

Alexander Hamilton, Public Records Law Share Top Billing at the First Circuit

The First Circuit recently delved into a mustier corner of the Public Records Law in *United States v. Letter from Alexander Hamilton to the Marquis De Lafayette Dated July 21, 1780*, shedding some light on how the Public Records Law affects historic documents.

The case concerned a 1780 letter from Alexander Hamilton to the Marquis De Lafayette about British troop movements in Rhode Island. The letter was forwarded to the Massachusetts government, which authorized sending troops to Rhode Island to reinforce French forces. Some time later, the letter was placed in the Massachusetts Archives, but it vanished in the first half of the 20th century and eventually made its way into a private collection. The circumstances of the letter's disappearance, and particularly whether it was stolen, are not conclusively settled.

The letter resurfaced in November 2018 when its possessor tried to auction it off. The company conducting the auction, realizing the letter might be stolen, contacted the FBI, which seized the letter and began forfeiture proceedings in federal court.

Both the Commonwealth of Massachusetts and the late possessor's estate appeared to claim the letter in the forfeiture proceedings. The presiding federal magistrate judge ruled that the Commonwealth was entitled to the letter. The estate appealed.

The First Circuit affirmed the magistrate's decision. The court began by reviewing [the original Massachusetts public records statute](#), adopted in 1897. That statute required that public records, including "[e]very original paper belonging to the files of the Commonwealth ... bearing a date earlier than the year eighteen hundred ... shall be safely kept." There is a near-identical provision in the modern statute, G.L. c. 66, § 8. Because the letter fell squarely within the terms of the historic and modern statutes, "dealt with a matter of public concern," "was retained by the Commonwealth in the normal course of record keeping, and was stored in the Archives" until at least the 1920s, and did not come within any of the statutory exceptions, the court "conclude[d] without serious question, that the Letter is a historic public record."

The court rejected all the estate's arguments that the Commonwealth somehow could have permissibly "alienated" the letter, as well as the estate's arguments that the Commonwealth's claim was barred by the doctrine of laches. Ultimately, "[a]s an original paper belonging to the Commonwealth and dated in 1780, the Letter is owned by the Commonwealth. It could not lawfully have been alienated to a third party under any statutory regime that was operative either before or after the Letter left the custody of the Commonwealth."

Despite the unusual posture in which it arose, *Letter from Alexander Hamilton* has a few general lessons for local governments.

First, it serves as a reminder that many historic documents like the Hamilton letter are also public records under Massachusetts law. Thus, how towns care for and manage access to such documents is informed not just by best archival practices, but by the Public Records Law.

Few towns will ever be called upon to litigate the ownership of their historic public records in federal forfeiture proceedings, but every town should consider the Public Records Law's implications for its archives. After all, many towns possess records documenting centuries of town affairs.

Second, the case reaffirms that a public body can retain an ownership interest in historic documents even after they pass out of the public body's immediate possession. As the court put it, "government property may generally pass only in the manner prescribed by legislative enactment and not through the carelessness, negligence, or perfidy of government employees or agents." That principle does not create an affirmative obligation to track down and recover missing historic public records, but it does strongly suggest that G.L. c. 66, § 13, empowering public records custodians to "demand" the return of public records "from any person unlawfully having possession of them," entitles custodians to recover certain wrongfully alienated historic documents. As for the Redcoats' ability to claw back the intelligence in the letter? That's history.