

MAURA HEALEY  
ATTORNEY GENERAL

# THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

TEL: (617) 727-2200  
[www.mass.gov/ago](http://www.mass.gov/ago)

January 15, 2016

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, 2015 through December 31, 2015.<sup>1</sup>

Presently, the Division consists of the Director, a paralegal, and three Assistant Attorneys General. The Division's responsibilities include 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.

In 2015, the Division received and resolved a record high number of complaints while continuing to resolve most complaints within 90 days. The Division also trained a record number of people on the OML's requirements. Finally, in 2015 we updated existing educational materials on the Division website, and added a pending complaint lookup feature to increase transparency.

## **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;
- (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;

Open Meeting Law Advisory Commission that, during 2015, the Division received 279 new OML complaints and resolved a total of 315 complaints. The Division issued 200 determination letters, 28 of which resolved complaints by informal action, and 43 declination letters. The median complaint resolution time in 2015 was approximately 70 days.

In 98 of its 200 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) insufficiently specific or inaccurate meeting 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) public release of documents, such as emails, used in deliberation outside of an open meeting; 3) attendance at a training on the OML or review of all or part of the Attorney General's online training video; 4) creation or amendment of open or executive session minutes; and 5) public release of open or executive session minutes. In 5 instances, we did not order any additional relief because the public body had taken sufficient remedial action.

The Division issued three determinations in 2015 finding intentional violations of the Open Meeting Law. In one instance, the public body involved chose to settle the matter without the need for a hearing. In another instance, the Division granted reconsideration and, based on facts not initially provided, withdrew the finding of intentional violation. The third matter is pending. A list of these matters and their resolution follows.

*OML 2015-9 (Hinsdale Select Board)* – Board paid a \$500 fine to the Commonwealth's General Fund.

*OML 2015-94 (Lincoln-Sudbury Regional School District School Committee)* – Following the issuance of this decision, the Committee provided our office with facts not disclosed during the original investigation. Based on this new information, we granted the Committee's request for reconsideration. After review, we modified our finding to conclude that the Committee's failure to review an Open Meeting Law complaint was not an intentional violation, thus we withdrew our referral of this matter to a hearing and no fine was paid.

*OML 2015-139 (Dudley Planning Board)* – This matter is currently pending.

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(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."



## Appeals

Three actions were filed in Superior Court during 2015 seeking relief from orders of the Division. One of these matters was voluntarily dismissed by the plaintiff. The other two are pending, and the Attorney General is represented in both matters by attorneys from the office's Administrative Law Division. A list of recently resolved matters and currently pending appeals follows.

### Pending

*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. PLCV2015-00161-B

*Revere Retirement Board v. Maura Healey*, Suffolk Superior Court, Civil Action No. SUCV2015-02707-E

### Resolved

#### **Appeal by Complainant**

*Steven K. Kaplan v. Office of the Attorney General, Division of Open Government*, Suffolk Superior Court, Civil Action No. SUCV2015-0335 (Feb 2015) – Voluntarily dismissed by plaintiff, June 2015.

*John P. O'Rourke v. Martha Coakley*, Franklin Superior Court, Civil Action No. FRCV2014-00080 – Defendant's motion to dismiss granted, January 2015.

#### **Appeal by Public Body**

*Town of Winchester Board of Selectmen v. Attorney General*, Middlesex Superior Court, Civil Action No. MICV2014-07246 – Plaintiff's motion for judgment on the pleadings denied and Attorney General's findings affirmed, January 2016.

## Education

Our office's primary goal in enforcing the OML remains ensuring 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 2015, the Division trained more than 1,675 people on the law's requirements. We conducted a series of nine regional trainings on the OML across the state, reaching more than 450 attendees. Two of these presentations were conducted jointly with the State Ethics Commission, who presented on the state's Conflict of Interest Law. The Division also hosted six webinars in 2015 to accommodate individuals who were unable to attend the live regional training events. Finally, the Division participated in 16 other training events, reaching hundreds more. These events included

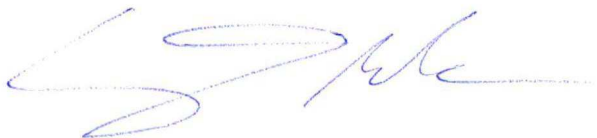
presentations to the Massachusetts Municipal Association, the Massachusetts Association of School Committees, and the Massachusetts Municipal Lawyers Association, among others.

As a complement to its in-person training and educational outreach, the Division has continued to build upon and update the existing range of educational material on its website. In 2015, new versions of the Open Meeting Law Guide, Open Meeting Law training video, and FAQ on remote participation were posted to the Attorney General's website. The revised materials reflect changes to the Open Meeting Law and recent interpretations by the Division. Additionally, the Division added a pending complaint lookup feature to its website, enabling members of the public, press, and public bodies to easily learn the status of complaints under review by the Division. The Division's website now includes the Open Meeting Law Guide; periodically updated FAQs; a training video consisting of six segments explaining different aspects of the OML's requirements; three checklists for use by members of public bodies; a database of all Open Meeting Law complaints under review by the Division; and a database of all the Division's determination and declination letters.

Finally, the Division continued to offer daily guidance to members of the public, public bodies, attorneys, and the press through our hotline. In 2015, we received and responded to more than 1,530 inquiries by telephone, e-mail, and letter.

Good governance should be a goal shared by everyone, regardless of whether they serve in government, are a member of the public, advise public officials, or are a member of the press. Our office seeks to achieve this goal through fair and consistent enforcement of the OML, coupled with robust educational outreach. We look forward to continuing to work with you to further this goal during 2016.

Sincerely,



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

cc: Attorney General Maura Healey