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To the Open Meeting Law Advisory Commission:

On behalf of Attorney General Andrea Joy Campbell 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, 2023, through December 31, 2023.

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, in accordance with General Laws chapter 30A, § 19(d), which 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."¹

Complaints

During 2023, **368** OML complaints were filed with the Division for review; **7** of those complaints were subsequently withdrawn by the complainant. Many more complaints were filed with public bodies in the Commonwealth but not filed with the Division for further review, likely

¹ "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."

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 **608** complaints filed with public bodies in 2023.

In 2023, the Division once again issued a record number of determination letters: **244** determination letters, resolving **298** separate complaints. In addition, the Division issued **32** declination letters resolving **59** complaints, for a total of **276** determinations and declinations resolving **357** complaints. By comparison, in 2022 the Division issued a total of 272 determinations and declinations resolving 371 complaints; in 2021 the Division issued a total of 231 determination and declination letters resolving 350 complaints; and in 2020 the Division issued a total of 195 determination and declination letters resolving 259 complaints. Consistent with past practices, the Division did not convene any hearings in 2023, but rather investigated and resolved complaints primarily by reviewing records, viewing meeting videos or listening to audio recordings, and conducting interviews. Overall, the Division found a violation on approximately 55% of complaints reviewed. Furthermore, many complaints allege multiple separate violations of the OML. When considering each alleged violation separately, the Division found a violation on approximately 42% of alleged violations.

The most frequent violations found were: 1) insufficiently specific meeting notice; 2) failure to timely approve meeting minutes; 3) inaccurate/insufficiently detailed meeting minutes; 4) deliberation outside of a posted meeting; and 5) failure to respond to request for minutes.

The remedial actions most frequently ordered by the Division were: 1) immediate and future compliance with the OML; 2) amend meeting minutes; 3) create and approve meeting minutes; 4) release executive session minutes; and 5) release documents or emails.

Out of 138 determinations finding a violation of the OML in 2023, the Division issued **2** determinations finding intentional violations. Those determinations are as follows:

- OML 2023-198 (Wayland School Committee): The Committee approved meeting minutes which were insufficiently detailed in that they failed to include any summary of interviews with candidates to fill a vacancy on the Committee that took place during two meetings. In determination OML 2022-17, we had found that the Committee violated the Open Meeting Law in substantially the same way, by failing to summarize in meeting minutes interviews that the Committee had conducted during a meeting. Because the Committee had previously been warned about this specific requirement, we found the violation was intentional. We acknowledged there was no evidence of an intent to conceal information from the public, as the interviews were held entirely in properly noticed open sessions.
- OML 2023-216 (Ashland Select Board): The Board failed to timely approve five sets of meeting minutes. In determination OML 2022-43, we had found the Board violated the Law by failing to timely approve meeting minutes, and reminded the Board of its obligations at that time. Furthermore, we specifically advised the Board that similar future violations could be considered evidence of intent to violate the law. All of the meeting minutes at issue were approved before the Open Meeting Law

complaint was filed with the Board, which was a factor we considered in not recommending a civil penalty.

In 2023, the Malden City Council paid a \$1,000 fine following a finding of an intentional violation in 2022.

As for the 32 declinations issued in 2023, 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

No public bodies filed actions for judicial review of Division determinations during 2023. However, the Division received two Superior Court decisions in 2023 stemming from actions that had been filed in prior years. Those decisions are summarized as follows:

Swansea Board of Selectmen v. Maura Healey, Bristol Superior Court, Civil Action No. 2173CV00906 (review of 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 Attorney General's Open Meeting Law regulations provide that "Minutes of all open and executive sessions shall be created and approved in a timely manner. A 'timely manner' will generally be considered to be 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(2). On cross-motions for partial summary judgment, the Superior Court found that the Open Meeting Law does not require executive session meeting minutes to be approved in a timely manner and therefore the Attorney General's regulation is invalid as it pertains to executive session meeting minutes.

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 (review of OML 2018-139): The Division found that the Board violated the Open Meeting Law 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 a reasonable basis for believing that its negotiating or litigating position would be harmed by disclosing such information. On review, the Superior Court found that the Board's assertions that disclosing the bargaining unit and litigation matter would compromise its bargaining and litigating position were reasonable, and vacated the determination finding a violation of the Open Meeting Law.

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 2023,

the Division directly trained more than 1,300 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 2023 during both daytime and evening hours. In addition, the Division provided direct training on the Open Meeting Law to professional associations and state boards, presented at MCLE seminars, and partnered with the Joint Committee on State Administration and Regulatory Oversight to present an in-person public training session. 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.

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 2023, the Division received and responded to approximately 1,600 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 2024.

Sincerely,



Carrie Benedon
Assistant Attorney General
Director, Division of Open Government

cc: Andrea Joy Campbell, Attorney General