS finds that the inquiry was initiated for no official criminal justice purpose." As indicated below, [redacted], the officer in charge of the September 27, 2016 shift resigned before he could be interviewed regarding his involvement in this event

On the basis of your correspondence, Chief Eaton last Friday issued a Memorandum to the Board, a copy of which is attached. In that memorandum and in contradiction to your findings, Chief Eaton wrote, "... pursuant to a recent ruling I received on Wednesday, February 8, 2017, from the Commonwealth of Massachusetts Department of Criminal Justice Information Services (DCJIS), this report unequivocally exonerates all 3 police officers who were wrongfully accused from any wrongdoing." Chief Eaton then published his false conclusion to the community, causing substantial turmoil. You will see that Chief Eaton gave the Board two (2) hours to act on his demands.

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Upon review of this matter, it is evident that your agency was supplied with erroneous and incomplete information with respect to the Town's concerns regarding the use of its CJIS System. The purpose of this correspondence is to alert you to the information that we have at the present time with the hope that you will reconsider your correspondence dated February 8, 2017, and in conjunction with the Town, undertake a more complete analysis of this matter.

The Chief of Police has been placed on administrative leave with pay. He was scheduled to be interviewed yesterday and has postponed that interview on the basis of

The Town's investigation is continuing, but it would appear that the following facts are supported by the evidence in this case: On September 27, 2016, the Board conducted an open meeting and at that time, discussed the appointment of [redacted] Assistant to the Town Administrator. The Board of Selectmen meeting was public and carried on local TV. Personnel at the Police Station viewed the meeting. At that time, the Department was staffed by one dispatcher, [redacted], and two police officers. The two police officers assigned to the shift were [redacted] and [redacted]. The evidence indicates that [redacted] was on patrol, leaving [redacted] in the station. The evidence available to us indicates that [redacted] instructed [redacted] to run a Board of Probation query on the individual being appointed. In my subsequent conversations with Chief Eaton, it was disclosed that the [redacted] was "upset" with the appointment of the individual, that the police officer felt that an inadequate background check had been done on the individual, and that he, as a [redacted], had the right to conduct his own background investigation. The Town was unaware that the query had been run.

[redacted] ran a subsequent BOP query in connection with this matter on October 11, 2016. From your correspondence, I assume that you have been given a [redacted] later generated by [redacted] with respect to the Board of Probation activity on October 11, 2016. While the investigation remains incomplete due to the Chief's unavailability, I believe that the evidence will show that the computer run on October 11, 2016 was not conducted for a proper police purpose.

On October 11, 2016, [redacted] the Board of Probation record for [redacted]'s partner. At that time, he also [redacted] was, according to the Chief,

Sometime between October 11, 2016 and October 27, 2016, Chief Eaton [redacted] of the Board of Probation [redacted]. At that time, Chief Eaton knew or should have known that a Board of Probation query was run on [redacted]'s partner for no legitimate police purpose, but rather to have [redacted] employment with the Town be terminated. I am not able to find any evidence as of this point in time that Chief Eaton took any action with your agency regarding an apparent violation of State Law.

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Rather, on or about October 27, 2016, Chief Eaton arranged to meet with [redacted]. At that time, the confidential CJIS information was disclosed to [redacted] purportedly for the purpose of having the Board revoke the hiring of [redacted] that the [redacted] contacted Town Counsel. I advised [redacted] was contrary to State Law and that an inquiry must be made.

My reading of your report indicates to me that you were not informed that the October 10, 2016 CJIS inquiry was done to discredit a Town employee. I am advised that protected information concerning the employee has been referenced in social media.

At the end of November, [redacted] was requested to prepare a report regarding Board of Probation inquiries conducted on [redacted] and [redacted] partner. At that time, [redacted] invoked his Fifth Amendment rights. [redacted] Shortly thereafter, under circumstances that remain uncertain, [redacted] which you have. [redacted] fails to mention his participation in the query run on September 27, 2016 and as a preliminary conclusion, does not accurately report the circumstances surrounding the October 11, 2016 inquiry of [redacted] and [redacted] partner.

On December 22, 2016, [redacted] entered into an Agreement resigning his position with the Townsend Police Department.

Since that time, interviews have been conducted of the officers who had run CJIS inquiries on [redacted] and [redacted] partner. As I understand it, [redacted] were not disclosed to you by the Chief.

In addition to this sequence of events, there are other matters that have caused concern in the Town regarding the Department's oversight of its CJIS System. The Town has recently learned that a former employee was found in possession of confidential CJIS information at his workplace at the Essex County House of Correction. A copy of that internal report is attached for your review, and I would refer you to pages 4 to 6. Chief Eaton had been repeatedly requested for an update of the status of that matter. I am informed that the Chief indicated to Town officials that there was no update. The information we have received is that the Chief has received the confidential information, never disclosing to the Town or your agency that the information had been compromised.

Within the last several weeks, we have been advised that a CJIS inquiry was made on [redacted] on July 5, 2016. We have since interviewed the officer involved in that inquiry who has stated that the CJIS inquiry of [redacted] was triggered "automatically" by the officer's having updated [redacted]'s "Master Card." We are currently trying to ascertain the veracity of

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that statement. I have been told by my police contacts that the creation of a "Master Card" does not cause an automatic CJIS inquiry. Is that correct?

As I stated initially, the consequence of the issuance of your February 8, 2017 report has resulted in the Chief's release of his memorandum. That memorandum states: "With this being said, pursuant to a recently ruling that I received on Wednesday, February 8, 2017, from the Commonwealth of Massachusetts Department of Criminal Justice Information Services (DCJIS), this report unequivocally exonerates all three police officers who were wrongfully accused from any wrongdoing." The statement is inaccurate in that information form which your agency would have concluded that [redacted] was responsible for the Board of Probation inquiry run on September 27, 2016 was withheld from you by the Police Chief.

The purpose of this correspondence is to alert you to the facts above and to request that you reconsider the issuance of your letter of February 8, 2017, and deferring your final decision on this matter until a proper investigation is completed.

The Town remains committed to complying with our legal responsibilities regarding the management of their confidential information.

If you would like to discuss this matter further, please do not hesitate to contact me.

Very truly yours,



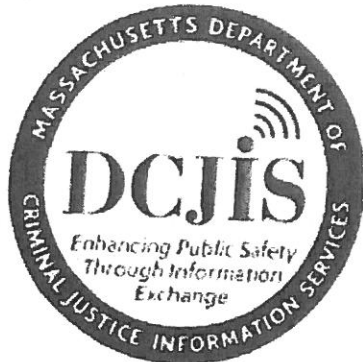
David C. Jenkins

DCJ/lem

Enc.

cc: Board of Selectmen
General Counsel

575789/TOWN/0049



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY

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Department of Criminal Justice Information Services

200 Arlington Street, Suite 2200, Chelsea, Massachusetts 02150, MASS.GOV/CJIS
TEL: 617-660-4600 • TTY: 617-660-4606 • FAX: 617-660-4613

Charles D. Baker Governor	Robert F. Healy Deputy Governor	David Betts Secretary of Public Safety and Security	James J. Silver, III Commissioner
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February 8, 2017

Chief Robert M. Eaton, Jr.
Townsend Police Department
70 Brookline Road
Townsend, MA 01469

Dear Chief Eaton:

Reference is made to your request for a review of Criminal Justice Information System (CJIS) transactions conducted by certain members of the Townsend Police Department between May 1, 2016 and November 17, 2016.

The Department of Criminal Justice Information Services (DCJIS), the state agency responsible for the management and operation of the CJIS, conducted a review of all CJIS transactions conducted by the following four (4) members of the Townsend Police Department:

All of the transactions were conducted between the dates noted above, inclusive. The CJIS transactions of all other members of the Townsend Police Department for this same time period were also reviewed. Finally, we reviewed the transactions of several of the other police departments surrounding Townsend over the same period.

In addition to the review of transactions obtained from the CJIS audit logs, the DCJIS also reviewed various interactions with individuals both within and outside your agency. Additionally, we reviewed the follow up information you provided in response to our request for further information. Lastly, we reviewed a copy of your Department's policies and procedures as they relate to the acquisition and dissemination of Criminal Offender Record Information (CORI).



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As a result, the DCJIS finds that, with one exception, all of the transactions conducted by the employees identified appear to have been conducted for authorized criminal justice purposes and are in compliance with all DCJIS and FBI policies. The one exception involves the query performed by _____ on 9/27/2016. On that occasion, _____ noted that _____ and other Townsend PD employees were watching the proceedings of the local town meeting on television. During that meeting, there was a discussion about _____ being hired as an administrative assistant for the _____. It was at that time that someone at the station _____ states that: _____ (cannot remember who it was) instructed _____ to run a query on _____, which the _____ did. As part of that query, a search of the Board of Probation files was initiated. The DCJIS finds that this inquiry was initiated for no official criminal justice purpose. Finally, your current CORI Policy includes some outdated information. General Counsel Agapi Koulouris will contact you directly to identify specific areas that require updates.

We would like to point out for the record that the Townsend Police Department utilizes the CJIS Web application on its mobile data computers. The significance of this is that CJIS Web takes full advantage of a feature known as "robo query". In short, this feature takes a single piece of information, such as a license plate number, and generates up to seven separate CJIS transactions automatically. The purpose of this feature is to reduce the time and effort necessary to conduct several individual CJIS transactions which, in turn, increases the safety of both the officer and the public.

In consideration of the improper transaction noted above, I believe it would be in the Department's best interests to undergo refresher CJIS and CORI training. Please contact Mr. Daniel Hutchinson, Supervisor of the CJIS Support Services Unit, to identify a date and time during which DCJIS staff will conduct this training. More than one date can be arranged if that will be more convenient given the coverage needs of you agency, and the training can be conducted either at the Townsend Police Department or in the DCJIS Training Lab in Chelsea. Dan can be reached directly at daniel.hutchinson@state.ma.us or at 617.660.4738.

Should you have any questions about these findings, or if we can be of any further assistance, please do not hesitate to contact me directly via email at james.slater@state.ma.us or via telephone at 617.660.4761.

Sincerely,

James F. Slater, III
Commissioner/ FBI CJIS Systems Officer



TOWNSEND POLICE DEPARTMENT

70 BROOKLINE STREET • TOWNSEND, MASSACHUSETTS 01469

TEL. 978-597-2242 FAX 978-597-1718

ROBERT M. EATON, JR.
CHIEF OF POLICE

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MEMORANDUM

To: Townsend Board of Selectmen
James M. Kreidler, Jr. – Town Administrator

From: Robert M. Eaton, Jr. - Chief of Police

Date: Friday, February 10, 2017

Re: DCJIS Investigation

Dear Board of Selectmen and Mr. Kriedler,

I am writing this Memorandum of Record to you today in reference to the DCJIS investigation. This being stated, I would be remiss if I did not conduct my own internal investigation into allegations of misconduct and/or criminal activity by my officers. I am obligated to enforce and comply with Massachusetts General Laws (M.G.L.), Townsend Police Department Internal Policies and Procedures, my job description and contract while serving the Town of Townsend as their Chief of Police and further, to the Commonwealth of Massachusetts as a sworn law enforcement officer.

There have been multiple and unsubstantiated inquiries into the daily operations of the police department both past and present. It is clear that the investigation being conducted by the Town of Townsend Board of Selectmen/Town Administrator is a strategic assassination of the department, the police officers reputations and their character. The ordering of your investigation is a calculated and orchestrated maneuver to disparage and dismantle the entire department. As the Chief of Police, I cannot allow that to happen. It would be considered neglectful towards ethical principles and my integrity. As a chief law enforcement officer, it is my lawful obligation to release credible and factual information that clears anyone from being wrongly accused. With this being said, pursuant to a recent ruling that I received on Wednesday, February 8, 2017, from the Commonwealth of Massachusetts Department of Criminal Justice Information Services (DCJIS), this report unequivocally exonerates all 3 police officers who were wrongfully accused from any wrongdoing. During your investigation, I have fully complied with all requests from David Jenkins Esq. As such, the DCJIS review has been forwarded to Attorney Jenkins as well as my legal counsel

Based on the facts presented in the DCJIS review, my internal investigation, reports from officers and other pertinent evidence, I am requesting immediate action which is listed below from the Board of Selectmen which shall reinforce the trust and integrity of this department and me as the Chief of Police for the Town of Townsend.

During your investigation, Sergeant Randy Girard was forced to resign under duress as he was subjected to threats of criminal charges, administrative discipline up to and including termination. A leak from your office to the news media resulted in his name and reputation as a 28 year veteran officer and citizen being slandered. Based on the factual evidence presented in the investigation and the DCJIS review clearing Sergeant Randy Girard, he shall be reinstated and made whole by giving him his rank, time in grade and compensated for all time lost.

It is further requested that a public statement be made by you and your office by today, Friday, February 10, 2017 at 5:00PM EST exonerating all 3 Town of Townsend Police Officers and me as the Chief of Police pursuant to the DCJIS and internal investigations. Failure to do so will result in a public statement by me as the Chief of Police in the form of a written press release.

A handwritten signature in black ink, appearing to read "R. M. Eaton Jr.", written in a cursive style.

Robert M. Eaton Jr.
Chief of Police

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PRESS RELEASE

TOWN OF TOWNSEND, MA

POLICE CHIEF

February 10, 2017

CONTACT: David Jenkins, Esquire
Townsend Labor Counsel
KP Law
617.654.1761

The Town of Townsend announced this evening that it has placed Police Chief Robert E. Eaton on administrative leave with pay pending completion of an investigation into the improper use of the CJIS computer system by members of the police department. The board ordered an investigation into this matter in November when it learned that records containing criminal history of two individuals who were not under police investigation were delivered to the police chief. The records on their face showed that the CJIS system had not been used for a proper police purpose, a determination that has since been confirmed by the state administrators of the CJIS system.

Rather than investigate the improper use of the CJIS system the Chief initially condoned the improper use of the system. The initial response of the chief was to not disclose that BOPs were run on the two individuals and after acknowledging that such checks were made the Chief contended that the checks were appropriate.

When the Chief was advised that BOP checks were run for no lawful police purposes the Chief stated that he believed that individual police officers had the right to run BOP checks in order to conduct "background investigations" of the individuals. The Chief stated that police officers could run these checks and that "the ends justified the means" because the police officers believed that an inadequate background was conducted by the Town Administrator. The Chief was advised that police officers were not authorized to conduct BOP runs on that basis and was counselled to seek independent legal advice regarding the proper function of the CJIS system. He declined that advice.

After November 27, 2016 the Police Chief was told orally and in writing that the investigation was under the jurisdiction of Town Counsel and that he should take no action in the matter.

On January 31, 2017 the Chief was advised by town counsel : " **By this email I am advising you to discontinue your separate investigation and to immediately turn over to me any information that**

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you have derived from this investigation which has not been preciously given to me. You are not to take any further action which could interfere with the investigation being conducted."

On February 9, 2017 the Chief was advised by Town Counsel: "I want to emphasize that this investigation is ongoing and until it is completed all the documents associated with this matter continue to be confidential. Neither the CJIS report nor the substance of the report should be released to anyone at his point in time. You should not take any action in connection with the investigation.

The Chief is scheduled to provide a recorded interview under oath to Town Counsel on February 15, 2017 regarding his knowledge of and/or participation in department response to the misuse of the CJIS system. On February 10 the Chief in disregard of the instructions to him released the results of an incomplete, erroneous and unauthorized investigation in contradiction of the direct orders he had received and as a result has been placed on administrative leave.

The town will proceed with the interview of the chief as scheduled and will bring this matter to a conclusion.

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