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# THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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January 23, 2017

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), I submit the following report summarizing the activities of the Division of Open Government (the Division) from January 1, 2016, through December 31, 2016.<sup>1</sup>

Presently, the Division consists of the Director, newly appointed in July of 2016, three Assistant Attorneys General, and a paralegal. The Division's responsibilities include reviewing, investigating, and resolving OML complaints; creating and disseminating 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 2016, the Division once again received a record high number of complaints while continuing to resolve most complaints within 90 days. The median complaint resolution time in 2016 was approximately 77 days. The Division also offered in-person and web-based training on the OML's requirements to people throughout the Commonwealth. Finally, in 2016 the Division provided updates to its website and online materials, including introducing a new OML complaint form.

## Complaints

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

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<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;



Open Meeting Law Advisory Commission that, during 2016, the Division received 295 new OML complaints and resolved a total of 253 complaints. The Division issued 176 determination letters and 31 declination letters. Some determination letters resolved multiple complaints.

In 93 of its determination letters, the Division found that the relevant public body had not violated the OML. In 83 of its 176 determination letters, the Division found that the relevant public body had violated the OML. The most frequently occurring violations were: 1) insufficiently detailed meeting notices; 2) failure to follow appropriate procedures for entering executive session; 3) insufficiently detailed or inaccurate meeting minutes; 4) deliberation outside of a properly posted meeting, including email deliberation; 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) creation or amendment of open or executive session minutes; 3) attendance at a training on the OML or review of all or part of the Attorney General's online training video; and 4) payment of a fine to the Commonwealth's General Fund. In 4 instances, we did not order any additional relief because the public body had taken sufficient remedial action.

Out of the 83 findings of violations of the OML in 2016, the Division issued four determinations finding intentional violations. The Division collected \$4,250 in fines which went into the Commonwealth's General Fund.<sup>3</sup> As a result of reaching negotiated settlements in all of these four cases, the Division did not need to convene any hearings. In one of the four settled intentional violation matters, a public body had discussed a topic that had not been listed on the meeting notice after being informed ahead of the meeting that the notice had not been properly posted. In the three other instances, the respective public bodies failed to act in accordance with previous instruction from the Attorney General following orders of immediate and future compliance with the OML. A list of these matters and their resolutions follows:

*OML 2015-139 (Dudley Planning Board)* – Board paid a \$1,000 fine to the Commonwealth's General Fund to resolve a 2015 determination.

*OML 2016-31 (Freetown Board of Selectmen)* – Board paid a \$750 fine to the Commonwealth's General Fund.

*OML 2016-64 (Webster Board of Selectmen)* – Board paid a \$500 fine to the Commonwealth's General Fund and released to the public portions of the Board's executive session minutes.

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(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.”

<sup>3</sup> One fine was collected as a result of an intentional violation found in 2015.

*OML 2016-69 (Boston Zoning Board of Appeals)* – Board paid a \$1,000 fine to the Commonwealth’s General Fund and attended a mandatory Open Meeting Law training conducted by the Division.

*OML 2016-98 (Wayland Board of Selectmen)* – Board paid a \$1,000 fine to the Commonwealth’s General Fund.

As to the 31 declinations issued in 2016, the most frequent reasons for declining to review a complaint were that: 1) the complaint was not timely filed with the public body; 2) the complaint was not timely filed with our office; and 3) the complaint did not allege a violation of the OML.

### **Challenges to Division Determinations**

Two public bodies filed actions in Superior Court during 2016 seeking judicial review of orders of the Division. The Superior Court upheld the Division’s determination in one case, which is now under appeal by the public body to the Appeals Court. The other 2016 challenge is still before the Superior Court. In addition, several court challenges filed in 2015 are still pending. A list of currently pending challenges follows:

#### Filed in 2016

*West Bridgewater Board of Selectmen v. Maura Healey*, Plymouth Superior Court, Civil Action No. 1583CV15-01242 (appeal of OML 2015-184); the Superior Court (Chin, J.) affirmed the Attorney General’s determination on September 22, 2016; the Board has filed an appeal of that decision to the Appeals Court.

*Fall River City Council v. Maura Healey*, Bristol Superior Court, Civil Action No. 1673CV00865 (appeal of OML 2016-117); awaiting briefing.

#### Pending from 2015

*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 (appeal of OML 2015-14); awaiting briefing.

*Revere Retirement Board v. Maura Healey*, Suffolk Superior Court, Civil Action No. SUCV2015-02707-E (appeal of OML 2015-120); briefed and argued as of January 4, 2017; under advisement.

## 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 2016, the Division trained more than **670** people on the law's requirements. We conducted a series of **seven** regional trainings on the OML across the state, reaching more than **300** attendees. The Division also hosted **six** webinars in 2016 to accommodate individuals who were unable to attend the live regional training events, and introduced evening webinars. Finally, the Division participated in **eight** other training events. These events included presentations to the Massachusetts Municipal Association, the Massachusetts Associations of School Committees and School Superintendents, and the Massachusetts Department of Housing and Community Development, among others.

As a complement to its in-person training and educational outreach, the Division has continued to update its website with guidance and educational materials. In 2016, the Division began updates to its website and published a new Open Meeting Law complaint form intended to make it easier for complainants and public bodies to follow the requirements of the complaint process. The Division's website now includes the Open Meeting Law Guide; a reorganized FAQs section; 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 continues to offer daily guidance to members of the public, public bodies, attorneys, and the press through our telephone and email hotlines. In 2016, we received and responded to more than **1,450** inquiries by telephone, e-mail, and letter.

While the Division continues to receive an increasing number of complaints each year, we are confident that more public body members are learning the requirements of the OML, meeting notices are becoming more detailed, and meeting minutes are becoming more robust. Our office strives to promote good government through fair and consistent enforcement of the OML, coupled with vigorous educational outreach. We look forward to continuing to work with you to further this goal during 2017.

Sincerely,



Jonathan Sclarsic  
Assistant Attorney General  
Director, Division of Open Government

cc: Attorney General Maura Healey