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January 28, 2025

OML 2025 – 6

VIA EMAIL ONLY

Jonathan L. Driscoll, Esq.
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RE: Open Meeting Law Complaint

Dear Attorney Driscoll:

This office received two complaints from Christine McCue Potts of the Medfield Insider on October 24, 2024, alleging that the Medfield Housing Authority Board of Commissioners (the "Board")[1] violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaints were originally filed with the Board on September 5 and September 20 and you responded on behalf of the Board by letters dated September 25 and October 10, respectively.[2] The complaints allege that the Board (1) approved minutes of its June 11 and August 13 meetings which failed to include a list of documents used during the meetings; (2) failed to timely respond to a request for minutes of the Board's August 13 meeting; and (3) approved minutes of its August 13 meeting, which were not sufficiently detailed.

Following our review, we find that the Board violated the Open Meeting Law by approving minutes which failed to include lists of documents used during the meetings, and by approving minutes which were not sufficiently detailed. We find that the Board did not violate the Law in the other way alleged. In reaching this determination, we reviewed the Open Meeting Law complaints, the Board's responses and the complainant's requests for further review. We also reviewed the minutes of the Board's June 11 and August 13 meetings and handwritten notes taken during the August 13 meeting, and listened to an audio recording of the August 13 meeting provided by the complainant.[3]

[1] The complainant refers to the Board as the Medfield Housing Authority Commission.
[2] All dates are in 2024, unless otherwise stated.
[3] We accessed the recording at https://soundcloud.com/user-66016128/mha-bd-mtg-aug-13-2024/s-oNhaJNmeSEC?si=5278f667b41240f4ac2a527c3ebbc7bd&utm_source=clipboard&utm_medium=text&utm_campaign=social_sharing.

FACTS

We find the facts as follows. The Board held a duly noticed meeting on August 13. The Executive Director of the Housing Authority, Candace Avery, attended the meeting and played an active role, addressing the Board on many items of its agenda. Executive Director Avery also took handwritten notes on a printed copy of the meeting notice.

During the "Director's Report" item of the agenda, Executive Director Avery noted that there were three vacancies within the Housing Authority property. There followed a discussion lasting approximately nine minutes, which included questions from one of the newer members of the Board about the process of filling the units. Approximately 18 minutes into the meeting, the Board began discussion of an article written by the complainant. This discussion lasted approximately 40 minutes, during which Executive Director Avery seemed to read from a prepared statement, responding to points made in the article. Additionally, the Board discussed the article. Minutes of the August 13 meeting contain a very brief summary of this discussion and reference the prepared response, which is appended to the meeting minutes. Also during the August 13 meeting, the Board took several votes, including on a motion to accept the Executive Director's report and on a motion to "approve new business." These two votes are recorded in the minutes but there is no indication of what motions are being voted on.[4]

After approximately one hour eight minutes, the meeting adjourned. The complainant then addressed the Board. She was told that the meeting was closed. However, she continued to speak, stating that she was exercising her first amendment rights. Her comments related to the prior discussion about the article she authored. Among other things, Ms. McCue Potts stated that Executive Director Avery does not respond to emails.

On August 14, the complainant sent an email to Board Chair Brent Nelson, the Medfield Housing Authority, and the Town Clerk, requesting minutes of the August 13 meeting and the August 13 meeting packet, among other things.[5] Executive Director Avery responded by email that evening at 7:09 p.m., attaching the August 13 meeting packet and stating:

> Christine,
> August information requested I will get you all the other documentation noted in your email as soon as I can.
> Sincerely,
> Candace Avery
> Executive Director

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[4] For example, the motion to approve new business is memorialized in full as follows, without any indication of what the motion is:

> Motion - Rob Canavan
> Second – Stacey Yakel
> Vote – Unanimous 5-0

[5] We have been provided with an email which the complainant sent to the Board on August 14 at 2:11 p.m. That email includes a notation at the top "Resending this to make it clear that #3 is a request under Public Records Law." This notation would suggest that the request for the August 13 minutes was also the subject of an earlier email. In light of the Board's response on August 14, the existence of a prior request for the August 13 minutes is not material to our analysis.

On September 8, draft minutes of the August 13 meeting (not yet approved by the Board) were sent to the complainant. On September 10, minutes of the August 13 meeting were approved by the Board and were forwarded to the complainant that day.

DISCUSSION

I. The Board approved minutes which failed to include lists of documents used during its meetings of June 11 and August 13.

The Open Meeting Law was enacted "to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based." Ghiglione v. School Board of Southbridge, 376 Mass. 70, 72 (1978). See OML 2023-56.[6] The Law requires that public bodies "create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes." G.L. c. 30A, § 22(a); 940 CMR 29.11(1). Although the Law does not define what it means for a document to be "used" during a meeting, we have said that a document is "used," and must be listed in the minutes, when the document is physically present, verbally identified, and its contents discussed by the public body during a meeting. See OML 2024-217; OML 2017-43; OML 2014-12. The failure to separately list documents used at a meeting constitutes a violation of the Open Meeting Law. See OML 2019-46. The Board acknowledges, and we find, that the Board failed to include within the minutes of its meetings of June 11 or August 13 a list of documents used during those meetings. That omission constituted a violation of the Open Meeting Law.

II. The Board responded in a timely manner to the complainant's request for minutes of its August 13 meeting.

The Open Meeting Law requires that a public body "create and maintain accurate minutes of all meetings, including executive sessions." G.L. c. 30A, § 22(a). The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days." G.L. c. 30A, § 22(c). If minutes do not yet exist at the time of a request, the public body is still required to respond to the request within 10 days with an explanation of whether the minutes do or do not exist in either approved or draft form. See OML 2024-231; 2017-50; OML 2015-173.

On August 14, the complainant requested minutes of the August 13 meeting, among other things. That same day, Executive Director Avery acknowledged the request, sent some of the requested materials, and promised to "get you all the other documentation noted in your email as soon as I can." Although Executive Director Avery's August 14 response could have been clearer, we find that the response reasonably conveyed that the requested minutes -- for a meeting that was held the day before -- did not yet exist. Moreover, the complainant was provided with draft minutes within 30 days of her request, and was provided with the approved minutes the same day they were approved, also within 30 days of her request. Under these

[6] Open Meeting Law determinations may be found at the Attorney General's website, https://www.mass.gov/the-open-meeting-law.

circumstances, we find that the Board did not violate the Open Meeting Law. Cf. OML 2024-193 (declining to review allegation that public body failed to respond to request for minutes received before meeting occurred).[7]

III. Minutes of the Board's meeting of August 13 were not sufficiently detailed.

When reviewing minutes for compliance with the Open Meeting Law, we look for substantial compliance with the accuracy requirement. See OML 2023-56; OML 2016-105. By substantial compliance, we mean that the minutes should contain enough detail and accuracy so that a member of the public who did not attend the meeting could read the minutes and have a clear understanding of what occurred. See OML 2023-56; OML 2023-35; OML 2021-140. Minutes may not simply reference a document without summarizing the discussion which was had during the meeting. See OML 2024-25; see also OML 2023-11 (noting that "[s]imply attaching a report does not meet the Board's obligation to summarize the discussion in its minutes."). Minutes of the August 13 meeting did not adequately summarize the discussion of the complainant's article, relying instead on the prepared statement that was attached to the minutes. Moreover, the minutes contained no summary of the nine-minute discussion concerning vacancies. That the discussion was "largely informational and intended to get [Board member Kathy] McDonald up to speed," as described by the Board, does not eliminate the need to summarize that discussion in the minutes. Because the minutes failed to sufficiently summarize discussions held during the August 13 meeting, we find that the Board violated the Open Meeting Law. We do not find that the Board violated the Law by including comments made after adjournment of the August 13 meeting. See OML 2018-90 (ordering public body to revise minutes to summarize deliberation that took place after adjournment); OML 2011-12 (noting that minutes included questions directed to public body after meeting adjourned).

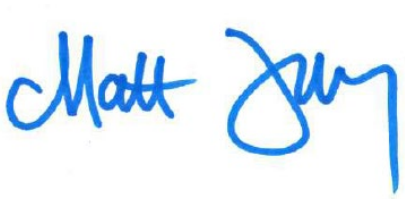
CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law by approving minutes which were insufficiently detailed and which failed to include lists of documents used during the meetings. We order the Board, within 60 days of the date of this letter, to amend the minutes of its June 11 meeting to include a list of all documents used at the meeting and to amend the minutes of its August 13 meeting to include a list of all documents used at the meeting and a sufficiently detailed summary of all discussions held, in conformance with this letter. As required by 940 CMR 29.07(4), the Board must certify in writing to our office that it has complied with the order to amend its meeting minutes. We also order the Board's immediate and future compliance with the Open Meeting Law and caution that future similar violations may be considered evidence of intent to violate the law.

[7]Although we have found that in some circumstances handwritten notes can be considered draft minutes, we have found that notes in shorthand are not draft minutes. See OML 2018-117; OML 2014-95. Here we find that Executive Director Avery's handwritten shorthand notes did not constitute draft minutes of the August 13 meeting and the Board was not required to produce them within ten days of request.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with the Board or with our office. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Matthew Lindberg
Assistant Attorney General
Division of Open Government

cc: Christine McCue Potts (via email: [redacted])
Medfield Town Clerk (via email: mbonoldi@medfield.net)

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.