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January 22, 2018

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 to the Commission summarizing the activities of the Division of Open Government (the Division) from January 1, 2017, through December 31, 2017.¹

Presently, the Division consists of the Director, 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 2017, 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 2017 was approximately 67 days (a decrease from 77 days in 2016). The Division also offered in-person and web-based training on the OML's requirements to people throughout the Commonwealth. Finally, in 2017 the Division promulgated new regulations and provided updates to its website and online educational materials.

Complaints

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

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."

² "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;



Commission that, during 2017, the Division received 323 new OML complaints and resolved a total of 249 complaints. The Division issued 200 determination letters and 24 declination letters. Some determination letters resolved multiple complaints.

In 113 of its determination letters, the Division found that the relevant public body had not violated the OML. In 87 of its 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) deliberation outside of a properly posted meeting, including email deliberation; 4) insufficiently detailed or inaccurate meeting minutes; and 5) failure to hold meetings that are accessible and open to the public. 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 5 instances, we did not order any additional relief because the public body had taken sufficient remedial action.

Out of the 87 findings of violations of the OML in 2017, the Division issued three determinations finding intentional violations. The Division collected a total of \$1,000 in fines in 2017. All three matters involved findings of violations of the Open Meeting Law after prior findings by the Division that the public body had violated the Open Meeting Law in a similar manner. In one instance, the Division convened a hearing before an administrative law judge. Following this review, the judge upheld the Division's finding of an intentional violation. That matter is now under appeal by the public body in Superior Court. In another matter, the Division continues to negotiate with the public body. In the third matter, the Division collected a \$1,000 fine.

A list of these three matters and their resolutions follows:

OML 2017-23 (Webster Board of Selectmen) – Board paid a \$1,000 fine to the Commonwealth's General Fund.

OML 2017-45 (Fall River City Council) – Taken to a hearing before an administrative law judge who upheld the Division's finding; under appeal in Bristol Superior Court.

OML 2017-159 (Wayland School Committee) – This matter remains ongoing.

(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 to the 24 declinations issued in 2017, the most frequent reasons for declining to review a complaint were that: 1) the complaint was not timely filed with the public body; and 2) the complaint did not allege a violation of the OML.

Challenges to Division Determinations

Three public bodies and one complainant filed actions in Superior Court during 2017 seeking judicial review of Division orders or decisions. Two matters were dismissed by stipulation and two matters are awaiting briefing of the merits. In addition, several court challenges filed in 2015 and 2016 are still pending. One case, involving the West Bridgewater Board of Selectmen, was argued before the Appeals Court in 2017, and is awaiting a decision by the Court. A list of currently pending challenges and matters resolved in 2017 are as follows:

Filed in 2017

Southampton Board of Selectmen v. Commonwealth of Massachusetts Office of the Attorney General, Suffolk Superior Court C.A. No. 1784CV01050 (Appeal of OML 2017-39): dismissed by stipulation on November 28, 2017.

Fall River City Council v. Maura Healey, Bristol Superior Court, Civil Action No. 1773CV00901 (Appeal of OML 2017-45): awaiting briefing.

Daniel J. Harlow v. Attorney General, Plymouth Superior Court, Civil Action No. NO. 1783CV00093 (Appeal of OML 2017-47, finding that the Kingston Board of Selectmen did not violate the OML): dismissed by stipulation on September 21, 2017.

Swansea Board of Selectmen v. Maura Healey, Suffolk Superior Court, Civil Action No. 1748CV03269 (Appeal of OML 2017-148): awaiting briefing.

Pending from 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, which was argued on December 13, 2017 and is under advisement.

Fall River City Council v. Maura Healey, Bristol Superior Court, Civil Action No. 1673CV00865 (appeal of OML 2016-117): argued on August 3, 2017, under advisement.

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); the Superior Court (Ricciuti, J.) vacated the Attorney General's determination and remanded the matter to the Attorney General for further investigation on December 14, 2017.

Revere Retirement Board v. Maura Healey, Suffolk Superior Court, Civil Action No. SUCV2015-02707-E (appeal of OML 2015-120); the Superior Court (Green, J.) affirmed the Attorney General's determination on May 30, 2017; the Board has filed an appeal of that decision to the Appeals Court; awaiting briefing.

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 2017, the Division trained more than 1,100 people on the law's requirements. We conducted a series of 12 regional trainings on the OML across the state, reaching more than 580 attendees. The Division also hosted 11 webinars in 2017 to accommodate individuals who were unable to attend the live regional training events, and introduced evening webinars. Finally, the Division participated in 15 other training events. These events included presentations to the Massachusetts Association of School Committees, Cannabis Control Commission, Massachusetts Finance Committee Association, Massachusetts Library Trustees Association, Treasurer's Office, and the Inspector General's Office.

As a complement to its in-person training and educational outreach, the Division has continued to update its website with guidance and educational materials aligned with the new regulations. In 2017, the Division updated its website, adding a new public body checklist, adding and updating answers to Frequently Asked Questions (FAQs), and issuing an updated OML Guide and Educational Materials. The Division's website now includes a page for OML certification for public body members; Open Meeting Law Guide and Educational Materials; a reorganized FAQs section; four 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.

In 2017, the Division began sending monthly newsletters to state-wide associations and interested parties. During 2017, the Division accrued a total of 188 subscribers, many of whom are contacts at associations who then forward the update to their mailing lists. The newsletters provide updates on OML training opportunities, Commission meetings, Division news, and a monthly guidance spotlight. Throughout the regulation review, the Division distributed e-updates to solicit feedback on proposals and publicize details for the public hearing.

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 2017, we received and responded to more than 1,800 inquiries by telephone, e-mail, and letter.

The Division continues to receive a significant volume of complaints and requests for guidance. However, we remain 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. Each year, we notice discernable improvement in the quality of meeting notices and minutes, even as we receive more complaints. We will continue to strive to promote good government through fair and consistent enforcement of the OML, coupled with vigorous educational outreach, as we seek to improve adherence to the law's requirements. We look forward to continuing to work with you to further this goal during 2018.

Sincerely,



Jonathan Sclarsic
Assistant Attorney General
Director, Division of Open Government

cc: Maura Healey, Attorney General