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December 11, 2017

OML 2017 – 188

Mark Terry, Esq.
Mirick O'Connell
1800 West Park Drive
Suite 400
Westborough, MA 01581

RE: Open Meeting Law Complaint

Dear Attorney Terry:

This office received a complaint from Jonathan Dame of the *Metrowest Daily News* on October 4, alleging that the Lincoln-Sudbury Regional School Committee (the "Committee") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ The complaint alleges that the Committee failed to provide Mr. Dame with copies of all written evaluations of the school superintendent submitted by individual Committee members. The complaint was originally filed with the Committee on August 4; and the Committee responded by letter dated August 11.

Following our review, we find that the Committee did not violate the Open Meeting Law. In reaching this determination, we reviewed the original complaint, the Committee's response to the complaint, and the complaint filed with our office requesting further review.

FACTS

We find the facts as follows. On July 3, Mr. Dame requested copies of all written evaluations of School District Superintendent Bella Wong submitted by individual committee members to the Committee chair for the purposes of compiling the superintendent's annual performance evaluation. Prior to a July 6 Committee meeting, individual Committee members had developed evaluations of Superintendent Bella Wong and sent them to the Committee chair to compile into a composite evaluation.

¹ All dates in this letter refer to the year 2017.



At its July 6 meeting, the Committee reviewed the composite evaluation of the superintendent. While the Committee reviewed the composite evaluation during the meeting, it did not review the individual evaluations created by each Committee member that provided the content for the composite evaluation.

DISCUSSION

The Open Meeting Law requires that all documents used at an open meeting be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under the Public Records Law. G.L. c. 30A, § 22(e). However, materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation, are exempt from disclosure as personnel records. Id.

Here, the document used during the Committee's open meeting on July 6 consisted of a performance evaluation of an individual bearing on her professional competence. Because the document was created by the members of the body for the purposes of evaluation, the document is a public record in its entirety. G.L. c. 30A, § 22(e). However, because the individual evaluations created by Committee members were not documents used by the Committee at the July 6 meeting, they are not required by the Open Meeting Law to be disclosed upon request.

Mr. Dame notes in his complaint that the Attorney General's Open Meeting Law Guide states that, "[d]ocuments created by members of the public body for the purpose of performing an evaluation are subject to disclosure. This applies to both individual evaluations and evaluation compilations, provided the documents were created by members of the public body for the purpose of the evaluation." Both individual and composite evaluations would be subject to disclosure under the Open Meeting Law only when such records are used by a public body during an open meeting. See G.L. c. 30A, § 22(e). Here, because the individual evaluations were not used during an open meeting, the Open Meeting Law does not require their disclosure. They do, however, remain subject to the requirements of the Public Records Law. The complainant may contact the Supervisor of Records within the Secretary of the Commonwealth's Office to appeal a denial of access to those records.²

² We note that the distribution of performance evaluations prior to a meeting and their status as public records are issues under consideration by the Supreme Judicial Court in Boelter v. Wayland Board of Selectmen, No. SJC-12353, argued December 4, 2017.

CONCLUSION

For the reasons stated above, we find that the Committee did not violate the Open Meeting Law. 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 Committee. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Jonathan Sclarsic
Assistant Attorney General
Director, Division of Open Government

cc: Lincoln-Sudbury Regional School Committee
Jonathan Dame

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.