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# THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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January 29, 2014

Dear Commission Members:

On behalf of the Attorney General and in accordance with the Open Meeting Law (the OML), G.L. c. 30A, § 19(d), the following report is submitted summarizing the activities of the Division of Open Government (the Division) from January 1, 2013 through December 31, 2013.<sup>1</sup>

The Division currently consists of the Director, a Legal Analyst, and three Assistant Attorneys General, one of whom shares duties across two divisions. The Division's responsibilities include receiving, reviewing, investigating and resolving OML complaints; creating and distributing 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.

During 2013, the Division received more than 2,300 such inquiries by telephone, e-mail, and letter. In addition to responding to these questions, as part of its continued effort to provide clear and accessible guidance on the law's requirements, the Division added new answers to frequently asked questions (FAQs) to its website, updated the Attorney General's Open Meeting Law Guide, and created three checklists for use by public bodies.

## Complaints

As required by G.L. c. 30A, § 19(d),<sup>2</sup> the Attorney General's Office reports to the

<sup>1</sup> 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."

<sup>2</sup> "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;

Open Meeting Law Advisory Commission that, during 2013, the Division received 217 new OML complaints and resolved a total of 302 complaints. The Division issued 200 determination letters, 22 of which resolved complaints by informal action, and 33 declination letters.

In 113 of its determination letters, the Division found that the relevant public body had violated the OML. The most frequently occurring violations were 1) insufficient meeting notices; 2) deliberation outside of a properly posted meeting, including email deliberation; 3) failure to follow appropriate procedures for entering executive session; 4) failure to respond properly to a request for open or executive session minutes; and 5) failure to follow the requirements of the OML complaint process. The remedial actions most frequently ordered by the Division were: 1) immediate and future compliance with the OML; 2) attendance at a training on the OML or review of all or part of the Attorney General's online training video; 3) public release of documents, such as emails, used in deliberation outside of an open meeting; 4) creation or amendment of open or executive session minutes; and 5) public release of open or executive session minutes. In twelve instances, we did not order any additional relief because the public body had taken sufficient remedial action.

The Division made no findings of an intentional violation and held no hearings in 2013. We are not aware of any actions filed in Superior Court during 2013 that sought relief from an order by the Division.

### **Education**

Our office's primary goal in enforcing the OML is compliance with the law. In order 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 2013, the Division conducted a series of seven regional trainings on the OML across the state, reaching approximately 280 attendees. In addition, in partnership with the Massachusetts Bar Association, the Division held a training session on the OML for more than 50 attorneys who advise public body clients. Finally, the Division participated in 11 other training events, reaching hundreds more. These events included presentations to the Massachusetts Municipal Association, the Massachusetts Association of School Committees, and the Massachusetts Municipal Lawyers Association.

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- (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."

As a complement to its in-person training and educational outreach, the Division has continued to update and supplement the material on its website. Two new sets of FAQs were posted in 2013, following a request for comment on the issues addressed and a review of input from stakeholders. The new FAQs address the calculation of quorum for purposes of the OML and procedures for discussing and voting on union and non-union employee contracts. The Division's website now includes the Open Meeting Law Guide, which was revised in August 2013; periodically updated FAQs; a training video consisting of six segments explaining different aspects of the OML's requirements; and a database of all the Division's determination letters. Additionally, in March 2013, the Division posted on its website three checklists for use by members of public bodies. The checklists are designed to assist public bodies in complying with the OML's requirements in three basic areas: meeting notices, meeting minutes, and executive sessions. In the coming year, we hope to provide additional guidance on the law's requirements through new and updated educational material.

We look forward to continuing to work with you to ensure that all members of the public and public bodies are able to understand and adhere to the OML's requirements.

Sincerely,



Amy L. Nable  
Assistant Attorney General  
Director, Division of Open Government

cc: Attorney General Martha Coakley