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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, 2020, through December 31, 2020.¹

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.

This past year was, for the Division and so many others, a year like no other. In March 2020, with the declaration of the State of Emergency, the Division immediately coordinated with the Governor's Office to implement the Executive Order Suspending Certain Provisions of the Open Meeting Law, in order to allow public bodies to meet remotely to continue to carry out their important government functions. The Executive Order contains two key provisions that had a significant impact on the conduct of public body meetings. First, the Executive Order allows public body members to participate in meetings remotely without a quorum being physically present at a meeting location. Second, and perhaps more significantly, the Executive Order allows public bodies to provide public access to their meetings via "adequate, alternative means" rather than mandating that meetings be held in a location that is physically accessible to the public. The Division promptly issued updated guidance on compliance with the revised requirements of the Open Meeting Law. Specifically, the Division formulated and posted new guidance to the AG's OML website; issued several rounds of guidance to its 700-person newsletter distribution list (consisting mostly of local public officials); provided guidance 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."

Massachusetts Municipal Lawyers Association; revised the presentation materials and content for the Division's regular Open Meeting Law webinars, and prioritized resources to ensure prompt responses to OML hotline inquiries to guide public bodies as they adjusted to new types of meetings. Implementation of these changes required – and continues to require – the Division to adapt its guidance to the new realities of public meetings.

In addition to the significant efforts devoted to implementing the Executive Order and adapting its guidance to all-remote meetings, the Division continued its core work of reviewing, investigating, and resolving Open Meeting Law complaints. In 2020, the Division again received more than 350 Open Meeting Law complaints, and resolved 259 complaints. Many of the complaints filed in 2020 raised novel issues that required the Division to thoughtfully apply the requirements of the Open Meeting Law to the virtual meeting context. The Division continued to offer trainings on the OML's requirements to people throughout the Commonwealth, and maintained its OML hotline through which the Division responded to thousands of phone and email inquiries regarding the requirements of the Open Meeting Law.

Complaints

As required by G.L. c. 30A, § 19(d),² the Attorney General's Office reports to the Commission that, during 2020, the Division received **356** new OML complaints and resolved a total of **259** complaints. By comparison, in recent years the Division resolved 253 complaints (2016), 249 complaints (2017), 235 complaints (2018), and 351 complaints (2019).

In 2020, the Division issued **173** determination letters (resolving 231 complaints) and **22** declination letters (resolving 28 complaints), for a total of **195** determinations and declinations. By comparison, in 2019 the Division issued a total of 191 determination and declination letters, and in 2018, a total of 183 determination and declination letters. Some determination letters resolved multiple complaints. Overall, the Division found a violation on approximately 56% of complaints reviewed. 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. When considering each alleged violation separately, the Division found a violation approximately 46% of the time.

The most frequently occurring violations were: 1) failure to release meeting minutes, 2) meetings not accessible to the public, 3) deliberation outside of a posted meeting, 4)

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."

insufficiently detailed meeting notices, and 5) convening in executive session for an improper purpose.

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.

Out of 95 determinations finding a violation of the OML in 2020, the Division issued 5 determinations finding an intentional violation. Those determinations are as follows:

- OML 2020-7 (Lunenburg Conservation Commission): The Commission denied the public access to its May 29, 2019, meeting when, after some members of the public became unruly following a tense discussion on a controversial matter, the Chair demanded that all members of the public vacate the meeting location, called the police to help remove members of the public from the meeting location, locked the doors to the meeting room, and the Commission then continued to deliberate for over an hour. The Division found that to instruct the entirety of the public in attendance to vacate a meeting location, lock the doors, and continue to deliberate is, if not an action taken with specific intent to violate the Open Meeting Law, at the very least an action taken with deliberate ignorance of the law's requirements.
- OML 2020-15 (Weston Board of Selectmen): A town employee circulated draft executive session minutes prior to a meeting. One Board member responded to the employee and to a quorum of the Board, stating that a portion of the minutes should be deleted because it described discussion on a matter on which the Board member had a conflict of interest regarding certain property and "was not for public consumption." The Board then approved minutes with that portion of the draft minutes removed. Therefore, the Division found that the Board member who emailed a quorum of the Board engaged his colleagues in deliberation outside of a public meeting, and that the Board as a whole approved inaccurate meeting minutes in order to conceal one Board member's conflict of interest from the public. Even if the Board members did not take this action with the specific intent to violate the Open Meeting Law, at the very least they acted with deliberate ignorance of the law's requirements.
- OML 2020-109 (Kingston Board of Selectmen): The Board failed to timely approve minutes of a January 21, 2020, executive session for six months, despite the fact that the Board had met dozens of times since that meeting. The Board was previously advised in a determination from the Division issued on January 25, 2019 that failure to approve meeting minutes within 30 days or three meetings, whichever comes later, is a violation of the Open Meeting Law.
- OML 2020-136 (Great Barrington Housing Authority Board of Commissioners): One Board member sent many emails to the whole Board in which she expressed her opinions on Board business, thus engaging the Board in deliberation outside of a public meeting. The Board was recently advised in a determination from the Division that deliberation via email is a violation of the Open Meeting Law.

- OML 2020-154 (Melrose School Committee): The Committee posted a meeting notice that did not identify the specific nonunion personnel with whom the Committee would be negotiating in executive session, nor did the Committee assert that including such information would have compromised the lawful purpose for the executive session. The Committee had been found in violation of the Open Meeting Law three prior times for failure to state with sufficient specificity its purpose for entering executive session. The Division recommended the imposition of a \$500 civil penalty and referred the matter to a hearing pursuant to 940 CMR 29.07(3).

As for the 22 declinations issued in 2020, 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

No public bodies filed actions in Superior Court during 2020 seeking judicial review of a Division determination. One matter that was filed in 2018 remains pending in Superior Court:

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. No mediations took place in 2020.

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 2020, the Division trained more than **875** people on the law's requirements. Although the Division's in-person spring and fall regional training series were canceled in 2020 due to the COVID-19 pandemic, the Division continued to host its monthly webinars, and even increased to more

frequent webinars in response to high demand. The Division hosted 14 webinars in 2020, at varying times of day, during both daytime and evening hours. Finally, the Division provided training on the Open Meeting Law to the Massachusetts Assessors Association, to trustees of boards of public higher education as part of their mandatory training curriculum, and presented at MCLE seminars. The Division has continued to maintain a robust website containing updated OML guidance and educational materials, as well as a searchable database containing all of the Division's determination and declination letters.

In 2020, the Division continued sending monthly newsletters to state-wide associations and interested parties. At the end of 2020, the Division had approximately 750 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 guidance to members of the public, public bodies, attorneys, and the press through our telephone and email hotline. In 2020, the Division received and responded to more than 2,100 inquiries by telephone, e-mail, and letter, which is a record number of inquiries and likely a result of the sudden shift to virtual meetings.

The Division continues to receive a significant volume of complaints and requests for guidance, which we believe reflects greater awareness of the Open Meeting Law. 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 2021.

Sincerely,



Carrie Benedon
Assistant Attorney General
Director, Division of Open Government

cc: Maura Healey, Attorney General