

TRURO'S PRR FIASCO - Town Delays, Defiance Betray Citizens' Right to Know

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submitted via email: editor@truronews.org

Dear Editor

It is time for Truro's Select Board to act to ensure transparency and honesty in the Town's response to Public Records Requests. The Town Manager will clearly not do this -- and in fact, makes it worse.

What is to be done when the Town of Truro knowingly violates State Public Records Law and ignores the directive of the Supervisor of Records to take corrective action? If you're the Town Manager or his personal hire, you simply declare "case closed," hoping the problem goes away by exhausting those seeking the transparency in government to which we are entitled.

Why are the taxpayers of Truro asked to pay \$40,000 for an out-of-state consultant unfamiliar with MA laws, the Truro community and Town records when such knowledge is key to determining what is a proper and lawful response to a PRR request? Even more so when the Town Manager is intensely involved in every case, in any case? Between them, performance to date has only worsened.

My Experience is Not Unique

This is not just my experience. Thanks to many of you who responded to my previous invitation to share your experiences will public records requests, I now know that the concerns that I detailed in my last [Letter to the Editor](#) (Nov 14, 2024) are shared by many, notwithstanding the appointment of Ms. Sprang, the Town's consulting RAO (Records Access Officer). Please remember that she was hired based on the Town Manager's false claim to the Select Board regarding the number and nature of public records requests made at the time -- a claim he refused to correct even after his misstatements were publicly brought to light.

So far, I am aware of more than a dozen PRR requests made over the last 18 months concerning serious matters about the actions of Town officials, staff, and major projects. These all had serious problems with fulfillment. Some individuals make PRR requests for simple matters -- records related to their property taxes, for example -- that are handled straightforwardly. PRR requests that serve the public interest of knowing how our Town government actually operates are subject to a tortuous, painful, expensive, and frustrating process that, in these cases, defeated transparency and honesty -- that is, it defeated the purpose of the public records requests and right to know. In some cases, a process that by law should take 10 days can take as long 18 months (so far) and have not been completed properly, even after the State instructs the Town to correct deficiencies and supply requested materials.

Public Release of Documents Has Gotten Worse

Responses to PRRs have now achieved a new level of concern, greater than those previously noted last year, including but not limited to:

- Increasingly long delays well beyond the timetable stipulated by law

- Mis-leading statements about the relevancy of documents to dissuade citizens from further pursuing the materials
- Delivery of documents in a format that could not be used without special computer software
- Massive over-estimates in the number of documents to be delivered to justify outlandish fees for their production -- requiring appeals to obtain more moderate and appropriate fees
- Deficient responses -- often multiple times in the same PRR case -- that force requesters to email the Town repeatedly, file one or more appeals , or abandon their requests;
- Obvious omissions in production that require multiple requests to obtain, often unsuccessfully
- Mis-use of “privilege” exemptions -- that is, claims of attorney client privilege about non-privileged matters as a way to hide documents and decisions from public scrutiny
- Willful and knowing disregard of the State’s directive -- and order -- that privilege logs must be redone to comply with the law
- Deliberate withholding of a full year of documents (related to a Select Board member) with no explanation
- Improper assertions that [a] “case is closed” even if the stated deficiencies are not corrected as required.
- Improper disclosure of information (e.g., years of Truro’s legal bills and employment forms) that are both irrelevant to the PRRs’ requests and create the misimpression of high rates of document production by the Town.

This by no means exhausts the Town’s tactics used to keep public records out of the hands of the public. And all of these tactics increase the Town’s costs unnecessarily for providing public records. It is not the PRRs that are expensive, it is the way the Town Manager tries to defeat fulfilling them that is expensive and costly to taxpayers, both in money and in trust. Prior to his tenure, this simply did not happen -- Town staff were fully capable of handling PRRs timely, properly, fulsomely, and without costs with the same number of requests handled then as are being filed now.

Based on the information I have received, these tactics are common especially if the Town Manager wants to protect a person, program or decision from scrutiny.

Improper Claims of Privilege – Intentional Abuse of Process

While all of these tactics are unacceptable, the most egregious abuse under the Town Manager’s tenure is the improper assertion of “privilege” and the derelict production of lawful privilege logs. Privilege is a right that merits protection but only when it specifically protects the actual “advice of counsel.”

Not all lawyer’s communications are privileged. In Truro, we have Town Counsel that helpfully and with permission will often answer procedural questions from citizens (e.g., about ATM) -- these are not privileged.

We also have a Town Planner who serves as Land Use Counsel, and apparently now, as an in-house general counsel of sorts. Many of the privilege claims involve her communications. Here’s the rub:

her dual role creates a serious problem and raises many important questions with respect to transparency: When is she acting as Town Planner, or is a lawyer merely in the room or in the email thread, but not actually giving privileged legal advice, or providing documents to a single Select Board Member that has not been approved or made known to the Select Board?

Privilege is often mis-applied in PRR production about communications exchanged between the Town Manager and Town staff -- which is definitely a matter of public record and not privileged.

All of this has actually happened. Most of these actions and communications are not privileged but the Town protects them as if they are privileged.

This abuse of privilege can be explained in two ways: either those making these decisions do not understand privilege, notwithstanding the State's very clear explanation, one that any lawyer would know about; or they do understand privilege and choose to misapply privilege and thus, also choose not to comply with the State's directive to provide proper privilege logs. Neither is good news for Truro citizens. This means Truro's Town Manager uses many paths to create improper cover for a host of actions that should be made public upon request.

One telling example is the PRR request I made last year for all correspondence to, from and referencing Mr. Robert Weinstein for a certain period of time. I paid the fee requested for production of these documents – yet after a few go-rounds, the production I finally received left out a full year of documents! No documents from Mr. Weinstein or referencing him in exchanges were produced at all. And improper claims of privilege were made for numerous documents that clearly did not involve an attorney-client relationship with him (e.g., one withheld document concerned a file Mr. Weinstein received individually from the Town Planner about exchanges with the CCNS on a citizen's private property). This latter action involved going to Counsel directly and alone without SB discussion or approval and going to a staff member while bypassing the Town Manager, Charter and SB policy violations, to boot. Nonetheless, it is not plausible that a Select Board Member is a ghost.

Why is Mr. Weinstein treated differently and preferentially? Why are his Charter and SB policy violations given a pass when clearly another SB member did not receive such treatment (could it be because she was properly fulfilling her duty to seek staff input to evaluate the Town Manager?). What did Mr. Weinstein get or do that deserves this kind of protection?

Citizens are Afraid to Speak Out

I attach several documents related to my own experiences to substantiate what I say here because I am willing to make these public. Other than being attacked by Truro officials and in local media, I have nothing more to lose in Truro.

But many of the people sharing their information with me have do have something to lose and have witnessed how persons and groups who ask tough questions can be targeted in Truro. They have expressed reluctance to go public with their concerns. I certainly understand their hesitancy in light of the targeting that has marred The Town Manager's (and Mr. Weinstein's) public statements of late regarding those who want the voter's will to have the DPW at Town Hall Hill.

With respect to my recent experience, please see links to:

- A document I painstakingly prepared detailing specific focus ("scope of request") about the documents withheld under this unwarranted claim of privilege (October 23, [here](#)).
- An [appeal I filed on Nov 21](#) after the Town Manager failed to supply promised documents.

- The [Dec 18 response of the State to my appeal](#), notably finding in my favor and directing the Town to comply and to provide a properly executed privilege log and to supply all of the missing documents (i.e., the missing year of “Weinstein” correspondence, all documents sent by or referencing Mr. Weinstein). This has still not been provided.

On December 8, only after he had received a copy of my appeal, Mr. Tangeman finally did reply as promised in October. He admitted that 30 of the 68 documents withheld as privileged were not privileged and, in his personal view, should be released by the end of that week. Instead, I received nothing from the Town for more than a month and only after it was ordered by the State to do so.

On December 18, the State issued its appeal, finding in my favor. Yet, on January 8, Truro supplied only 26 of the documents promised by Mr. Tangeman. It came with an email from Ms. Sprang informing me that “This case is considered closed.”

Despite specific instructions from the State, I did not receive a correctly revised and fulsome privilege log; I did not receive any emails in the missing categories; and an entire year of requested documents still has not been produced. Additional detail is found in the [Addendum linked here](#).

Case closed? Don’t think so....

The Truro Select Board Should Act Now

What is clear is that public records requests that involve anything potentially controversial or that go beyond the sharing of readily available administrative information continue to go through an unwarranted, unacceptable and entirely avoidable process of delays and withholding under the direct control and with full participation the Town’s most senior employee.

The Select Board has a place to start now to right this wrong that I and many others have experienced: Instruct the Town Manager to compile a preliminary report listing the number of requests since January 2023 by date filed and case number, noting for each how it handled the procedural items I mentioned above. This can be done in chart form for easy use by all.

The Town Clerk should be able to easily prepare such a list. Please make this report public immediately, with opportunity for public responses and if needed, correction by creating a mechanism for response and confidential correction to an independent party.

This should give the Select Board ample evidence of a pattern of practice under this Town’s Manager’s tenure (and not before this) to deliberately avoid the timely and fulsome disclosure of public records. It will also reveal an inconsistent practice in the withholding of documents due to privilege and other exemptions claimed and the production of documents that are both unresponsive and irrelevant to requests filed.

It is not lost on Truro citizens that the Town’s aggressive and obstructive PRR behavior escalated in late Spring 2023, around the time that citizens began to raise their voices to object to the renewal of the Town Manager’s contract. Perhaps this is a coincidence; perhaps not. Either way, if the SB Chair is serious that reinstating trust in Town government is a true priority, I believe addressing this matter after nearly 18 months of complaints by numerous citizens would be an important and essential step in achieving that goal.

Sincerely,

Jon Slater, Truro and Wellfleet