

## “Justice delayed is justice denied.”

In 1868, British Prime Minister William Gladstone famously said, “Justice delayed is justice denied.” The phrase has often been repeated here in the United States, most famously by the Rev. Martin Luther King Jr., who echoed it in his 1963 “[Letter from a Birmingham Jail](#)”: “Justice too long delayed is justice denied.”

In Massachusetts, we, the citizens, have a couple of powerful tools afforded us under the law:

1. [The Public Records Law \(“PRL”\)](#)(M.G.L. c66, §§ 10-10A)
2. [The Open Meetings Law \(“OML”\)](#) (M.G.L. c30A, §§ 18-25)

OpenCommonwealth has heavily invested in the operation of, accountability under and the efficacy these laws since its inception in 2021.

We continually assess our investments, efforts, and results; to which we have recently identified a fatal flaw, the enforcement mechanism of the OML.

Recently, we have received [2 email communications](#) from the Director of the Division of Open Government (“DOG”), Assistant Attorney General (“AAG”), Carrie Benedon. These email communications are attached to this article, and can be found publicly on our public data repository here:

<https://www.dropbox.com/scl/fo/r4xgdvb80edzq104bj77p/h?rlkey=0nm580vq88hc2yradylusz89y&dl=0>

The impetus for these communications for these communications stems from OpenCommonwealth’s efforts to hold the Malden Public Schools School Committee (“MPSSC”) accountable for our reporting of alleged repeated and persistent OML violations.

The MPSSC has been found previously to have violated OML, OpenCommonwealth files these [complaints and the determinations can be found here](#):

<https://www.dropbox.com/scl/fo/zyozldnvuhzwl6waqx16j/h?rlkey=dpuvu7ikit6vzv8otw6i1k497&dl=0>

The Attorney General (“AGO”)/DOG is exclusively charged under OML for the interpretation and enforcement of [OML under Section 25](#):

*(a) The attorney general shall have the authority to promulgate rules and regulations to carry out enforcement of the open meeting law.*

*(b) The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section.*

No single person/organization is able to challenge the AGO/DOG on any of their determinations or actions as it relates to OML see [BOELTER vs. WAYLAND, 479 Mass. 233.](#)

The only other mechanism available to the public is if **three registered voters** bring suit under the [OML under Section 23:](#)

*(f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law.*

This brings us full circle to the issues at hand; the problematic emails from the AAG, Carrie Benedon.

Ms. Benedon has a duty under [OML, Section 23:](#)

*(c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. ...*

However, in the case of the [18 OML Violation Complaints](#) filed with the AGO/DOG/AAG which can be found here:

<https://www.dropbox.com/scl/fo/dgnhx6kcc7x8wcpjpre/h?rlkey=axktmc0odfgvkn6q1ga93c3gd&dl=0>

Ms. Benedon appears to be punishing the complainant (OpenCommonwealth) for registering 18 complaints with her office.

We have asked her, and her staff on several occasions why the emphasis and focus is on the complainant, and not on the alleged behavior of the MPSSC who has admitted in nearly every response to nearly every complaint that at least one of the allegations is true and remedial actions have been taken.

Of particular concern is the serial, repeated and wonton failure to respond to OML records requests [within 10 calendar days as required under OML Section 22,](#) and where the MPSSC has been previously found to had [violated the OML in June of 2023.](#)

SO:

- [A complainant has 30 days to lodge a complaint with the public body, or the AGO/DOG will not investigate same.](#)
- [The AGO/DOG must determine “in a timely manner” if a violation has occurred upon receipt of a complaint.](#)
- [AAG Carrie Benedon has theoretically allowed the MPSSC to wait until \*\*Friday, July 5, 2024\*\* to respond to complaints filed in February of 2024.](#)
- [AAG Carrie Benedon has theoretically paused the investigation of any complaints filed by OpenCommonwealth against the MPSSC until some day after \*\*Friday, July 5, 2024\*\* \(assuming OpenCommonwealth does not file any more complaints\).](#)

- [OpenCommonwealth may be filing a large number of complaints against the MPSSC, however the 18 complaints filed thus far are a fraction \(29%\) of the 62 complaints filed against the town of Acton in 2019.](#)

YET:

- The focus of the AGO/DOG appears to be on stopping the complainant from making further complaints.
- The focus is on how many complaints the complainant has filed, not on the Public Body (MPSSC) who is causing the complaints and ***admitting*** to allegations in the complaints.

Currently, OpenCommonwealth is unable to ascertain the mean time it takes for the DOG/AGO to determine (“in a timely manner”) whether there has been a violation of the OML, however we now feel it is incumbent upon us to find the answers to this question.

[As a guidepost, we can see today that 140 outstanding OML complaints are in “Pending” status. There is a complaint which is 829 days \(2.3 YEARS\) old \(since filed with Swansea\), and that \*\*\*the average complaint is 155 days old\*\*\* \(from the date filed with the public body\) and has \*\*\*been on file for 114 days at the AGO/DOG.\*\*\*](#)

OpenCommonwealth has searched for guidance regarding the interpretation of the OML’s “Timely Manner” language regarding the AGO/DOG and has not found any caselaw or published interpretation. However, the Supreme Judicial Court in Massachusetts generally speaks to 60 days when interpreting “Timely Manner” in other cases regarding other codified law, and also looks to the other time requirements within the law for guidance, such as the 10-calendar day requirement in public bodies providing “[...the minutes of open meetings, along with "the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session,"](#) available to the public, upon request, within ten days after an open meeting has taken place. G. L. c. 30A, § 22 (c), (e).” and to the 30-day requirement for a complainant to file a complaint and to the 14 day requirement for a public body to respond to a complaint.

OpenCommonwealth will file public records requests from the DOG seeking data regarding these questions, hopefully allowing us to understand what the AGO/DOG/AAG Benedon currently provide as “Timely Manner”.

If you have experience with this issue, if you have data regarding the AGO/DOG and OML complaints or if you wish to comment, or otherwise communicate with OpenCommonwealth, please email us at: [info@opencommonwealth.org](mailto:info@opencommonwealth.org)