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# THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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January 29, 2013

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, 2012.<sup>1</sup>

Currently, the Division consists of three 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 2012, the Division received nearly 2,400 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 promulgated additional regulations, revised the Open Meeting Law Guide, reformatted its website to make it more user friendly, and posted an online training video and new and revised Frequently Asked Questions (FAQs) to its website.

## 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 2012, the Division received 212 OML complaints, and resolved 179 complaints. The Division issued eight informal determination letters and 111 formal determination letters, together resolving 143 complaints.

In 67 instances, the Division determined that the relevant public body had violated the OML and issued a remedial order. The most frequently occurring violations were insufficiently detailed meeting notice topics (17 instances); deliberation outside of a properly posted meeting, including email deliberation (15 instances); failure to properly convene an executive session (15 instances); entering into executive session for an improper purpose (15 instances); and failure to provide open and executive session minutes within 10 days of request (12 instances). The remedial actions most frequently ordered by the Division were immediate and future compliance with the OML (54 instances); creation or amendment of open or executive session minutes (14 instances); release of open and executive session minutes (10 instances); and attendance at a training on the OML (5 instances). In six instances, we did not order any remedial action because the public body took appropriate steps to cure the violation.

The Division made no findings of an intentional violation and held no hearings in 2012. The Division obtained \$750 in fines during calendar year 2012, stemming from the resolution of two 2011 decisions in which the Division found intentional violations.

We are not aware of any actions filed in Superior Court during 2012 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 2012, the Division conducted a series of four regional trainings on the OML across the state, reaching more than 270 attendees. In addition, the Division conducted or participated in 23 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, and the Massachusetts City Solicitors and Town Counsel Association. Additionally, in partnership with the Massachusetts Bar Association, we held the Division's first training for attorneys who conduct OML trainings.

As a complement to its in-person trainings and educational outreach, the Division

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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."



has continued to update and supplement the materials on its website. These materials currently include the Open Meeting Law Guide, which was revised in February 2012; periodically updated Frequently Asked Questions, including an FAQ on applications for tax abatement and exemption, which was published in August 2012; and a database of all the Division's determination letters, searchable by key word, public body name, and remedy ordered, amongst other things. Additionally, the Division created a free one-hour OML training video that can be viewed on our website. Finally, in September 2012 the Division re-designed its website to better enable visitors to locate relevant content.

In the coming year, we hope to provide additional guidance on the law's requirements through new FAQs and updates to existing educational materials.

### **Regulations**

In May 2012, the Division filed an emergency regulation amending 940 CMR 29.10(8) to clarify this regulation that allows adopting authorities to set consistent restrictions, reflecting their unique priorities and concerns, on the use of remote participation by members of public bodies. A public hearing was held in July 2012, during which one person testified regarding the regulation. The Division also received two written comments. A final regulation was published in the state Register in August 2012.

Also in May 2012, the Division filed a proposed regulation to amend the definition of the term "Intentional Violation" in 904 CMR 29.02 to provide additional guidance on the types of conduct that may be considered evidence of an intentional violation of the Open Meeting Law. A public hearing was held in July 2012, during which seven people testified regarding the draft regulation. The Division also received 14 written comments. Following the public comment period, a final regulation was published and took effect in September 2012.

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 2013.

Sincerely,



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

cc: Attorney General Martha Coakley