

**Minutes of the Open Meeting Law Advisory Commission
Tuesday, May 14, 2019, 1:00PM**

Approved on October 29, 2019

Executive Conference Room on the 20th floor of the McCormack Building
at One Ashburton Place, Boston, MA 02108

Members Present: Robert Ambrogi, Massachusetts Newspaper Publishers Association designee; Anne Sterman, Attorney General's designee; Jeffrey Hull, Massachusetts Municipal Association Designee; Representative Danielle Gregoire, Chair of the Joint Committee on State Administration and Regulatory Oversight; Senator Marc Pacheco, Chair of the Joint Committee on State Administration and Regulatory Oversight

Attorney General's Staff Present: Juliana Rice, Deputy Bureau Chief of the Government Bureau; Carrie Benedon, Assistant Attorney General, Director, Division of Open Government; KerryAnne Kilcoyne, Assistant Attorney General, Division of Open Government; Hanne Rush, Assistant Attorney General, Division of Open Government; Sarah Chase, Assistant Attorney General, Division of Open Government; Mira Netsky, Paralegal, Division of Open Government; Gabrielle Viator, Senior Policy Advisor/Assistant Attorney General

Others Present and Identified: John Hawkinson, Cambridge Day; Kyle Murphy, Office of Senator Marc Pacheco; Evan Berry, Office of Senator Rebecca Rausch; David Rosenberg, Resident of Norfolk; Representative David Linsky, Assistant Superintendent Timothy Luff, Natick Public Schools

Call to Order

Mr. Robert Ambrogi called the meeting to order at 1:05pm. Mr. Ambrogi, Ms. Anne Sterman, Mr. Jeffrey Hull, and Representative Danielle Gregoire introduced themselves to those present.

Election of Commission Chair

Mr. Ambrogi stated that the first order of business would be to elect a new chair and asked if there were any volunteers. Mr. Hull nominated Mr. Ambrogi. Ms. Sterman seconded the motion. **By unanimous vote (4-0), Mr. Ambrogi was elected chair.** (Senator Marc Pacheco had not yet arrived.)

Review and approval of draft minutes for June 18, 2018 Commission meeting

Mr. Ambrogi said that the draft minutes of the June 18 meeting had been circulated and asked if there were any comments or corrections. Mr. Hull and Rep. Gregoire noted that they were not present for that meeting. No members offered comments or corrections. Rep. Gregoire moved to approve the minutes and Ms. Sterman seconded the motion. **By unanimous vote (4-0), the minutes were approved.** (Senator Marc Pacheco had not yet arrived.)

Report from the Attorney General's Division of Open Government

Mr. Ambrogi said that the next order of business would be the annual report from the Division of Open Government. Assistant Attorney General (AAG) Carrie Benedon referred those present to a copy of the Division's Annual Report and introduced herself as the Director of the Division and as a previous member of the OMLAC. Ms. Benedon said that she would go through the report and talk about a few highlights and about the general activity of the Division in 2018 compared with previous years. Ms. Benedon said that though not yet time for the 2019 report, she would report on some activity of the Division so far in 2019. Ms. Benedon said that as of yesterday when AAG Chase started, the Division is up to four AAGs. Ms. Benedon introduced all present from the Division of Open Government. Ms. Benedon noted that longtime team member AAG Rush would be leaving soon and that a new AAG would be starting in two weeks to replace her.

Ms. Benedon said that the Division experienced staffing vacancies and changeovers in 2018, including change at the Director level, a gap between paralegals, two slightly overlapping parental leaves, and one Attorney vacancy. Ms. Benedon said staffing shortages were particularly significant in the second half of 2018, bleeding into the beginning of 2019, and that an impact could be seen in the Division's reported numbers. Ms. Benedon said that the Division is now working to speed up its backlog, and that the Division has stayed on top of its work despite being short-staffed.

Ms. Benedon said that she would first talk about the Division's work regarding complaints. Ms. Benedon said that in 2018, the Division received 317 complaints. Ms. Benedon said that this number was similar to in 2017, when the Division received 323 complaints. Ms. Benedon said that the Division had resolved 235 complaints, in comparison with 249 the previous year. Ms. Benedon said that the Division issued 162 determination letters, some addressing multiple complaints. Ms. Benedon said that there were more complaints resolved than there were determination letters because some letters addressed multiple complaints. Ms. Benedon said that the Division issued 21 declination letters, and that the most common reasons the Division declined to review a complaint were that the complaint was not initially timely filed with the public body or that the complaint's allegations, even if true, would not constitute Open Meeting Law violations.

Ms. Benedon reported that in 77 (roughly half) of its determinations, the Division found that the public body had not violated the Open Meeting Law (OML), while in 85 of its determinations, the Division found that the public body had violated the OML. Ms. Benedon noted that some complaints alleged multiple violations of the OML, and that a complainant might file multiple complaints against a single public body, all resolved in one determination. Ms. Benedon said that while the Division tracks whether or not each determination found a violation of the OML, the Division has not tracked how many allegations reviewed by the Division were found to be OML violations. Ms. Benedon said that sometimes the Division issues a determination finding a violation of the OML, but this does not mean that all allegations included in the original complaint or complaints were found to be violations. Ms. Benedon said that although the Division found a violation in about half of its determinations, this does not mean that half of all allegations reviewed by the Division resulted in findings of violation. Ms. Benedon said that going forward, the Division will try to more specifically track findings of violations with respect

to individual violations to provide more clear information about the percent of allegations resulting in findings of violations.

Ms. Benedon said that the most frequently occurring violations could be found on the second page of the report. Ms. Benedon said that the categories were the same as in the past couple of years and that although the top 3 had changed a bit, the top 5 or 6 had been the same for a while. Ms. Benedon said the Attorney General's Office (AGO)'s most frequent remedy ordered for OML violations was immediate and future compliance with the OML. Ms. Benedon said that the AGO has also mandated attendance at trainings, the viewing of training videos available on the Division's website, the creation of meeting minutes, and the release of meeting minutes. Ms. Benedon said that in 6 instances, the Division did not order anything because the public body had already taken sufficient corrective action.

Ms. Benedon said that in 2017, the Division found 3 intentional violations of the OML, compared with 2 intentional violations in 2018. Ms. Benedon said that the Division's number one standard for considering whether a violation should be considered intentional is whether a public body has previously been found in violation of the same activity. Ms. Benedon said that the intentional violations found in 2018 had involved the Swansea Recreation Commission's approval of meeting minutes and the Ashland Board of Selectmen's timely approval of minutes.

At 1:20 pm, Mr. Ambrogi acknowledged that Senator (Sen.) Marc Pacheco had arrived. Mr. Ambrogi informed Sen. Pacheco that Ms. Benedon was giving her report on the Division of Open Government's activities in 2018.

Ms. Benedon said that after the AGO issues a determination, if the AGO finds that a public body has violated the OML, that body can appeal to Superior Court for review of the determination. Ms. Benedon said that this generally happens a few times each year. Ms. Benedon said that in 2018, two such appeals were filed in Superior Court, and that one appeal involved the Bay State Conference (the BSC), which the AGO found to be a public body. Ms. Benedon said that the BSC disagreed with this finding. Ms. Benedon said that the BSC subsequently made changes to their charter and that those changes were significant and addressed issues and factors considered in the AGO's determination, so the AGO issued an amended determination and found that the BSC was no longer a public body. Ms. Benedon said that the BSC withdrew and entered a stipulation to dismiss the lawsuit, and that the case never went beyond that stage.

Ms. Benedon said that the other case involved Hull and dated back 4 or 5 years. Ms. Benedon said that the AGO had found the Hull Board of Selectmen in violation of the OML for listing an insufficiently detailed description of topics to be discussed in executive session on its agenda. Ms. Benedon said that in 2015 or 2016 the Board of Selectmen appealed to Superior Court. Ms. Benedon said that the case was remanded back to the AGO, and that the AGO reached out to the Board of Selectmen and gave them the opportunity to provide additional information or evidence to justify their failure to provide more detail on the notice regarding the executive session. Ms. Benedon said that the Board of Selectmen provided no new information and that the AGO issued a new determination and again found the Board in violation of the OML. Ms. Benedon said that the Board of Selectmen filed a new lawsuit asking the Court to review the second determination. Ms. Benedon said that the case is now in Superior Court, and that the record is no different from

the first time, except that the AGO gave the Board an additional opportunity to provide information and no additional information was added.

Ms. Benedon said that some matters from prior years were resolved in 2018, but that all that were filed in past years were reported in past years. Ms. Benedon said that she would mention two that made their way to the highest courts; one being West Bridgewater, where the Appeals Court ruled in the AGO's favor. Ms. Benedon said that the West Bridgewater Board of Selectmen appealed to the Supreme Judicial Court, but that the appeal was denied, and that the case is now fully resolved.

Ms. Benedon said that the other case involved the Revere Retirement Board. Ms. Benedon said that the Appeals Court rendered a decision upholding the AGO's determination, and that the Supreme Court denied the appeal. Ms. Benedon said that the case had to do with the permissible use of executive session. Ms. Benedon said that under the OML, there are only 10 specific circumstances where a public body is allowed to meet in executive session. Ms. Benedon said that the Retirement Board said that there was an additional implied purpose for executive session for Attorney Client Privilege. Ms. Benedon said that under the Public Records Law, there is an implied exclusion as needed for Attorney Client Privilege. Ms. Benedon said that in the Revere case, the Board argued that there should also be an implied purpose for meeting in executive session to protect Attorney Client Privilege, but that the Superior Court disagreed and said that if a discussion with an Attorney does not fall under one of ten purposes allowable for executive session, that meeting must be held in open session. Ms. Benedon said that the Division gets questions about this and refers people to the Revere decision. Ms. Benedon said that until the legislature changes the law or the SJC reconsiders, there will be no executive session purpose for meeting with an Attorney.

Ms. Benedon said that 2017 amendments to the regulations allowed for a mediation process to take place where one complainant has filed 5+ complaints with the same public body or within the same municipality within 12 months. Ms. Benedon said that to date, two public bodies have requested mediation, and that both mediations were unsuccessful. Ms. Benedon said that the Division was disappointed that the process had not worked and hopeful that it could work in a different situation.

Ms. Benedon said that the Division takes education very seriously and devotes significant time and resources to educating the public, public body members, and the media. Ms. Benedon said that the Division offers monthly webinar trainings, which include a live broadcast, free of charge, often with good participation. Ms. Benedon said that the format is one-way communication by Attorneys with a chatbox for questions from participants. Ms. Benedon said that the Division also has a regional training series and goes every spring and fall to multiple cities and towns spread around the Commonwealth for live trainings. Ms. Benedon said that these trainings are hosted by municipalities contacting the Division and asking for trainings. Ms. Benedon said that the Division has also spoken at seminars put on by the Bar Association and by the Massachusetts Municipal Association. Ms. Benedon said that the Division also has an OML hotline staffed by Attorneys in the office with assistance from a paralegal. Ms. Benedon said that the Division responds the same day to questions about the OML. Ms. Benedon said that this year there were around 1500 inquiries via phone and email, and that each question gets an individual

response. Ms. Benedon said that the Division hopes this outreach will help to prevent OML violations and ensure compliance and greater transparency.

Ms. Benedon said that that was it for the 2018 report, and that she would provide a preview for 2019. Ms. Benedon said that the volume of OML complaints received by the Division this year was way up in comparison with previous years, partly because of a few complainants who have filed dozens of complaints. Ms. Benedon said that as of April, the Division was on pace to receive 450 complaints, a significantly higher number than in 2018, and that a big portion of these complaints could be attributed to a small number of complainants.

Mr. John Hawkinson (Cambridge Day) asked if this was just in April or if this was the projection for the whole year. Ms. Benedon said that this was the projection for the year. Ms. Benedon said that despite this significant increase in the number of complaints received, the number of complaints resolved as of April was on pace for the total number of complaints resolved in 2019 to be comparable to the two previous years. Ms. Benedon said that the total number of determinations was down because the Division has been combining complaints with the same complainant and issue, and that the Division is now routinely issuing determinations that address multiple complaints, because it is more efficient, and because the Division is seeing complainants file several similar complaints. Ms. Benedon said that at the end of this year, the Division will issue another report on activities, complaints and numbers.

Ms. Benedon said that despite the additional work resulting from additional complaints, the Division is making sure to continue focusing on education. Ms. Benedon said that this does mean that the average time to resolve complaints is up somewhat compared to previous years, but that the Division still thinks that prioritizing educational work is important.

Mr. Ambrogi thanked Ms. Benedon and asked if any Commission members had questions. Mr. Hull asked whether the repeat, similar complaints are generally being found to be violations. Ms. Benedon said that there is a split. Ms. Benedon said that one thing the Division has seen is one complainant who will file 15 nearly identical complaints all alleging that a public body committed the same technical violation. Ms. Benedon said that for example, a meeting notice must state the date and time of posting. Ms. Benedon said that one municipality had a template for minutes that did not include that information, so every public body in town's minutes were lacking this. Ms. Benedon said that this was significant, because public bodies are required to include that information in their minutes, but that this was a technical violation. Ms. Benedon said that the complainant filed complaints about this with multiple public bodies and that when brought to the attention of the public bodies, they took action and changed their template. Ms. Benedon said that where a public body takes appropriate action, the Division likes to see that the complainant is satisfied and does not elevate the complaint to the AGO. Ms. Benedon said that in situations like the one she described, some complainants are still elevating their complaints to the Division.

Ms. Benedon said that the Division is seeing more contentious relationships between complainants and public bodies, and that the Division has issued determinations remarking that it is not necessary to file so many complaints or to elevate complaints to the Division if they have been fully resolved and acknowledged by the public body.

Ms. Benedon said that in response to Mr. Hull's question, it is a combination; there are some complaints where the Division does not find a violation but many complaints where the Division does.

Mr. Hull said that he found these to be troubling circumstances. Mr. Hull said that to some measure the Open Meeting Law and Public Records Law are being used as tools by people who are aggrieved in one form or another by a particular community. Mr. Hull said that if there are many violations, this is legitimate, but that in the circumstances described by Ms. Benedon, where corrective action has been taken and there is still a desire to push further, this seems like something beyond a desire to see good government.

Ms. Benedon said that one failed mediation involved a single complainant who filed over 600 complaints with the Natick School Committee. Ms. Benedon said that not all of those complaints were elevated to the Attorney General's Office, as the Division said it would allow the individual to choose 15 complaints, since 600 is many times the number of the complaints that the Division would generally review in a year. Ms. Benedon said that Mr. Hull was right that the Division is seeing the Open Meeting Law be used in a way that was maybe not intended. Ms. Benedon said that the Public Records Law has a provision allowing the Supervisor to cut off complainants deemed to be harassing, but that there is no similar provision in the Open Meeting Law.

Mr. Ambrogi said that numbers alone do not necessarily indicate whether or not complaints are harassing, as someone may or may not have a legitimate reason for filing numerous complaints. Mr. Ambrogi said that even if a town or municipality remedies a violation, a complainant may want to have an order from the AGO on the books so that there is a record of what is expected going forward. Mr. Ambrogi said that it is hard to say without knowing the circumstances of each case whether or not a situation is vexatious.

Mr. Ambrogi asked Ms. Benedon what was at issue in the West Bridgewater case. Ms. Benedon said that the competence of an employee was discussed in executive session. Ms. Benedon said that the evaluation of an employee or discussion of professional competence must first take place in open session, and that the public body did not have the required discussion in open session. Ms. Benedon said that the Division found an inappropriate use of executive session, and that the Appeals court agreed.

Mr. Ambrogi asked if there were anymore questions. The Commission members did not have additional questions. Mr. Ambrogi thanked Ms. Benedon.

Status of bills pertaining to the Open Meeting Law filed in the Legislature

Mr. Ambrogi said that the next item on the agenda was a status update on bills filed in the legislature. Mr. Ambrogi asked the legislators if they had an update on any of the bills.

Representative (Rep.) Gregoire said that there had been two hearings on bills before the Oversight Committee. Rep. Gregoire said that none of the bills on the list had been discussed during those hearings. Rep. Gregoire said that the Oversight Committee hoped to schedule two

hearings in June, and that bills C and D on the agenda (H2740 and S1899) would be heard then. Rep. Gregoire acknowledged that Rep. Linsky was in attendance and said that she knew one of these bills was an important priority for him as a result of what had happened in Natick. Rep. Gregoire said that the Oversight Committee was moving as quickly as possible and had received interest from many colleagues on H2740 and S1899. Rep. Gregoire said that although she had not heard from her colleagues about other bills on the agenda, every bill filed would receive a public hearing, and that the Oversight Committee was working to make this happen as soon as possible.

Sen. Pacheco said that the Oversight Committee would be interested in hearing the AGO's recommendations, particularly on H2740 and S1899, given the changes to the OML that would result from these bills. Sen. Pacheco said that the legislators did not need to hear that now, but that they would like to hear guidance from the AGO as to how reasonable the guidance set forth in the statutes would be.

Rep. Linsky introduced himself as the sponsor of one of the bills on the agenda. Rep. Linsky approached the Commission and said that he represented Natick. Rep. Linsky said that he had brought with him Assistant Superintendent Timothy Luff of the Natick Public Schools to help him explain why he'd filed his bill. Rep. Linsky said an individual living in Wellesley filed over 600 OML complaints and a similar number of Public Records Requests with public bodies in Natick, principally the School Committee. Rep. Linsky noted that this had cost the taxpayers of Natick a significant amount of money and tied-up Assistant Superintendent Luff, whose job is mainly to supervise special education in Natick. Rep. Linsky said that this situation was untenable and that this individual had also filed similar complaints against other public bodies in Natick and surrounding towns. Rep. Linsky said that this is why he and Rep. Rausch have filed a bill that would implement a fail-safe mechanism similar to the provision in the Public Records Law that says that when one person has filed 5+ complaints in a given year against the same public body, and a town feels that the complaints are harassing and burdensome, it does not have to respond. However, the complainant can bring the complaints to the AGO for review. Rep. Linsky said that this mirrors the provision in the Public Records Law, where the petitioner has the right to bring complaints to the Supervisor. Rep. Linsky said that this would allow people in the school department whose jobs are to educate children to get out of the business of spending all of their time responding to complaints and instead send the complaints to a body whose job is to deal with complaints. Rep. Linsky said that he is looking to his colleagues in the legislature to move these bills, and that this is a priority for him, for Senator Rausch, and he believes, for the Senate President. Rep. Linsky said he'd be looking for guidance from the AGO, and that the bill is not cast in stone and is open to changes. Rep. Linsky said that if the Commissioners wanted to hear more about this story, he was sure Mr. Luff would be happy to answer questions.

Mr. Ambrogi said that the Commission usually reserves the end of the meeting for public comment. Rep. Linsky said that he needed to get to a hearing. Mr. Ambrogi said that in that case, Mr. Luff could speak now.

Mr. Luff said that the school committee had received hundreds of public records requests, and that requests for minutes and materials would often come in on the night of the meeting. Mr. Luff said that the Committee had received over 600 OML complaints from a gentleman in

Wellesley. Mr. Luff said that the last 500 complaints were about failure to timely respond to the complaints, even after the Committee was granted reprieve by the AGO and told not to respond to the complaints until after mediation was done. Mr. Luff said that although the Committee went through the process and tried to be transparent, the complainant tried to work the process to his advantage and harassed the Committee. Mr. Luff said that through the complainant's public records requests and what he posts on his website, it is clear that the complaints are harassing, and that this is the perception of other superintendents and residents of Natick. Mr. Luff said that he would appreciate a stipulation in the OML to deal with harassment.

Rep. Gregoire reiterated that the Oversight Committee is trying to hold a hearing on this bill in June. The Representative said that she hopes to hear from Mr. Luff and from the AGO to tighten up the legislation before moving forward.

Mr. Hull said that it's clear that there needs to be a balance, as the OML needs to permit people to engage their elected officials and witness discussion, but in situations like this it can be weaponized.

Mr. Ambrogi said that his comment about numbers had not been about people filing 600 complaints. Mr. Ambrogi said that in many cases, people are filing numerous requests for good reason. Mr. Ambrogi said it's important to consider circumstances, not just numbers.

Mr. John Hawkinson asked whether a conversation had taken place/suggested consulting the Supervisor of Public Records about whether a new provision in the OML regarding harassing complaints should mirror the provision in the Public Records Law verbatim, or if changes should be made.

Mr. Ambrogi noted that there had been a great deal of discussion around the introduction of the provision in the Public Records Law, and that the legislature would have its work cut out for it. Mr. Ambrogi asked if anyone had anything else to say on this matter and thanked Rep. Linsky and Mr. Luff.

Rep. Linsky thanked the Commission and reiterated that this was a big issue for taxpayers in Natick. Rep. Linsky also reminded the Commission that many who serve on Committees and Boards are volunteers. He said that the Chair of the Natick School Committee just resigned and said that was a loss for the community.

Mr. David Rosenberg (Norkolk resident) asked if there were comments on any of the other bills filed. Sen. Pacheco said he usually reserved comments on bills until they'd had a public hearing, so he could hear the testimony of people coming in for the hearing. Mr. Ambrogi said that in previous incarcerations, the Commission has voted not to take a formal position on legislation, although there have been long debates about whether or not the Commission should take positions. Mr. Ambrogi noted that this group of Commissioners could change that, and that anyone wishing to speak about the bills today could do so.

Correspondence received by the Commission

Mr. Ambrogi said that the Committee had received correspondence from Steven Buckley. Mr. Ambrogi read the text of the email and asked if anyone cared to comment.

To the point suggesting that the OMLAC engage in remote participation, Mr. Hull asked how that would work in terms of those who wish to observe the meetings, and how that would impact the ability of folks to attend meetings and witness what was being discussed. Mr. Hull said that he supposed this may not be different from the general provision allowing for remote participation. Mr. Hull asked, if Commission members were calling in from their offices, would people attend in person to hear the Commissioners participating remotely?

Mr. Ambrogi said that the remote participation regulations relate to remote participation by members of the public body, not to participation in general. Mr. Ambrogi said that the OMLAC is entitled to invoke those regulations since the OMLAC is subject to the OML. However, Mr. Ambrogi said that remote participation has never come up with the OMLAC.

Mr. Hull said that he was not suggesting that the OMLAC start to do this and noted the requirement that the majority of a body be present in order to allow some public body members to participate remotely.

Mr. Ambrogi agreed and said that if others outside of the Boston area wanted to hear the Commission's meetings, that would be different from remote participation and would be a question of whether the OMLAC wanted to webcast proceedings. Mr. Ambrogi said that nothing would stop the Commission from doing this legally, but that he did not know if the Commission had the technical ability to do that.

Ms. Benedon said that Mr. Buckley also reached out to the Division separate from the OMLAC. Ms. Benedon said that the Attorney General's office has the technical capability to have a call-in number for members of the public to call in and listen to audio, and that the Attorney General's Office thought it was up to the Commission whether it wished to offer this option.

Rep. Gregoire suggested piloting this option with a few meetings to see if people were using it before moving forward with using the technology permanently.

Mr. Hull asked how the Commission would know if people were listening, and Mr. Ambrogi said that for most conference calls it can be determined whether people dial in and how long they stay on the phone. Mr. Hull said that a pilot sounded good. Mr. Ambrogi asked if anyone wanted to make a motion to pilot broadcasting the meeting by telephone for the next three meetings. Mr. Hull made the motion. Ms. Sterman and Rep. Gregoire seconded the motion. **The motion passed.**

Mr. Ambrogi asked if someone at the Attorney General's Office could let Mr. Buckley know of the Commission's plan. Mr. Ambrogi said that there was one other communication to the Commission, a citizen's suggestion for tweaking the OML from Faye Saulenas. Mr. Ambrogi read the email, and asked Ms. Benedon if the Division had had other communication with this person.

Ms. Benedon said that the Attorney General's Office had not followed up with her. Ms. Benedon said that the Division thought this correspondence was intended for the OMLAC and that given the timing of receipt just before the meeting, the Division thought it would present the correspondence to the OMLAC, but that the Division could respond if the OMLAC wanted and convey the OMLAC's response.

Mr. Ambrogi said that either way, this issue is determined by the Attorney General's regulations and what the law requires. Mr. Ambrogi said that he was not sure what a response from the OMLAC would do in this situation. Mr. Ambrogi suggested that the Commission could discuss the issue and if the Commission had an opinion, it could recommend that the Attorney General's Office look at the issue.

Mr. Ambrogi said that in so far as the OMLAC is an advisory body, it could recommend that the AGO look at this or say that it thought the regulations were fine as they are. Mr. Ambrogi asked if anyone had immediate thoughts on this.

Rep. Gregoire said that to her it would depend if a request was onerous to a town. Rep. Gregoire said that not everyone knows how to put something on a website, and that she would be interested in hearing from folks involved in logistics before moving forward.

Ms. Benedon said that in the Open Meeting Law and through regulations, municipalities have the option of choosing to use a municipal website as the official meeting posting location, and that municipalities must notify the Attorney General's office when they do that. Ms. Benedon said that about half now use websites. Ms. Benedon said that the regulations had been amended in late 2017.

AAG Hanne Rush said that when the regulations were updated, the Attorney General's office modified the list of locations to make it easier for municipalities. For example, Ms. Rush said that the regulations took away some options that municipalities were not using, such as a 24/7 voice mail option.

Ms. Benedon said that the ability to use a website existed before 2017. Ms. Benedon said that the Attorney General's office had not mandated it.

Mr. Hull said that he was inferring that the commenter was seeking that both the meeting notice and the documents to be used in the meeting be posted electronically. Mr. Hull said that some communities will include documents to be presented in electronic form. Mr. Hull said that speaking from personal experience, it could be challenging to get all of the documents to post at the same time as one is trying to get the agenda posted.

Mr. Ambrogi said that that's not required and asked if anyone had a recommended response.

Sen. Pacheco asked if the regulations as they stand would allow mandated electronic posting to be done through regulations.

Mr. Ambrogi asked if documents to be used in a meeting need to be posted. Ms. Benedon said that documents to be used in a meeting do not need to be posted. Ms. Benedon said that the statute requires that notice be posted, and that the language seems to contemplate physical posting. Ms. Benedon said that the AGO has interpreted this to allow for web posting. Ms. Benedon said that the question seemed to be whether there needed to be a legislative change or whether changes could be made through regulations.

Sen. Pacheco said that the legislators could be advised as to whether there could be a regulatory solution or if a legislative change would be required, perhaps through one of the bills pending in the legislature.

Ms. Benedon said that the AGO would be interested in input about whether it should be mandated that a website be the official notice posting location. Ms. Benedon said that some might not have easy access to a website and might prefer town hall. Ms. Benedon said that even if the AGO could mandate a change, the question would be whether that mandate would be desirable.

Mr. Hull said that he would be concerned, with a website mandate, about those don't have regular access to computers. Mr. Hull said that he was not sure what web resources were in communities across the state and not sure if it would be an imposition to mandate the website as the official notice posting location for all meetings.

Ms. Sterman said that it sounded like there were competing and very legitimate interests, for individuals without web access and for individuals unable to get to a physical location to look at a notice. Ms. Sterman said that both interests were legitimate and hard to prioritize.

Mr. Ambrogi asked why it needed to be either or and said that the requirement could also be to post on both a website and in a physical location. Mr. Ambrogi noted that he was sympathetic to people in the Commonwealth without internet and that he would not want to see the web be the exclusive method.

Sen. Pacheco said that he did not disagree, but that the point made earlier about significant documents over and above the posting of a meeting may complicate things for some jurisdictions as opposed to others. Sen. Pacheco said that most communities in his district, and probably across the state, have a website by now that keeps residents apprised of what is going on. Sen. Pacheco said that if a jurisdiction does have a website, it would seem reasonable that the website would be one of the places where posting takes place, but that he was not sure whether that should be a requirement. Sen. Pacheco said that he could certainly see the concern, especially for those in the disability community, of people who would like to access their government by web.

Ms. Sterman said that perhaps the issue of the meeting notices and supporting documents could be separated. Mr. Ambrogi said that a public body may not know all of the documents in advance, and that there is no requirement to have all of the documents in advance. Mr. Ambrogi said that perhaps the Division should take a look at the issue before the next OMLAC meeting and then provide thoughts on how best to handle the question.

Public Comment

Mr. Ambrogi said that the Commission would take comments from members of the public in attendance. Mr. Rosenberg introduced himself and said that in response to the Director's report, he had found the Division's helpline to be extremely helpful. Mr. Rosenberg said that he got fast and useful responses, and that he very much appreciated that.

Items Not Reasonably Anticipated

Mr. Ambrogi asked for any other public comment and asked if there were any other matters that had not been reasonably anticipated that any member wished to raise. No Commissioners raised unanticipated issues.

Schedule Next Meeting

Mr. Ambrogi suggested meeting sometime in the fall and revisiting the legislation filed and some of the issues discussed that day. Mr. Ambrogi suggested having the Division coordinate with the OMLAC about possible meeting dates in October. Ms. Benedon agreed.

Adjourn

Mr. Hull made a motion to adjourn. Rep. Gregoire seconded the motion. **The meeting concluded at 2:19pm.**

List of Documents Used by the Commission during the Meeting

1. OMLAC Meeting Notice for May 14, 2019
2. Draft Minutes from OMLAC Meeting of June 18, 2018
3. Annual Report to OMLAC by the Attorney General's Division of Open Government dated January 31, 2019
4. February 12, 2019 email from Stephen Buckley (Chatham) to Commission Members
5. May 2, 2019 email from Fae Saulenas (Saugus) to Commission Members

Netsky, Mira (AGO)

From: Fae Saulenas <[REDACTED]>
Sent: Thursday, May 2, 2019 1:16 PM
To: OpenMeeting (AGO); Fae Saulenas
Subject: Citizen's Suggestion for Tweaking the OML
Attachments: Public.Record.Request.Response.05.02.19.pdf

To: The OML Division

It my understanding that:

The OMLAC plans to meet next on Tuesday, May 14th, 2019 at 1pm. The meeting will take place in the Executive Conference Room on the 20th floor of the McCormack Building at One Ashburton Place, Boston, MA 02108. When it becomes available, the meeting notice will be posted on the OMLAC website.

As an ordinary citizen not understanding exactly how changes in the OML are first recommended, I am suggesting that serious consideration be given to making electronic / website posting a mandatory manner of publicly posting all municipal meetings. In my own case, as a seventy year old 24/7 caregiver for my blind quadriplegic daughter, it is not feasible for me to make a trip to the Saugus town hall in order to read a document. I have attached the Saugus town clerk's response to me stating that the electronic web posting is merely a curtesy not a requirement. She did, however, ultimately provide me with the document I'd requested. This morning, I also left you a rather meandering voice message on this topic. Hopefully, I am correct in assuming that the OMLAC may represent the appropriate forum for a discussion on the issue that I have raised. Thank you for considering my suggestion.

Sincerely yours,

Fae Saulenas

[REDACTED]

Saugus, MA 01906

Sent from [Mail](#) for Windows 10

Netsky, Mira (AGO)

From: Stephen Buckley <[REDACTED]>
Sent: Tuesday, February 12, 2019 3:27 PM
To: OpenMeeting (AGO)
Cc: Netsky, Mira (AGO); sbuckley@opengovmetrics.com
Subject: OMLAC meeting; Agenda item request for

Hello,

The purpose of this message is to request that an item be added to the agenda of the next meeting of OMLAC.

The AGO's guidance on "remote participation" is not sufficiently clear about who is allowed to participate from a remote location.

For example, while a member of a public body is allowed to use "remote participation", it is not clear whether, then, members of the public are also allowed to do so under the OML.

And, also, I would like the OMLAC to consider adopting "remote participation" for its own meetings, if only to allow members of the public, many of whom are outside the Boston area, to hear the OMLAC's deliberations.

Technically, this is easily accomplished by providing a conference call number to a phone on the meeting table (with callers muted).

Feel free to call me if there are any questions.

sincerely,

Stephen Buckley
OpenChatham.com
[REDACTED]
Chatham, MA 02633
[REDACTED]

On Tue, Feb 12, 2019, 2:00 PM Attorney General's Division of Open Government <OpenMeeting@state.ma.us> wrote:

[View this email in your browser](#)