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December 23, 2010

Harvey A. Silverplate, Esquire
David Duncan, Esquire
Zalkind, Rodriguez, Lunt & Duncan LLP
65a Atlantic Avenue
Boston, Massachusetts 02110

Re: Request for Opinion

Dear Mssrs. Silverplate and Duncan:

I am writing in response to your December 14, 2010, request seeking a legal opinion regarding the enforceability of "confidentiality clauses" imposed by public agencies in resolving disputes by agreement with private parties.

The Attorney General's statutory authority to render formal legal opinions extends only to opinion requests by state officials, district attorneys, and branches and committees of the Legislature. Mass. G.L. c. 12, §§ 3, 6 and 9. More specifically, under G.L. c. 12, § 3, the Attorney General is authorized to provide representation and other legal services to "the commonwealth and . . . state departments, officers, and commissions." Therefore, I regret that we are unable to provide you with a legal opinion on this matter.

By way of further information, I note that the Attorney General has a longstanding policy against including confidentiality clauses in settlement agreements resolving litigation against state agencies and officials, on the ground that such clauses are, absent some specifically applicable statute that authorizes them, inconsistent with the state public records law. As your letter notes, information within such agreements that is within an exemption to the public records law may be redacted before the agreement is produced in response to a public records request.

Very truly yours,

A handwritten signature in cursive script that reads "Peter Sacks".

Peter Sacks
Deputy Chief, Government Bureau
617-963-2064

PS/sc

