



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

January 31, 2019

To the Open Meeting Law Advisory Commission:

On behalf of the Attorney General and in accordance with the Open Meeting Law (the OML), G.L. c. 30A, § 19(d), I submit the following report to the Commission summarizing the activities of the Division of Open Government (the Division) from January 1, 2018, through December 31, 2018.¹

Presently, the Division consists of the Director, two Assistant Attorneys General, and a paralegal, with one Assistant Attorney General vacancy we are in the process of filling. The Division's responsibilities include reviewing, investigating, and resolving OML complaints; creating and disseminating educational materials about the OML; providing training on the OML; promulgating regulations; and responding to general inquiries about the OML from members of public bodies, municipal attorneys, members of the public, and the press. In addition to the Division's responsibilities regarding the OML, the Division bears certain enforcement responsibilities under the Public Records Law and has represented the Attorney General in litigation in other matters involving government transparency. This report is limited to the Division's activities relating to the OML.

In 2018, the Division once again received over 300 complaints. This year, the median complaint resolution time was approximately 99 days, an increase over 2017 largely due to personnel changes, vacancies, and parental leave in a small division. We will actively work to reduce the complaint resolution time in 2019 once our full complement of staff is again in place. The Division also offered in-person and web-based training on the OML to people throughout the Commonwealth and maintained its OML hotline through which Division attorneys responded to dozens of phone and email inquiries each week.

Complaints

As required by G.L. c. 30A, § 19(d),² the Attorney General's Office reports to the

¹ G.L. c. 30A, § 19(d) provides that "[t]he attorney general shall, not later than January 31, file annually with the [Open Meeting Law Advisory] commission a report providing information on the enforcement of the open meeting law during the preceding calendar year."

² "The report shall include but not be limited to:

(1) The number of open meeting law complaints received by the attorney general;



Commission that, during 2018, the Division received 317 new OML complaints and resolved a total of 235 complaints. The Division issued 162 determination letters and 21 declination letters. Some of these letters resolved multiple complaints.

In 77 of its determinations, the Division found that the public body had not violated the OML. In 85 of its determinations, the Division found that the public body had violated the OML in at least one of the manners asserted in the complaint(s) addressed in the determination. The most frequently occurring violations were: 1) deliberation outside of a posted meeting, including email deliberation; 2) insufficiently detailed meeting notices; 3) release of meeting minutes; 4) failure to create meeting minutes; 5) failure to list anticipated topics on notices; and 6) failure to comply with general notice posting procedures. The remedial actions most frequently ordered by the Division were: 1) immediate and future compliance with the OML; 2) creation or amendment of open or executive session minutes; and 3) attendance at a training on the OML or review of all or part of the Attorney General's online training video. In six instances, we did not order any additional relief because the public body had taken sufficient remedial action.

Out of the 85 findings of violations of the OML in 2018, the Division issued two determinations finding intentional violations. Both matters involved violations after prior Division findings that the public body had violated the Open Meeting Law in a similar manner.

A list of these two matters and their resolutions follows:

OML 2018-34 (Swansea Recreation Commission) – The Commission was ordered to review the Attorney General's training video on meeting minutes.

OML 2018-108 (Ashland Board of Health) – We ordered immediate and future compliance with the law's requirements. The Board was cautioned that future violations could be considered evidence of intent to violate the law, and that future intentional violations for failure to timely approve meeting minutes may result in a recommendation of a civil penalty.³

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- (2) The number of hearings convened as the result of open meeting law complaints by the attorney general;
 - (3) A summary of the determinations of violations made by the attorney general;
 - (4) A summary of the orders issued as the result of the determination of open meeting law enforcement actions;
 - (5) An accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions;
 - (6) The number of actions filed in superior court seeking relief from an order of the attorney general; and
 - (7) Any additional information relevant to the administration and enforcement of the open meeting law that the attorney general deems appropriate.”

³ Open Meeting Law determinations can be viewed here:
<https://massago.onbaseonline.com/Massago/1700PublicAccess2/OML.htm>

As for the 21 declinations issued in 2018, the most frequent reasons for declining to review a complaint were that: 1) the complaint was not timely filed with the public body; and 2) the complaint did not allege a violation of the OML.

Challenges to Division Determinations

Two public bodies filed actions in Superior Court during 2018 seeking judicial review of Division determinations. Both matters were filed late in the year, and no substantive action has been taken yet in either case. Several earlier cases were resolved in 2018. A list of currently pending challenges and matters resolved in 2018 are as follows:

Filed in 2018

The Bay State Conference v. Maura Healey, Suffolk Superior Court, Civil Action No. 1884CV03221 (Appeal of OML 2018-129): The Attorney General initially found that the Bay State Conference is a public body subject to the OML. The BSC both brought an action for judicial review of that determination and also made changes to its organizational structure and then sought reconsideration. On January 15, 2019, the Attorney General modified her prior determination and found that, following its restructuring, the BSC is not a public body subject to the OML. Stipulated dismissal of the action is anticipated.

Board of Selectmen of the Town of Hull and the Town Manager of the Town of Hull v. Maura Healey, Plymouth Superior Court, Civil Action No. 1883CV01227 (appeal of OML 2018-139): In a determination on remand, the Attorney General found that the public body violated the OML when it failed to publicly identify the collective bargaining unit with which it would be negotiating and the party with whom it was involved in litigation before entering into executive session to discuss those matters, and failed to demonstrate that its negotiating or litigating position would be harmed by disclosing such information.

Matters from Prior Years

Fall River City Council v. Maura Healey, Bristol Superior Court, Civil Action No. 1773CV00901 (Appeal of OML 2017-45): The Superior Court (Hopkins, J.) affirmed the Attorney General's determination finding an intentional violation and imposing a \$1,000 civil penalty on July 25, 2018. The Fall River City Council did not appeal.

Swansea Board of Selectmen v. Maura Healey, Suffolk Superior Court, Civil Action No. 1748CV03269 (Appeal of OML 2017-148): The Superior Court (Giles, J.) quashed the Attorney General's determination on October 29, 2018. The Attorney General opted not to appeal.

West Bridgewater Board of Selectmen v. Maura Healey, Plymouth Superior Court, Civil Action No. 1583CV15-01242 (appeal of OML 2015-184): The Superior Court (Chin, J.) affirmed the Attorney General's determination on September 22, 2016; the Appeals Court affirmed on May 4, 2018; and the SJC denied further appellate review on July 30, 2018.

Fall River City Council v. Maura Healey, Bristol Superior Court, Civil Action No. 1673CV00865 (appeal of OML 2016-117): The Superior Court (Hopkins, J.) affirmed the Attorney General's determination on March 16, 2018. The Fall River City Council did not appeal.

Board of Selectmen of the Town of Hull and the Town Manager of the Town of Hull v. Maura Healey, Plymouth Superior Court, Civil Action No. PLCV2015-00161-B (appeal of OML 2015-14): The Superior Court (Ricciuti, J.) vacated the Attorney General's determination and remanded the matter to the Attorney General for further investigation on December 14, 2017. After providing the parties an opportunity to submit additional evidence, the Attorney General issued a revised determination on remand on October 18, 2018 (OML 2018-139), again finding a violation. See report above.

Revere Retirement Board v. Maura Healey, Suffolk Superior Court, Civil Action No. SUCV2015-02707-E (appeal of OML 2015-120): The Superior Court (Green, J.) affirmed the Attorney General's determination on May 30, 2017; the Appeals Court affirmed on June 29, 2018; and the SJC denied further appellate review on September 13, 2018.

Mediation

In 2017, the Attorney General amended her OML regulations to allow a public body to request mediation if one complainant files five or more complaints within 12 months with the same public body or in the same municipality. The first mediation under this new regulation took place in 2018. At the time the Natick School Committee requested mediation in April 2018, a single complainant had filed 46 separate OML complaints with it. The complainant subsequently filed hundreds more complaints, and to date has filed 603 separate OML complaints with the Committee. Mediation was not successful, and the Attorney General has granted the Committee extensions of time to respond to the many complaints.

Education

Our office's primary goal in enforcing the OML remains ensuring compliance with the law. To help individuals subject to the OML comply with its requirements, the Division has continued to devote significant time and resources to education and training. During 2018, the Division trained more than **789** people on the law's requirements. We conducted a series of **10** regional trainings on the OML across the state, reaching more than **424** attendees. The Division also hosted **10** webinars in 2018 to accommodate

individuals who were unable to attend the live regional training events. Finally, the Division participated in several other training events. These events included presentations to the Municipal Finance Oversight Board, the Public Employee Retirement Administration Commission, the Group Insurance Commission, and the Inspector General's Office, as well as presentations at seminars organized by entities such as MCLE and the Massachusetts Municipal Association. As a complement to its in-person training and educational outreach, the Division has continued to maintain a website featuring OML guidance and educational materials, as well as a searchable database containing all of the Division's determination and declination letters.

In 2018, the Division continued sending monthly newsletters to state-wide associations and interested parties. At the end of 2018, the Division had a total of 369 newsletter subscribers, many of whom are contacts at associations who then forward the update to their mailing lists. The newsletters provide updates on OML training opportunities, Commission meetings, Division news, and a monthly guidance spotlight.

Finally, the Division continues to offer daily guidance to members of the public, public bodies, attorneys, and the press through our telephone and email hotline. In 2018, we received and responded to approximately 1500 inquiries by telephone, e-mail, and letter.

The Division continues to receive a significant volume of complaints and requests for guidance. However, we remain confident that more public body members are learning the requirements of the OML and are striving to comply. In 2018, for example, we received many inquiries regarding the 2017 revised regulations, which demonstrates that public bodies are aware of the changes and are actively working to implement the new guidance. Each year, we notice improvement in the quality of meeting notices and minutes, even as we receive more complaints. We will continue to promote good government through fair and consistent enforcement of the OML, coupled with vigorous educational outreach, as we seek to improve adherence to the law's requirements. We look forward to continuing to work with you to further this goal during 2019.

Sincerely,



Carrie Benedon
Director, Division of Open Government

cc: Maura Healey, Attorney General