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November 17, 2017

Rebecca Murray, Esq.
Supervisor of Records
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place
Room 1719
Boston, MA 02108

RE: SPR 16/183

Dear Supervisor Murray:

The Attorney General received your April 14, 2017 letter, in which you stated that the Governor's Office had failed to comply with an order from your office and in which you referred the matter to our office for enforcement. This referral arises from a request to the Governor's Office by Laura Krantz of the *Boston Globe* for "records showing all constituent calls from the 12 months ending 1/30/17, including but not limited to the issue the constituent called about." In a March 15, 2017 letter, you had ordered the Governor's Office to either provide the responsive records or provide a more detailed explanation for their withholding.

After reviewing your referral, we contacted the Governor's Office. Following our discussions with the Governor's Office regarding the applicability of the Public Records Law, the Governor's Office sent us a letter, dated November 9, 2017, with attachments, explaining why the requested records are not records subject to the Public Records Law. A copy of the letter is attached. Because, as your order directed, the Governor's Office provided a more detailed, and, in our view, legally correct, explanation of why it is not subject to the Public Records Law, we consider the referral resolved.

For the reasons set forth in the November 9, 2017 letter from the Governor's Office, including those laid out by the Supreme Judicial Court in Lambert v. Executive Director of the Judicial Nominating Council, 425 Mass. 406, 409 (1997), we conclude that documents in the possession of the Governor or the Governor's Office are not records that must be disclosed under



the Public Records Law.¹ By sending its more detailed response to your March 15, 2017 order, the Governor's Office has met its obligations, and no further action is required.

As the Governor's Office notes in its letter, the Legislature recently created a special legislative commission to examine the constitutionality and practicality of subjecting the Legislature, the Governor's Office, and the judicial branch to the public records law. See Section 20(c) of Chapter 121 of the Acts of 2016 ("An Act to Improve Public Records"). However, at this time the Governor's Office is not required to disclose documents in response to a public records request, although it may choose to do so.

We now consider this matter closed. Please feel free to contact me if you have any questions.

Sincerely,



Jonathan Sclarsic
Assistant Attorney General
Director, Division of Open Government

Enclosure

cc: Laura Krantz, *Boston Globe*
Cathy M. Judd-Stein, Deputy Chief Legal Counsel, Office of the Governor

¹ We note that there is no law or regulation that establishes the "Office" of the Governor. Therefore, we understand the term "Governor's Office" or "Office of the Governor" to be a term that refers collectively to the direct employees of the Governor, rather than an entity distinct from the Governor. In reviewing this matter, we examined whether the Governor's Office is an "executive office" as described in the Public Records Law. "Executive office" records are subject to the requirements of the Public Records Law. See G.L. c. 4, § 7, cl. 26. "Executive offices" are defined in the General Laws as those serving "*under the governor*" and headed by a "secretary." G.L. c. 6A, § 2; G.L. c. 6A, § 3 (emphasis added). Because the Governor's Office is not headed by a secretary, neither the Governor nor the Governor's Office are included in the definition of "executive office."