

Minutes of the Open Meeting Law Advisory Commission
Monday, April 4, 2022, 10:00AM
Meeting Minutes
Virtual Access Via Zoom

Members Present: Robert Ambrogi (Chair), Massachusetts Newspaper Publishers Association Designee; Representative (Rep.) Antonio Cabral; Senator Marc Pacheco; Jeffrey Hull, Massachusetts Municipal Association Designee; Hanne Rush, Attorney General's designee

Attorney General's Staff Present: Anne Sterman, Deputy Bureau Chief of the Government Bureau; Carrie Benedon, Assistant Attorney General, Director, Division of Open Government; Kerry Kilcoyne, Assistant Attorney General; Elizabeth Carnes Flynn, Assistant Attorney General

Others Present and Identified: Jamie Howell-Walton; Adam Freudberg, Framingham School Committee;

Call to Order

Robert Ambrogi called the meeting to order at 10:10am. All in attendance introduced themselves.

Mention of Item Not Listed on Agenda

Mr. Ambrogi noted that this item was not listed on the agenda for this meeting, but he would like to speak at the next OMLAC meeting about the election of a new chair of the Commission.

Review and approval of draft minutes for March 3, 2020, Commission meeting

Mr. Ambrogi said that the first order of business would be to approve the minutes of the March 3, 2020 Commission meeting. Mr. Ambrogi said that the minutes had been circulated and asked if anyone had comments or corrections. With no comments or corrections offered, Ms. Hanne Rush motioned to approve the minutes. Jeffrey Hull seconded the motion. Mr. Ambrogi noted that Rep. Cabral and Senator Pacheco were not on the Commission on the date of the referenced meeting. **Ambrogi, Cabral, Hull, Pacheco, Rush in favor.**

Report from the Attorney General's Division of Open Government

Mr. Ambrogi said the next order of business would be the annual report from the Division of Open Government (DOG). DOG Director Carrie Benedon introduced herself to the Commission and said that she would discuss the highlights of each section of the report.

Ms. Benedon said that the Division had issued a record number of Open Meeting Law determinations and resolved the largest number of complaints that the Division has ever resolved. Ms. Benedon also said that the number of new complaints had also increased. Ms. Benedon discussed in detail the number of complaints received, filed, and resolved. Ms. Benedon said that the Division found a violation in about 50% of the complaints reviewed by the Division. Ms. Benedon identified the most common violations found and the number of intentional violations found in determinations issued by the division and explained the reasons violations are found to be intentional.

Ms. Benedon said that there were not any mediations that took place under the Open Meeting Law in 2021.

Ms. Benedon said that the Division has continued to offer live webinar trainings on the Open Meeting Law. Ms. Benedon stated that we have seen our largest attendance at our webinars.

Ms. Benedon stated the Division continues to issue a monthly newsletter to a growing subscriber list. Ms. Benedon described the structure of the newsletter and how it is helpful to its subscribers.

Ms. Benedon said that the Attorney General's Office is continuing to offer a hotline service, which is staffed by rotating members of the team.

Ms. Benedon concluded the report from the Division of Open Government.

Mr. Ambrogi asked if members of the Commission have any questions or comments regarding the report read by Ms. Benedon. Rep. Cabral asked how the Division reaches the conclusion that a public body as a whole has intentionally violated the Open Meeting Law rather than concluding that specific individuals who serve on the public body have intentionally violated the Open Meeting Law. Rep. Cabral discussed the legislation and how it pertains to intentional violations and his desire to have a future conversation with Commission members on interpreting intentional violations and the Open Meeting Law differently moving forward. Ms. Benedon responded by noting that generally, the Division finds that the body as a whole intentionally violates the Open Meeting Law such as in cases where the intentional violation is for a repeat violation by the body, but identifies when specific public body members were or were not responsible for the violation, as illustrated in some of the determinations issued last year finding intentional violations, and she understands that there is legislation being considered that could change how this is applied in the future. Mr. Ambrogi responded by stating that he is in agreement with Rep. Cabral on his position. Mr. Ambrogi asked Rep. Cabral if he is suggesting any action that he would like the Commission to take. Rep. Cabral responded that he is not looking for an official recommendation from the Commission, but he would like to work with the Attorney General's Office to think of a solution that works with how the legislation is currently written. Mr. Hull asked Mr. Ambrogi what problem is proposed to be solved by the legislation in terms of intentional vs. unintentional violations. Mr. Ambrogi offered that Rep. Cabral address Mr. Hull's question. Rep. Cabral responded that he is not satisfied that the Division of Open Government finds intentional violations with public bodies as a whole rather than specific public body members. Mr. Ambrogi asked Mr. Hull if Rep. Cabral's response properly addressed his question. Mr. Hull said yes. Mr. Ambrogi discussed past legislation and the history of this conversation about intentional violations.

Mr. Ambrogi asked if the Commission members have any additional questions or comments. Mr. Hull asked given the increase in number of complaints filed, has the Division of Open Government seen a decline in the number of filed complaints. Ms. Benedon responded by stating that the Division is seeing a slow by steady increase in the complaints filed with the Division of Open Government. Ms. Benedon noted that she does not believe an increase in complaints is indicative of an increase in violations, but rather an increase in awareness of the Open Meeting Law by members of the public and of the complaint procedure.

Rep. Cabral commented that he would like to commend the work that the Attorney General's Office has done in recent months.

Mr. Ambrogi asks if there are any further comments or questions from Commission members. Senator Pacheco commented that he would like to thank Rep. Cabral for his concern about the issue raised regarding intentional violations. Senator Pacheco asked if there is a requirement for local public bodies to participate in any Open Meeting Law education, and is this something that should be considered if it is not currently required. Ms. Benedon responded that there is a certification requirement that every public body member is required to certify on a certification form that our office has produced that they have received and reviewed certain Open Meeting Law materials. Senator Pacheco asked if the Division sends the materials to public body members. Ms. Benedon responded and said that the Division does not send materials to public body members as the Division does not know who new public body members are, but the materials can be found on the Division of Open Government website. The municipal clerk or appointing authority provides the certification form and materials. Senator Pacheco asked how comprehensive the materials are. Ms. Benedon responded that they are fairly comprehensive.

Senator Pacheco and Rep. Cabral log off of the meeting.

Mr. Ambrogi asked Ms. Benedon the extent to which the complaints the Division received during 2021 were related to the pandemic or to the temporary changes to the conduct of meetings in the midst of the pandemic. Ms. Benedon responded and said that while she cannot precisely quantify this, a large number of complaints did pertain to the circumstances surrounding holding remote meetings. Ms. Benedon noted that many of these requirements did exist prior to the pandemic but were highlighted due to the pandemic.

Ms. Rush asked Ms. Benedon why Ms. Benedon believes there were no mediations in 2021 and whether she believes this is related to the pandemic. Ms. Benedon responded that there have never been a large number of mediations. Ms. Benedon said that there was one mediation scheduled for early 2022, which ultimately did not proceed because parties were not able to reach agreements. Ms. Benedon noted that the mediation process has not been a satisfactory process for public bodies in the past. Ms. Benedon said that the Division of Open Government is not pushing for mediations.

Mr. Ambrogi asked the Commission members if there are any more questions.

Pending legislation pertaining to Open Meeting Law

Mr. Ambrogi asked members of staff that are representing Senator Pacheco and Rep. Cabral if they would like to provide an update on pending legislation. Jamie Howell-Walton stated that legislation is in extension until April 15, where it looks like legislation will be extended again. Mr. Ambrogi asked if Commission members have any questions or comments. Ms. Rush and Mr. Hull said no.

Public Comment

Mr. Ambrogi asked if any members of the public would like to address the Commission about any issues. Mr. Adam Freudberg asked for a follow up on an email sent in a previous week and commented that moving forward the Division of Open Government has an opportunity to work closely with the legislature and noted that the flexibility of hybrid meetings has been very helpful for his Committee.

Mr. Ambrogi asked Ms. Rush and Mr. Hull if they have any questions or comments. Ms. Rush and Mr. Hull said no.

Mr. Ambrogi asked Mr. Freudberg if the document he emailed to the Commission is a draft regarding hybrid meetings, and if so what is the status of it. Mr. Freudberg stated that Framingham does not currently have a policy for hybrid meetings, and this draft policy will be sent to a policy subcommittee to take it up at some point within April or May of 2022. Mr. Freudberg stated that whether or not the July 15th deadline is extended, the draft policy will be helpful for remote access for the Framingham School Committee.

Mr. Ambrogi asked if any other members of the public would like to speak before the Commission meeting concludes.

Schedule next meeting

Mr. Ambrogi mentioned that the Commission had previously met every 6 months, which was put on hold during the pandemic. Mr. Ambrogi asked Ms. Rush and Mr. Hull if they would like to schedule the next meeting about 6 months down the road. Ms. Rush suggested that the Commission meet in August. Mr. Ambrogi asked Mr. Hull if August sounds reasonable to him. Mr. Hull said yes. Mr. Ambrogi stated that the Commission will work with the Attorney General's Office to coordinate a meeting in August.

Adjourn

Mr. Hull moved to adjourn. Ms. Rush seconded the motion. Ms. Rush suggested that although there are only three Commission members left, they vote by roll call. All three Commission members vote by roll call. **The meeting concluded at 11:00am.**