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May 14, 2025

OML 2025 – 57

Jonathan L. Driscoll, Esq.
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By email only: Jonathan@drilaw.com

RE: Open Meeting Law Complaint

Dear Attorney Driscoll:

This office received a complaint from Christine McCue Potts on January 16, 2025, alleging that the Medfield Housing Authority Board of Commissioners (the "Board") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Board on November 21, 2024, and you responded, on behalf of the Board, by letter dated December 12, 2024. The complaint alleges that the Board i) posted a notice with insufficient specificity for a meeting held on November 12, 2024; ii) created insufficient minutes of meetings held on October 26, 2023, and October 15, 2024, by failing to include a list of documents used during the meetings; and iii) failed to timely review the October 26, 2023, executive session meeting minutes to determine whether continued nondisclosure was warranted.

Following our review, we find that the Board violated Open Meeting Law in the ways alleged. In reaching this determination, we reviewed the original complaint, the Board's response to the complaint, the complaint filed with our office requesting further review, and the notice and minutes of the Board meetings held on October 26, 2023, October 15, 2024, and November 12, 2024.

FACTS

We find the facts as follows. During a meeting held on October 26, 2023, the Board first convened in open session, then moved to convene in executive session to discuss the terms of the

"Tilden Village MDA," and finally unanimously voted by roll call to convene in executive session. During the executive session, the Board discussed a proposed disposition and transfer of land.[1]

On November 7, 2024, at 3:40 P.M., the Board posted notice of a meeting to be held on November 12, 2024, at 6:30 P.M. The notice listed eight topics, one of which was New Business. The notice then listed four specific item descriptions that further advised the public of the topics to be discussed under New Business, including Tenant Holiday Event-Discussion, Truck Sander, Unit Inspection Schedule (Tenant), and October 2023 Special Meeting: Minutes Approval.

The November 12, 2024, meeting was held as planned. During the meeting, the Board unanimously approved the executive session minutes of the Board meeting held on October 26, 2023, as well as the minutes of the Board meeting held on October 15, 2024.

DISCUSSION

I. The November 12, 2024, Meeting Notice Lacked Sufficient Specificity by Failing to Identify the Specific Minutes to be Approved.

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 Committee of Southbridge, 376 Mass. 70, 72 (1978). The Law requires that, except in an emergency, "a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays." G.L. c. 30A, § 20(b). The notice must be printed in a legible, easily understandable format and must contain the date, time and place of the meeting, as well as a listing of topics that the chair reasonably anticipates will be discussed. Id. The list of topics shall have "sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting." 940 CMR 29.03(l)(b). We generally consider a topic to be sufficiently specific when a reasonable member of the public could read the topic and understand the anticipated nature of the public body's discussion. See OML 2015-35.[2]

[1] Although not raised in the complaint, we note our concern with the sufficiency of the executive session topic listed on the notice for the meeting held on October 26, 2023. Executive session topics must be described, both in the meeting notice and in an announcement during open session, in as much detail as possible without compromising the purpose for which the executive session was called. See G.L. c. 30A, § 21(b)(3); see also District Attorney for the N. Dist. v. Sch. Comm. of Wayland, 455 Mass. 561, 567 (2009) ("[a] precise statement of the reason for convening in executive session is necessary ... because that is the only notification given the public that a [public body] would conduct business in private, and the only way the public would know if the reason for doing so was proper or improper"). While a public body is not required to provide the specific statutory citation of the executive session it plans to convene under, the public body must at least provide a sufficient description of the executive session purpose. See OML 2016-95. Moreover, our office discourages the use of abbreviations or acronyms in notices that are not widely understood by members of the public. See OML 2016-5 (finding that "PILOT" is not a widely understood acronym); cf. OML 2015-172 (concluding that "FAA" is a widely understood acronym). We remind the Board of its obligations under the Open Meeting Law.

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

The complaint alleges that the November 12, 2024, meeting notice was insufficient where it referred to minutes to be reviewed as "October 2023 Special Meeting." We decline to find that the notice was insufficient for identifying the minutes as from a "special" meeting without specifically referring to an executive session, but we do find a violation where the November 12, 2024, notice did not identify the specific date of the meeting minutes to be approved. We have explained in previous determinations that notices should generally identify the specific meeting minutes to be reviewed and approved. See OML 2020-34; OML 2017-92; OML 2013-199. The Board does not contend that it was unaware of the exact minutes to be approved during its November 12, 2024, meeting. Compare OML 2015-25 (when the chair does not anticipate which minutes will be ready for review until the meeting, a generic topic may be sufficient). As such, we find that the Board violated the Open Meeting Law by failing to list on its notice the specific meeting minutes to be approved.

II. The Board Created Minutes Which Failed to Include a List of Documents Used During its Meetings of October 26, 2023, and October 15, 2024.

The Open Meeting 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.

Here, the Board acknowledges, and we find, that the Board failed to include within the minutes of its meetings of October 26, 2023, and October 15, 2024, a list of documents used during those meetings. That omission constituted a violation of the Open Meeting Law. We order the Board to revise its minutes to include a list of the documents used during the October 26, 2023, and October 15, 2024, meetings if it is not already done so.

We must determine whether this violation was, as the complainant urges, an intentional one. See G.L. c. 30A, § 23(c). An intentional violation is an "act or omission by a public body or a member thereof, in knowing violation of [the Open Meeting Law]." 940 CMR 29.02. An intentional violation may be found where the public body acted with deliberate ignorance of the law's requirement or has previously been advised that certain conduct violates the Open Meeting Law. Id. As of November 12, 2024, the date that the minutes were reviewed and approved , the Board had not yet been advised by the Attorney General of its obligation to list in the minutes the documents used during meetings. We acknowledge that, on January 28, 2025, the Attorney General found that the Board violated the Open Meeting Law by approving minutes which failed to include lists of documents used during meetings. See OML 2025-6. However, we do not rely on the January 2025 determination to find an intention violation because the Board had not yet been advised by the Attorney General of its obligation to list in the minutes the documents used

during meetings as of the time the minutes were reviewed and approved. As such, we decline to find that the violation here was intentional.

III. The Board Violated the Open Meeting Law by Failing to Periodically Review Executive Session Minutes.

The Open Meeting Law also states that "[m]inutes of all open sessions shall be created and approved in a timely manner," while requiring that minutes of executive sessions be "review[ed]" "at reasonable intervals" to determine whether continued nondisclosure is warranted. G.L. c. 30A, § 22(c); G.L. c. 30A, § 22(g)(1); see also OML 2024-158; OML 2024-29; Swansea Board of Selectmen v. Attorney General, Civil Action No. 2173CV00906 (Bristol Sup. Ct. December 27, 2023). In other words, the Open Meeting Law does not require that a public body approve executive session minutes in a timely manner, but rather that the executive session minutes be "create[d] and maintain[ed]" and "review[ed]" "at reasonable intervals" to determine whether continued nondisclosure is warranted, and to announce that determination at the next meeting following the review. G.L. c. 30A, §§ 22(a), (g)(1).[3] Although "reasonable intervals" is not defined by the law, our office has consistently found a quarterly review or a review every six months to be appropriate. See OML 2022-233; OML 2019-45; OML 2017-104; OML 2015-166; OML 2013-180. The review of minutes may be conducted by the public body, or its chair or designee. See G.L. c. 30A, § 22(g)(1).

In addition, the Open Meeting Law requires a public body to respond to a request for executive session minutes within 10 days. G.L. c. 30A, § 22(g)(2). If the public body or a designee has determined, prior to the request, that certain executive session minutes may be released, it should respond to the requester directly, notifying him or her of the availability of those minutes. See OML 2013-105; OML 2013-99. And if, at the time of a request, the public body has not conducted a review of the minutes to determine whether continued nondisclosure is warranted, the body must perform such a review and release the minutes, if appropriate, no later than its next meeting or within 30 days, whichever occurs first. G.L. c. 30A, § 22(g)(2). In such circumstances, the body must still respond to the requestor within 10 days, notifying him or her that it is conducting this review. See OML 2013-99.

On October 25, 2024, the complainant requested from the Board the executive session minutes of the meeting held on October 26, 2023. On November 4, 2024, within 10 days, the Board responded to the request explaining that minutes had not yet been reviewed to determine

[3] We acknowledge that since 2017, the Attorney General's Open Meeting Law regulations have provided that minutes of "all open and executive sessions shall be created and approved in a timely manner," and that "timely manner" means "within the next three public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay." 940 CMR 29.11(2). However, the Bristol Superior Court recently explained that the Open Meeting Law does not require executive session minutes to be approved in a timely manner and that the Open Meeting Law regulation requiring approval of executive session meeting minutes "imposes additional requirements on the maintenance of executive session minutes that cannot be read in harmony with the statute and thus is invalid." See Swansea Board of Selectmen v. Attorney General, Civil Action No. 2173CV00906 (Bristol Sup. Ct. December 27, 2023). Therefore, we decline to review the "timely approval" of executive session meeting minutes.

whether continued non-disclosure is warranted. During its next meeting on November 12, 2024, the Board reviewed and approved for release the October 26, 2023, executive session minutes.

Although the Board timely reviewed the October 26, 2023, executive session minutes in response to the request as the Board reviewed the minutes at its next meeting, the Board acknowledged that "no procedure is in place for periodic review of Executive Session minutes." As stated above, a public body is required to review, at reasonable intervals, executive session minutes to determine if the Open Meeting Law allows for continued non-disclosure, or if the lawful purpose for the executive session has been served such that the minutes must be released, and to announce that determination at the next meeting following its review. See G.L. c. 30A, § 22(g)(1). Here, the Board did not review the October 26, 2023, executive session minutes at all until it received a request for those minutes on October 25, 2024, a year later. Therefore, we find that the Board violated the Open Meeting Law by failing to review the minutes at reasonable intervals. We commend the Board for its commitment "to adopt a procedure under which it will review and approve executive session minutes twice annually" and order no further remedial action where the Board has now reviewed and released the requested executive session minutes.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law by posting the November 12, 2024, meeting notice with insufficient specificity, by creating minutes which failed to include a list of documents used during the meetings, and by failing to periodically review executive session minutes. We order the Board's immediate and future compliance with the law's requirements and caution the Board that a future finding of an intentional violation of the Open Meeting Law may result in a civil penalty of up to $1,000 per violation. In addition, we order the Board, within 30 days of the date of this letter, to revise the minutes of the October 26, 2023, and October 15, 2024, meetings to include a list of the documents used during those two meetings if it is not already done so.

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 our office or the Board. Please feel free to contact the Division at (617) 963-2540 if you have any questions.

Sincerely,



KerryAnne Kilcoyne
Assistant Attorney General
Division of Open Government

cc: Christine McCue Potts – By email only: [redacted]
Medfield Housing Authority Board of Commissioners – By email only: medfieldha@comcast.net
Medfield Town Clerk – By email only: 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.