

**From:** Greco, Bob (FWE) **Sent:** Tue 12/14/2004 3:19 PM  
**To:** Kunce, Edward (DEP); Testa, Mike (DCR); Hanlon, James (ENV); Lennon, Ray (ENV); Abdal-Khabir, Anthony (ENV); 'jclarke@massaudubon.org'; 'article17@earthlink.net'; 'mark amorello'; 'johnfabroski@aol.com'  
**Cc:** Pritchard, Stephen (ENV); Hoover, David (FWE); Peters, David (FWE); Austin, Bob (FWE)  
**Subject:** FW: Status of Consultant's Comprehensive Review of OLE  
**Attachments:**

Panel members,

Although there have been few requests to this office for copies of the MAT report to date, some of you may have been asked for copies of the report. We are asking that you do not release the report at this time. After the panel meets and establishes its final report, this will be given to EOEI Secretary Ellen Roy Herzfelder. Secretary Herzfelder will then decide when to release the panel and consultant reports.

The email below written by Department of Fish and Game General Counsel David Hoover (who consulted with the EOEI General Counsel and the State Public Records agency in formulating the policy) further explains the rationale for withholding the report until the panel's work is done.

Please feel free to send requests for copies to me and I will see to it that they are delivered at the appropriate time. We will also provide copies of pages 1-10 (the OLE history) at this time to anyone who requests it.

We look forward to your comments on the recommendations; please feel free to call if you have any questions.

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-----Original Message-----

**From:** Hoover, David (FWE)  
**Sent:** Tuesday, December 14, 2004 2:31 PM

**To:** Peters, David (FWE); Greco, Bob (FWE); Hanlon, James (ENV)  
**Cc:** Griffin, Mary (ENV); Flagg, Jennifer (ENV); Sullivan, Lori (SEC)  
**Subject:** Status of Consultant's Comprehensive Review of OLE

The consultant, Management Assistance Team of the International Association of Fish and Wildlife Agencies, was contracted to conduct a study of the Office of Law Enforcement (OLE). The consultant has completed a comprehensive review of OLE. That review, in the form of a report containing 57 recommendations, has been sent by the consultant to all the members of the OLE Review Panel. The Review Panel is presently considering the report, and will meet to discuss its findings and recommendations. Based on the consultant's comprehensive review, the Review Panel will develop final recommendations to the Secretary of the Executive Office of Environmental Affairs concerning OLE. The Secretary is expected to review these final recommendations and determine what, if any, administrative or legislative policies are advised.

Until the Secretary has made her final policy determinations concerning OLE, all documents containing recommendations related to this ongoing deliberative process fall within the exemption of G.L. c. 4, § 7, ¶ 26 (d) to the Public Records Law (G.L. c. 66). Public records requests for these documents may be denied until such time as final agency policy has been adopted. Once adopted, all documents related to the deliberative process, unless otherwise exempt, must be released in response to a public records request.

Please note that exemption (d) applies to the consultant's comprehensive review of OLE, notwithstanding that the consultant placed on the front page of the comprehensive review the words "Final Report." Simply labeling a document as final, or in the alternative as confidential, does not make it so for purposes of the Public Records Law. The application of exemption (d) applies to all "recommendations on legal and policy matters found within an ongoing deliberative process." *Babets v. Secretary of the Executive Office of Human Services*, 403 Mass. 230 (1988); Determination Letter of the Supervisor of Public Records, SPR95/036 (February 2, 1995). As indicated above, the consultant's comprehensive review of OLE contains some 57 recommendations. It is an integral document to the agency's ongoing deliberative process of policy-making concerning OLE and is exempt from disclosure despite the words "Final Report".

There is a section of the consultant's comprehensive review of OLE entitled "The History of the Office of Law Enforcement." This section, at pages 1-10, contains purely factual material setting forth the legislative history of OLE from 1919 to the present. Purely factual materials, documents or reports used in the development of agency policy are, however, subject to disclosure. *Id.*, citing *Environmental Protection Agency v. Mink*, 410 U.S. 73 (1979), (construing cognate federal provision). Public records, and any non-exempt, segregable portions thereof, are subject to disclosure upon request. See *Reinstein v. Police Commissioner of Boston*, 378 Mass. 281 (1979). Therefore, a public records request for the factual history of OLE which is segregable from the comprehensive review must be released.