



# EXECUTIVE OFFICE OF TECHNOLOGY SERVICES & SECURITY

COMMONWEALTH OF MASSACHUSETTS | 1 ASHBURTON PLACE, 8TH FLOOR, BOSTON, MA 02108

**CHARLES D. BAKER**  
Governor

**CURTIS WOOD**  
Secretary

**KARYN E. POLITO**  
Lieutenant Governor

March 26, 2019

VIA ELECTRONIC MAIL

Susan Smith  
[67519-04095643@requests.muckrock.com](mailto:67519-04095643@requests.muckrock.com)

RE: SPR19/0453 – Settlement Agreement Inquiry - Petition Response

Dear Ms. Smith:

I am writing in response to your petition dated February 25, 2019 to the Supervisor of Public Records and subsequent communications to EOTSS regarding the basis for redactions applied to the settlement agreements produced to you. You also requested the Supervisor's office to review the settlement agreement of Linda Hamel and inquired about a specific redacted settlement amount of \$9,000.

With regard to Ms. Hamel's settlement agreement, the \$9,000 amount was redacted in error. I've attached a revised settlement agreement with clause (f) unredacted.

For the remainder of the settlement agreements, please note the following exemption that EOTSS invoked as the basis for redaction as well as the legal basis for such redaction. I have included links to the Supervisor of Public Records Office's Guide to Massachusetts Public Records Law <http://www.sec.state.ma.us/pre/prepdf/guide.pdf> as well as the general law referenced <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleI/Chapter4/Section7>.

Exemption C – The Privacy Exemption

“personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy” G. L. c. 4, § 7(26)(c)

Case Law

The Superior Court, in construing the scope of the personnel file or information exemption category, has held that the following categories of information may be redacted or withheld, when responding to a Public Records Request seeking settlement agreements and other similar agreements:

“[information that is] subject to redaction may generally be classified into the following categories: (1) promotion of grade; (2) compensation at a different salary grade; (3) adjustment in compensation; (4) waiver of bumping rights

and/or recall rights; (5) entitlement to remain on administrative leave; (6) requirement to tender a letter of resignation; (7) demand of voluntary resignation; (8) reinstatement; (9) layoff; (10) agreement by an agency to remove a letter from a personnel file; (11) agreement by an agency concerning the providing of references and their contents; (12) the requirement that an employee meet with a supervisor to review progress of assigned matters; (13) adjustment of an agency's records to reflect an employee's status; (14) adjustment or continuation of employee benefits, such as unemployment assistance, COBRA, and retirement benefits, and agreement regarding back wages; (15) recitations concerning grievances, including agreement to withdraw a grievance and acknowledgment by an employee of the absence of a pending grievance; (16) a statement of resolution of all claims concerning termination of employment and prior disciplinary actions, (17) agreement to turn in agency property, (18) global resolution involving the entering of a *nolle prosequi* by a prosecutorial official; (19) language affirming an agency's legitimate concern for discipline and an employee's receipt of a memorandum of verbal discipline; and (20) completion by an employer of harassment training. The distinguishing characteristic of these categories of information is their manifest "useful[ness] in making employment decisions regarding an employee," *id.* Such portions contained in the agreements which have been submitted as exhibits are entitled to be withheld from mandatory disclosure."

*Globe Newspaper Company v. Exec. Office of Administration and Finance*, Civ. A. No. 2011-01184 (2013), p. 34 – 35.

With respect to the exemption category related to "materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy," the Superior Court stated that an agency is not "obligated to produce unredacted agreements in response to ... [a] records request." *Id.* at p. 40.

Should you object to this response, you may appeal to the Supervisor of Public Records pursuant to 950 CMR 32.08.

Please let me know if you have any questions or need further assistance. My direct dial is 617-626-4527.

Very truly yours,



Michelle M. Burwell  
EOTSS Records Access Officer

cc: Rebecca S. Murray, Supervisor of Public Records  
Michelle M. Bouchard, Staff Attorney, Office of the Supervisor of Public Records

AGREEMENT AND MUTUAL RELEASE

Linda Hamel and the Commonwealth of Massachusetts Office of Information Technology (hereinafter "MassIT") mutually want to enter into the following Severance Agreement and Mutual Release (the "Agreement") [REDACTED]

[REDACTED]

1. Recitals. This Agreement is intended to comply with the Older Workers Benefit Protection Act, 29 U.S.C. § 626 et seq. with regard to Ms. Hamel's waiver of rights under the Federal Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. ("ADEA"). As such, Ms. Hamel understands that a) she is specifically waiving rights and claims under the ADEA; b) she is waiving rights or claims only in exchange for consideration in addition to anything of value to which she is already entitled; c) the waiver of rights and claims under the ADEA does not extend to any rights or claims arising after the date Ms. Hamel executes this Agreement; d) Ms. Hamel has 21 days within which to consider this Agreement; e) Ms. Hamel has been advised that even after she signs this agreement, she may revoke it within 7 days of the date of her signing by delivering a signed revocation notice to Elizabeth Sullivan, MassIT, 1 Ashburton Place, Boston, MA 02108; f) this Agreement shall not become effective or enforceable until 8 days after she signs it; [REDACTED]

[REDACTED]



h) Ms.

Hamel is advised to consult with an attorney before executing this Agreement; i) Ms. Hamel has had an adequate opportunity to discuss all aspects of this Agreement with, and seek advice from, her own attorney, and Ms. Hamel has availed herself of this right or has voluntarily and willingly decided to forego this right; j) Ms. Hamel has carefully read and fully understands all of the provisions of this Agreement; k) Ms. Hamel was not coerced into signing this Agreement; l) Ms. Hamel is knowingly and voluntarily entering into this Agreement; m) in executing this Agreement Ms. Hamel does not rely and has not relied upon any representation or statement not set forth herein made by MassIT or by any of its agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement or otherwise and; n) Ms. Hamel intends to be bound by the Agreement's terms.

2. Benefits. In consideration of Ms. Hamel's signing the Agreement, MassIT agrees to the following:

a.

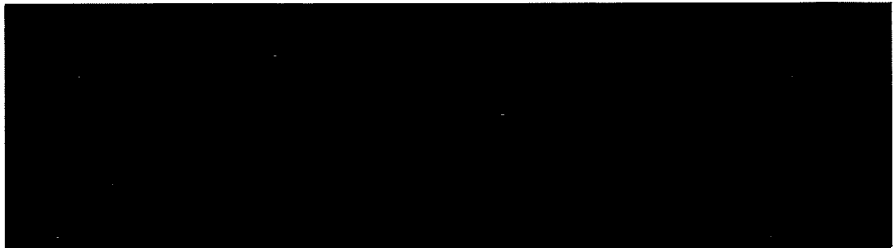
b.

c.

d.



e.



f. Ms. Hamel will be paid additional compensation of \$9000.00.

g.



h.

i.

j.

3. Release by Employee. In consideration of MassIT signing the Agreement, Ms. Hamel hereby fully, forever, irrevocably and unconditionally releases, remises, and discharges MassIT and its officers from any and all manner of actions, causes of actions, suits, debts, sums of money, costs, losses, contracts, controversies, agreements, promises, doings, damages, claims, charges, complaints, executions, liabilities, obligations, expenses, and demands and any and all other claims of every kind, nature and description whatsoever (including attorney's fees and costs), whether

known or unknown to Ms. Hamel, either at law, in equity, or mixed, from the beginning of the world to the date of this Agreement, ever had, not has, or hereafter can, shall or may have for or by reason of, on account of or arising out of any matter, cause or thing whatsoever, including but not limited to those arising under the Massachusetts Civil Service Law, MGL c. 31; the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000e et seq., the Civil Rights Act of 1866, 42 U.S.C. § 1981 et seq., the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq., the Equal Pay Act of 1963, 29 U.S.C. § 206 et seq., the Age Discrimination in Employment Act, as amended by the Older Workers Benefits Protection Act, 29 U.S.C. § 621 et seq., the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., the American with Disabilities Act of 1990, and its amendments: 42 U.S.C. 12101 et seq., Mass. Gen. L. ch. 151B and any other federal, state or local human rights, civil rights, wage-hour, pension, tort, employment or labor statute, law, order, rule, regulation or public policy. However, nothing in this paragraph or the Agreement shall operate as a release of, or prevent Ms. Hamel from seeking redress for: (i) a breach of the Agreement or (ii) a claim related to an employee pension, retirement or benefit plan.

4. Release by the Commonwealth. MassIT hereby fully, forever, irrevocably and unconditionally releases, remises, and discharges Ms. Hamel from any and all manner of actions, causes of actions, suits, debts, dues, sums of

money, costs, losses, contracts, controversies, agreements, promises, doings, damages, claims, charges, complaints, executions, liabilities, obligations, expenses, and demands and any and all other claims of every kind, nature and description whatsoever (including attorney's fees and costs), whether known or unknown, either in law, in equity or mixed, that the MassIT, from the beginning of the world to the date of this Agreement, ever had, now has or hereinafter can, shall or may have against Ms. Hamel for, or by reason of, on account of or arising out of any matter, cause or thing whatsoever.

5. Mutual Nondisparagement. Except as required by law, Ms. Hamel agrees that she shall not disparage, defame or slander MassIT or its officers. In return, except as required by law, no MassIT employee or agent on behalf of Mass IT will disparage, defame or slander Ms. Hamel. Further, MassIT and its agents agree not to interfere with any future attempt by Ms. Hamel to obtain employment with the Commonwealth of Massachusetts or any other employer.
6. Limited Waiver of Attorney Client Privilege. Notwithstanding any other provision of this Agreement to the Contrary or any contrary provisions of the Massachusetts Rules of Professional Conduct, and solely for the purpose of advancing the interests of the Commonwealth, MassIT hereby knowingly grants a limited waive of attorney client confidentiality and privilege with respect to all matters related to the OptumInsight, Inc. contract with MassIT for the creation, hosting and maintenance of the

Commonwealth's Health Insurance Exchange [REDACTED]

[REDACTED]

[REDACTED] except with respect to the opinions of MassIT personnel regarding such contract and the actions of other state agencies with regard thereto. [REDACTED]

[REDACTED]

7. [REDACTED]

8. [REDACTED]

9. Integrated Agreement. The Agreement constitutes and contains the entire understanding and agreement between Ms. Hamel and MassIT. No other promises or agreements shall be binding or shall modify the Agreement unless executed in accordance with paragraph 7 of the Agreement.

10. Modification. This Agreement may not be assigned, released, discharged, abandoned, supplemented, amended, changed, or modified in any manner,



orally or otherwise, except by an instrument in writing of concurrent or subsequent date signed by each of the parties hereto.

11. Non-Publication. The Agreement is not for publication, nor shall it serve as precedent, or evidence in, any matter. Notwithstanding the foregoing, the parties acknowledge that the Commonwealth's courts have determined that certain portions of settlement agreements are subject to disclosure under the Commonwealth's Public Records Law, MGL ch. 66 s. 10. No lawful production of this document in response to a public records request or other legal process (such as a subpoena, request for production, or civil investigative demand) shall constitute breach of this section.
12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts wherein it has been executed by the parties hereto.
13. Binding Effect. The Agreement shall be binding upon and shall insure to the benefit of the parties hereto and all of their respective heirs and successors.
14. Counterparts. The Agreement may be executed in two or more duplicate counterparts, each which shall be treated as an original, but all of which together shall constitute one and the same instrument.
15. Waiver. No waiver of any provision of this Agreement, or the breach thereof, shall be deemed a waiver of any other provision of breach.

16. No Admission of Liability. The signatories to the Agreement, in so signing, do not agree to any liability or fault and said signatures shall not constitute any admission of liability or fault.

By: *Sean C. Vinick*

\_\_\_\_\_  
MassIT  
Its duly authorized representative

Date: *4/6/2017*

*Linda M. Hamel*  
\_\_\_\_\_  
Linda M. Hamel

Date: *4/6/17*