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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, 2022, through December 31, 2022.¹

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 enforcement responsibilities under the OML, the Division bears certain enforcement responsibilities under the Public Records Law and represents the Attorney General in litigation in matters involving government transparency. This report is limited to the Division’s activities relating to the OML.

This past year was an extraordinarily productive and active year for the Division. After two years of repeatedly extended temporary provisions allowing for public bodies to hold meetings remotely due to the COVID-19 pandemic, the Division advocated for sound legislative changes that would make permanent some of the flexibility permitted during the pandemic, as well as make other changes to improve transparency and access, in keeping with the OML’s objectives of transparency, convenience, and access by the public.

In addition to its legislative and policy efforts, the Division continued its core work of reviewing, investigating, and resolving Open Meeting Law complaints as well as providing training and outreach to the public. The Division issued 20% more complaint determinations than in any prior year, again resolving a record number of Open Meeting Law complaints. The Division also offered an increased schedule of trainings on the OML’s requirements to people throughout the Commonwealth, reaching a record number of attendees, and maintained its OML hotline through which the Division responded to phone and email inquiries regarding the requirements of the Open Meeting Law.

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 2022, **358** OML complaints were filed with the Division for review. Many more complaints were filed with public bodies in the Commonwealth but not filed with the Division for further review, likely because either the complainant was satisfied by the public body's response and remedial action taken, or because the complainant understood from the public body's response or from communications with our office that the issues raised did not fall within the scope of the Open Meeting Law. In total, the Division received **638** complaints filed with public bodies in 2022.

In 2022, the Division resolved a total of **371** complaints through determination or declination letters. By comparison, in recent years the Division resolved 253 complaints (2016), 249 complaints (2017), 235 complaints (2018), 351 complaints (2019), 259 complaints (2020), and 350 complaints (2021). In addition to the complaints that were resolved through determination and declination letters, **19** complaints were withdrawn by the complainant after having been filed with the Division.

In 2022, the Division issued a record **241** determination letters (resolving 336 complaints) and **31** declination letters (resolving 35 complaints), for a total of **272** determinations and declinations resolving 371 complaints. By comparison, in 2021 the Division issued a total of 231 determination and declination letters; in 2020 the Division issued a total of 195 determination and declination letters; and in 2019 the Division issued a total of 191 determination and declination letters. Overall, the Division found a violation on approximately 52% 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 on approximately 37% of alleged violations.

The most frequent violations found were: 1) insufficiently specific meeting notice; 2) deliberation outside of a posted meeting; 3) failure to timely approve meeting minutes; 4) inaccurate/insufficiently detailed meeting minutes; and 5) meetings not accessible to the public.

The remedial actions most frequently ordered by the Division were: 1) immediate and future compliance with the OML; 2) release documents or emails; 3) amend meeting minutes; 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."

create and approve meeting minutes; 5) attendance at a training on the OML or review of all or part of the Attorney General's training video series.

Out of 132 determinations finding a violation of the OML in 2022, the Division issued 4 determinations finding intentional violations. Those determinations are as follows:

- OML 2022-135: (Malden City Council): The Council improperly deliberated regarding an increase to the cost-of-living adjustment ("COLA") base for Malden City retirees when that topic was not included on the notice for the Council's meeting. Based on the response from the Council, review of the video recording of the June 29 meeting and communications with the Assistant City Solicitor, we found that it was known and anticipated that the Council would need to vote on the increase to the COLA base on or before June 30. Therefore, the Council violated the OML when it deliberated on an anticipated topic that was not included on the notice for its meeting. Furthermore, we found the violation to be intentional where the Council discussed at length whether discussing the COLA base would violate the OML and sought legal advice from the city solicitor who explained that continued discussion of the COLA base would likely violate the OML. Ultimately, the Council decided to proceed with its discussion and a vote on the COLA base with some members expressly stating that the Council should proceed regardless of whether doing so would violate the OML. We recommended the maximum \$1,000 civil penalty.
- OML 2022-184 (Fall River School Committee): The Committee failed to approve five sets of meeting minutes in a timely manner where the Committee did not approve the minutes within the later of the next 30 days or three meetings. Although some of the minutes were untimely by only a few days, we found that the Committee did not have good cause for delay in approving the minutes. And because the Committee had previously been found in violation of the OML for failing to timely approve meeting minutes, and had been advised of its obligations, we found that this violation was intentional. As the meeting minutes had already been approved before the complaint was filed with our office, we ordered no further remedial action but advised that future violations for failing to timely approve meeting minutes may result in a civil penalty of up to \$1,000 per violation.
- OML 2022-200 (Wayland Board of Selectmen): The Board deliberated outside of a properly posted meeting in December 2019 and March 2021 when it shared via email a composite evaluation of the town administrator; the violation was not discovered until executive session minutes were disclosed in 2022. The very practice utilized by the Board, where Board members submitted performance evaluations to the chair, who then aggregated the individual evaluations into a single document, and then distributed that composite evaluation in advance of the noticed meeting, was found to be a violation of the Open Meeting Law by the Supreme Judicial Court in Boelter v. Board of Selectmen of Wayland (2018). Because the Boelter decision specifically involved the Board, we find that the Board had previously been advised that this conduct violated the Open Meeting Law and therefore find that the Board's distribution of the composite evaluation outside of a meeting was an intentional violation of the Law. However, we credit the Board's explanation that it "misinterpreted the restrictions of Boelter and believed that if the contents of the

composite were not attributed to any members and the document was distributed by staff rather than the members, this would comply with the Law.” Therefore, we did not recommend the imposition of a civil penalty in this instance.

- OML 2022-236 (Rehoboth Board of Selectmen): The Board failed to timely approve two sets of August 2022 meeting minutes. Because we had found that the Board violated the OML three times over the past year for failing to timely approve meeting minutes, and it failed to prioritize this responsibility despite our determinations, we found that the Board intentionally violated the OML. We acknowledged that the Board repeatedly but unsuccessfully hired/attempted to hire additional administrative staff to create meeting minutes. We reminded the Board that Board members themselves must prepare the meeting minutes if staff resources are unavailable. As the meeting minutes had already been approved before the complaint was filed with our office, we ordered no further remedial action but advised that future violations for failing to timely approve meeting minutes may result in a civil penalty of up to \$1,000 per violation.

As for the 31 declinations issued in 2022, the most frequent reasons for declining to review a complaint were that: 1) the complaint did not allege a violation of the OML; and 2) the complaint was not timely filed with the public body.

Challenges to Division Determinations

In December 2021, the Swansea Board of Selectmen filed an action in Superior Court seeking judicial review of a Division determination; the complaint was served on the Attorney General in February 2022.

Swansea Board of Selectmen v. Maura Healey, Bristol Superior Court, Civil Action No. 2173CV00906 (appeal of OML 2021-169): In OML 2021-169 the Division found, in part, that the Board violated the Open Meeting Law when it failed to approve executive session minutes in a timely manner. The Open Meeting Law requires public bodies to create and approve meeting minutes, whether for open or executive session, in a timely manner. G.L. c. 30A, § 22(c). The Attorney General’s Open Meeting Law regulations provide 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. The Division found the Board’s failure to timely approve executive session minutes to be an intentional violation of the Open Meeting Law where we had found that the Board violated the Open Meeting Law in a similar manner in 2019. The Board sought review of the determination in Superior Court and also filed a declaratory judgement claim challenging the validity of the Attorney General’s Open Meeting Law regulation, 940 CMR 29.11. The matter is currently pending before the Superior Court.

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 2022, the Division again increased its training and outreach efforts. In 2022, the Division directly trained more than 1,500 people on the law's requirements. The Division continued to host its live, interactive webinars one to two times per month, which attract large attendance levels. The Division hosted 20 webinars in 2022, at varying times of day, during both daytime and evening hours. The Division increased the frequency of its webinar trainings in 2022 compared to prior years and nonetheless saw a 40% increase in average attendance at each webinar compared to the prior year. In addition, the Division provided direct training on the Open Meeting Law to the Town Clerks Association, other professional associations, and several state boards, and presented at MCLE seminars. The Division continues 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 2022, the Division continued sending monthly newsletters to state-wide associations and interested parties. At the end of 2022, the Division had approximately 1,100 newsletter subscribers, many of whom forward the update to their staffs or 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 2022, the Division received and responded to more than 1,500 inquiries by telephone and email.

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 and of the role of the Attorney General's Office. We will continue to promote good governance 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 2023.

Sincerely,



Carrie Benedon
Assistant Attorney General
Director, Division of Open Government

cc: Andrea Joy Campbell, Attorney General