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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, 2019, through December 31, 2019.¹

Presently, the Division consists of the Director, three Assistant Attorneys General, and a paralegal. 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 also 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 2019, the Division received and resolved a record number of Open Meeting Law complaints. The Division also offered in-person and web-based training on the OML's requirements to people throughout the Commonwealth, and maintained its OML hotline through which the Division responded to dozens of phone and email inquiries each week.

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."

Complaints

As required by G.L. c. 30A, § 19(d),² the Attorney General’s Office reports to the Commission that, during 2019, the Division received **324** new OML complaints and resolved a total of **351** complaints. Both numbers are unprecedented; by comparison, in recent years the Division resolved 253 complaints (2016), 249 complaints (2017), and 235 complaints (2018).

In 2019, the Division issued **170** determination letters and **21** declination letters. Some determination letters resolved multiple complaints. Furthermore, many complaints allege multiple separate violations of the OML. In 2019, the Division began tracking the number of separate alleged violations included in each OML complaint. Overall, in **59%** of its determination letters, 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. However, when considering each alleged violation separately, the Division reviewed approximately 651 alleged violations and found violations 44% of the time.

The most frequently occurring violations were: 1) insufficiently detailed meeting notices; 2) failure to timely approve meeting minutes; 3) failure to properly respond to a request for meeting minutes; 4) convening in executive session for an improper purpose; and 5) failure to follow appropriate procedures for entering executive session. The remedial actions most frequently ordered by the Division were: 1) immediate and future compliance with the OML; 2) creation or approval of open session minutes; 3) release or revision of executive session minutes and 4) attendance at a training on the OML or review of all or part of the Attorney General’s online training video. In 5 instances, we did not order any additional relief because the public body had taken sufficient remedial action.

Out of the 101 determinations finding a violation of the OML in 2019, the Division issued **one** determination finding an intentional violation. In OML 2019-114 (Sandwich Board of Selectmen), the Division found that the Board posted an insufficiently detailed meeting notice that stated only that the Board planned to convene in executive session under Purpose 3 to discuss “Collective Bargaining Strategy” without

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

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

identifying the unions it intended to discuss. Because the Division had previously found that the Board violated the OML in an almost identical way when the Board failed to identify on its meeting notices the specific personnel with whom it would be negotiating, see OML 2015-127, the Division found the violation to be intentional.

As to the 21 declinations issued in 2019, 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.

The average complaint resolution time increased in 2019 to approximately **184** days, as the Division worked in the latter half of 2019 to investigate and resolve a substantial backlog of Open Meeting Law complaints from the preceding 12 months when the Division experienced significant staffing shortages.

Challenges to Division Determinations

No public bodies filed actions in Superior Court during 2019 seeking judicial review of a Division determination. One matter that was filed in 2018 was resolved in 2019, and another matter remains pending in Superior Court:

The Bay State Conference v. Maura Healey, Suffolk Superior Court, Civil Action No. 1884CV03221 (Appeal of OML 2018-129): The Division 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 by the Division. In response to the request for reconsideration, on January 15, 2019, the Division modified its prior determination and found that, following its restructuring, the BSC is not a public body subject to the OML. The parties entered a stipulation of dismissal, and the court dismissed the action.

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): The Division previously 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. The Board sought review of that determination in Superior Court, which remanded the matter to the Division for further consideration and to allow the Board the opportunity to submit additional information. Thereafter, the Division again determined that the Board violated the OML, and the Board again sought review in Superior Court. The matter remains pending in Superior Court.

Mediation

The Attorney General's 2017 amendments to the OML regulations allow a public body to request mediation if a complainant files five or more complaints with the same public body or within the same municipality within 12 months. Mediations are conducted by outside professional mediators, not by Division attorneys, so that the Division remains in a position to fairly investigate and resolve the complaints if mediation is unsuccessful. Two mediations took place in 2019, one involving the Weymouth School Committee (7 complaints) and the other the Wayland Board of Selectmen and Personnel Board (5 and 2 complaints, respectively). The Weymouth mediation was unsuccessful, and the Division subsequently issued determination letters resolving the complaints. The Wayland mediation concluded in November 2019, with only partial success, and the complaints are under review by a Division attorney.

Education

Our office's primary goal in enforcing the OML remains ensuring compliance with the law. To help individuals who are subject to the OML comply with its requirements, the Division has continued to devote significant time and resources to education and training. During 2019, the Division trained more than **920** people on the law's requirements. We conducted a series of **8** regional trainings on the OML across the state, reaching more than **364** attendees. The Division also hosted **11** webinars in 2019, at varying times of day, to accommodate individuals who are unable to attend the live regional training events. Finally, the Division participated in several other training events. These events included presentations to the Massachusetts Town Clerks Association, to the Massachusetts Association of School Committees, and to the Attorney General's appointees to state boards and commissions, as well as presentations at seminars organized by entities such as MCLE. As a complement to its in-person training and educational outreach, the Division has continued to maintain a robust website to which it frequently adds OML guidance and educational materials, as well as a searchable database containing all of the Division's determination and declination letters.

In 2019, the Division continued sending monthly newsletters to state-wide associations and interested parties. At the end of 2019, the Division had a total of 528 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 2019, we received and responded to approximately **1,990** inquiries by telephone, e-mail, and letter, a sharp increase over past years when the Division has typically responded to fewer than 1,500 such inquiries.

The Division continues to receive a significant, and increasing, volume of complaints and requests for guidance, which we believe reflects greater awareness of the Open Meeting Law, not less. Each year, we notice discernable 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 2020.

Sincerely,



Carrie Benedon
Assistant Attorney General
Director, Division of Open Government

cc: Maura Healey, Attorney General