



THE COMMONWEALTH OF MASSACHUSETTS
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VIA EMAIL ONLY

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RE: Open Meeting Law Complaint

Dear Attorneys Donnelly and Greenspan:

This office received a complaint from Brian DeLacey, on behalf of the Malden News Network, on February 22, 2024,¹ alleging that the Malden School Committee (the “Committee”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Committee on January 22. Attorney Donnelly responded on behalf of the Committee by letter dated February 9, and, after an extension of time granted by this office, Attorney Greenspan also responded on behalf of the Committee by letter dated February 16. The complaint alleges that the Committee failed to respond to a January 12 request for meeting minutes made under the Open Meeting Law.²

Following our review, we find that the Committee violated the Open Meeting Law by failing to respond to the January 12 request for meeting minutes. In reaching this determination,

¹ All dates are in 2024 unless otherwise stated.

² The request for meeting minutes also included requests for other records, including “preparatory materials and documents and exhibits used at the session . . . , corresponding agenda, and every corresponding document which was discussed, referenced or referred to in the meeting.” The Open Meeting Law governs requests for meeting minutes that are made under the Open Meeting Law; requests for other records, including documents used at a meeting, fall under the Public Records Law. See OML 2014-45; OML 2021-134, n.2.; OML 2023-57, n.4. Therefore, we decline to review whether the Committee properly responded to a request for records other than meeting minutes.

we reviewed the Open Meeting Law complaint, the Committee’s responses, the request for further review,³ the January 12 request for meeting minutes, and the website where the Committee posts its meeting minutes.⁴

FACTS

We find the facts to be as follows. On January 12, the Complainant sent an email to the Clerk of the Committee and Mayor Gary Christenson who serves as the Committee’s chair. In the email the Complainant requested, among other things, “minutes from School Committee meetings held during calendar year 2023 or 2024, in which the contract for / of the Superintendent of Malden Public Schools was discussed directly or indirectly, whether meetings were held in Open or Executive Session.” The email made clear that the request was being made under the Open Meeting Law, not the Public Records Law.

The Committee met on January 18 and reviewed three sets of executive session minutes that it had identified as responsive to the request. Specifically, the Committee reviewed minutes for executive sessions held on September 11, November 13, and December 4, 2023. The Committee determined that some of the executive session minutes should be released to the public, and that portions of others required redaction either because the executive session purpose remained ongoing or because the attorney-client privilege or an exemption to the Public Records Law applied.⁵

On January 22, the Complainant filed the present Open Meeting Law complaint alleging that the Committee failed to respond to the January 12 request. The Committee explains in response to the complaint that it has identified additional minutes that are responsive to the request, these include minutes for executive sessions held on April 3, May 1, and June 12, 2023.

DISCUSSION

The Open Meeting Law requires that a public body “create and maintain accurate minutes of all meetings, including executive sessions.” G.L. c. 30A, § 22(a). The Law further provides that “[m]inutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.” G.L. c. 30A, § 22(c). We have consistently explained that even if meeting minutes do not yet exist at the time of a request or if there are no responsive minutes, the public body is still required to respond to the requester within ten days informing them that the minutes do not yet exist or that there are no responsive

³ The request for further review raises several additional allegations, some of which relate to the withholding and redaction of the requested executive session minutes as well as the sufficiency of the minutes, and some of which relate to other matters entirely. We decline to review allegations that were raised for the first time in the request for further. See G.L. c. 30A, § 23(b); 940 CMR 29.05(1); OML 2019-76; OML 2012-92.

⁴ The Committee’s meeting minutes may be found at <https://maldenps.org/school-committee/school-committee-meetings/>.

⁵ The Committee explained in its responses that during the December 4, 2023, executive session it was determined that the minutes of the November 13, 2023, executive session may have needed to be amended. The Committee also explained that, at the time of its response to this complaint, it had not yet finalized the December 4, 2023, executive session minutes.

minutes. See OML 2023-95 (explaining to the Malden School Committee that “if minutes do not yet exist at the time of a request, the public body is still required to respond to the request within 10 calendar days with an explanation of whether the minutes do or do not exist in either approved or draft form”); OML 2017-102; OML 2015-173; OML 2013-83; OML 2012-86.

With respect to executive session minutes, a public body may withhold the minutes from disclosure to the public for “as long as publication may defeat the lawful purposes of the executive session, but no longer.” G.L. c. 30A, § 22(f). Once the purpose for the executive session “has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under [the Public Records Law] apply to withhold these records, or any portion thereof, from disclosure.” Id. A public body has an obligation to review its executive session minutes at reasonable intervals to determine if continued nondisclosure of the minutes is warranted, and to announce that determination at the next meeting following such review. G.L. c. 30A, § 22(g)(1); see OML 2013-56; OML 2015-94.⁶

A public body must respond to a request for executive session minutes within 10 days. G.L. c. 30A, § 22(g)(2). If the public body has determined, prior to the request, that certain executive session minutes should be released, it should respond to the requester directly, notifying them of the availability of those minutes. If the body has determined that executive session minutes should remain confidential because publication would defeat the lawful purposes of the executive session, it should respond by stating the reason why the minutes continue to be withheld. And if, at the time of a request, the public body has not recently conducted a review of the minutes to determine whether continued nondisclosure is warranted, the body must perform such a review and release the minutes, if appropriate, no later than its next meeting or within 30 days, whichever occurs first. G.L. c. 30A, § 22(g)(2). In such circumstances, the body should still respond to the requester within 10 days, notifying the requester that the body is conducting this review. See OML 2013-99; 2013-105; OML 2022-200; OML 2022-194; OML 2023-53.

To begin, we note that the Committee makes assertions regarding whether particular executive session minutes have been permissibly redacted. The Committee also asserts that, unlike open session minutes, it is not required to provide executive session minutes that are in draft form in response to a request. The allegation raised in the complaint, and therefore the allegation before us, is that the Committee failed to respond at all to the Complainant’s January 12 request. Therefore, we do not address the propriety of redactions made to specific meeting minutes nor the Committee’s assertion that it need not provide executive session minutes that are in draft form.

The Committee does not assert that it responded to the Complainant regarding the January 12 request for meeting minutes. Instead, the Committee asserts that it complied with the Open Meeting Law by virtue of the fact that the Committee posts online its open session minutes and executive session minutes that have been approved for release to the public. The Committee additionally explains that the minutes posted online are “independently searchable by keyword[] and may be downloaded.” We commend the Committee for making its open session and released

⁶ Open Meeting Law determinations may be found at the Attorney General’s website, www.mass.gov/ago/openmeeting.

executive session meeting minutes readily available to the public online. However, the Committee was still required to respond to the Complainant within ten days regarding his request for meeting minutes. A public body may respond to a request for minutes by directing the requester to where the requested minutes may be accessed online, see OML 2022-205; however, in this instance the Committee did not respond within ten days at all. Therefore, we find that the Committee violated the Open Meeting Law.

The Committee has explained that minutes for executive sessions held on the following dates in 2023 are responsive to the January 12 request: April 3, May 1, June 12, September 11, November 13, and December 4. After reviewing the website where the Committee posts its meeting minutes, we note that all of the above-listed executive session minutes have been posted to the website. Some of the minutes contain redactions, but as explained above, the propriety of such redactions is not before us on this complaint.⁷ Additionally, to the extent redactions are made on the basis of the attorney-client privilege or an exemption to the Public Records Law, review of such redactions falls outside the purview of the Division and should be addressed to the Supervisor of Records in the Secretary of the Commonwealth's office. See OML 2022-195; OML 2021-143.

CONCLUSION

For the reasons stated above, we find that the Committee violated the Open Meeting Law by failing to timely respond to a request for meeting minutes. We order the Committee's immediate and future compliance with the Open Meeting Law and caution that similar future violations could be considered evidence of intent to violate the Law. It is our understanding that the meeting minutes responsive to the Complainant's request have now been posted online; therefore, we do not order additional remedial action.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with the Committee or with our office. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Elizabeth Carnes Flynn
Assistant Attorney General
Division of Open Government

⁷ The Complainant filed a complaint with our office on May 15 alleging that redactions made to the minutes of the November 13 and December 4 executive sessions are improper. That complaint will be addressed in a separate letter.

cc: Gary Christenson, Mayor of Malden and Chair of the Malden School Committee
(via email: mayor@cityofmalden.org)
Malden School Committee (via email: sdorai@maldenps.org)
Denise Corbett (via email: denise@greenspanlawyers.com)
Carol Ann Desiderio, City Clerk (via email: cdesiderio@cityofmalden.org)
Brian DeLacey (via email: maldennewsnetwork@gmail.com)

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.