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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 through December 31, 2011.¹

Currently, the Division consists of two attorneys, one of whom is the Director, and one paralegal. 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 2011, the Division received nearly 2,700 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 also revised the Open Meeting Law Guide, created a searchable online database containing all determinations issued by the Division, and posted new and revised Frequently Asked Questions (FAQs) on our website. Finally, the Division promulgated regulations authorizing the use of remote participation by public body members in certain circumstances, and issued more than 50 determinations resolving OML complaints.

Complaints

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

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."

²The 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;



the Open Meeting Law Advisory Commission that during 2011, the Division received 155 OML complaints, and resolved 78 complaints. Of those, 56 complaints were resolved through formal determination letters.

In 32 instances, the Division determined that the relevant public body had violated the OML and issued a remedial order. The most frequently occurring violations were deliberation outside of a properly posted meeting, including email deliberation (13 instances); failure to follow proper procedures to convene an executive session (12 instances); failure to include sufficient detail in meeting notices (11 instances); and entering into executive session for an improper purpose (10 instances). The remedial actions most frequently ordered by the Division were immediate and future compliance with the OML (22 instances); release of open and executive session minutes (8 instances); attendance at a training on the OML (8 instances); and creation or amendment of open or executive session minutes (6 instances). In four instances, we did not order any remedial action because the public body took appropriate steps to cure the violation.

In three instances, the Division found an intentional violation of the OML, referred the matter to a hearing, and recommended a \$1,000 fine be imposed on the public body.³ A settlement in one of these cases, OML 2011-26, resulted in a payment of \$500 to the Commonwealth. The other two matters are currently awaiting hearings. No actions were filed in Superior Court seeking relief from an order of the Attorney General.

During 2011, in addition to the formal written complaints discussed above, the Division received nearly 2,700 inquiries about the OML's requirements by telephone, e-mail and letter.

Education

Our office's 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 2011, the Division conducted a series of seven regional trainings on the OML across the state, reaching approximately 400 attendees. In addition, the Division conducted or participated in 15 other training events, reaching hundreds more. These trainings included presentations to the Massachusetts Municipal Association, the Massachusetts Association of School Committees, the Massachusetts City and Town Clerks Association, the Massachusetts Bar Association, and the Massachusetts chapter of the National

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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."

³ OML 2011-26; OML 2011-27; and OML 2011-43.

Association of Housing and Redevelopment Officials, and others.

As a complement to its in-person trainings and educational outreach, the Division has continued to update and supplement the materials on its website. These materials currently include the Open Meeting Law Guide, which was revised in March 2011; periodically updated Frequently Asked Questions; and a database of all the Division's determination letters, searchable by key word, public body name, and remedy ordered, amongst other things.

In the coming year, we hope to build upon efforts to make the Division's website a robust and easily accessible resource for guidance on the law's requirements by posting additional FAQs, an updated Open Meeting Law Guide that includes a section on remote participation, and an online training presentation.

Regulations

In June 2011, the Division issued draft regulations governing remote participation in meetings of public bodies. In accordance with G.L. c. 30A, the Division held a public hearing on September 6, 2011 to receive comments on the proposed regulations. Written comments were received from approximately 50 individuals and organizations, and 5 individuals testified during the public hearing. The Division promulgated final remote participation regulations, 940 CMR 29.10, on November 11, 2011.

In December 2011, the Division issued a draft regulation to clarify the standard for finding an intentional violation under the OML. The Division is presently reviewing comments received during the public comment period, which closed following a January 19, 2012 hearing on the draft regulation.

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 working with you to further this goal during 2012.

Sincerely,



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

cc: Attorney General Martha Coakley