OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

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DEPUTY CITY CLERK

October 22, 2015

Amy Nable, Assistant Attorney General
Director, Division of Open Government
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Re: Action taken by Cambridge City Council on Open Meeting Law complaint of Ilan Levy dated September 28, 2015

Dear Ms. Nable:

On behalf of the Cambridge City Council, I am writing to advise you pursuant to 940 CMR 29.05(5) of the action taken by the City Council on the Open Meeting Law complaint of Ilan Levy. A copy of Mr. Levy's complaint dated September 28, 2015 (the "Complaint") is attached as Exhibit A. You granted the City Council an extension of time to respond to the Complaint to October 22, 2015. Mr. Levy alleges that seven incumbent City Councilors, in forming a slate for re-election, violated the Open Meeting Law "when they discussed their opinions on issues of public business, and on their joint strategic approach, and leadership, of these issues, outside of a properly posted meeting." The City Council denies that its members engaged in any such discussions, and denies that its members violated the Open Meeting Law.

FACTS

The Cambridge City Council is composed of nine Councilors. Five City Councilors constitute a quorum. All nine seats on the City Council are subject to election every two years. This November, all nine incumbent City Councilors are seeking re-election to a new legislative term that will commence in January, 2016, and fourteen challengers (including the complainant, Mr. Levy) are seeking election to the City Council. In anticipation of

November's election, seven incumbent Councilors (Mayor and Councilor David Maher, Vice Mayor and Councilor Dennis Benzan, Councilor Timothy Toomey, Councilor Denise Simmons, Councilor Craig Kelley, Councilor Leland Cheung, and Councilor Marc McGovern) formed the so-called "Unity Slate," (the "Slate") as documented in the Cambridge Chronicle article (the "Article") cited in Mr. Levy's complaint. Sara Feijo, *Seven Cambridge Councilors Form 'Unity Slate' for Election*, CAMBRIDGE CHRONICLE, September 9, 2015, accessed online at http://cambridge.wickedlocal.com/article/20150909/NEWS/150906753?template=printart. In the Article, the Slate is stated to be "committed to investing resources into affordable housing, education, environment, public safety, arts and culture, poverty and job creation, while keeping residential taxes low" but members of the Slate have stated that they expressed no specific proposals to do so, and no collective positions on any particular proposal within those broad subject areas.

DISCUSSION

1. There was no Open Meeting Law violation.

Mr. Levy's Complaint fails because the Slate did not hold a meeting in violation of the Open Meeting Law and Mr. Levy's speculation to the contrary should not be credited. Mr. Levy's conclusory allegations that the Slate members "discussed their opinions on issues of public business, and on their joint strategic approach, and leadership, of these issues" is unsupported by any facts. Mr. Levy appears to have concluded that by the mere fact of forming a slate for re-election, the Slate members must have discussed particular issues that are before the City Council ("[i]n forming any substantial alliance, the individual allies need to first exchange views"), and that they therefore deliberated outside of a public meeting in violation of the law.

Under the Open Meeting Law, unless an exception applies, all meetings of a public body, such as the City Council, must be open to the public. A meeting is defined as "a deliberation by a public body with respect to any matter within a body's jurisdiction", and deliberation means "an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on *any public business within its jurisdiction*." M.G.L. c. 30A, § 18 (emphasis added). Your office has previously determined that "[s]tatements made by public body members for political purposes that do not involve matters presently or likely to come under consideration by the public body in the future are not communications on public business within the jurisdiction of the body, regardless of whether they are made by an individual public body member or by the members collectively." OML 2012-64; see also OML 2015-28, OML 2014-135 and OML 2014-14.

Here, the members of the Slate have coordinated their efforts to seek re-election to the City Council, but have not communicated regarding any public business within the City Council's jurisdiction at present or which is likely to come under consideration by the City Council in the current legislative session; as such, there has been no impermissible deliberation and no violation of the Open Meeting Law. The stated purpose of the Slate is to communicate to voters that its members have committed to working collaboratively

going forward, not that the Slate members agree on any particular issue or proposal. To the extent that the formation of the Slate indicates some general agreement of its members as to which issues are important in Cambridge, that agreement is based upon knowledge of prior positions taken by the Slate members during public meetings of the City Council. Those issues are general areas of great interest to both the members of the Slate and the City Council as a whole, and do not evidence any agreement, discussion, or collective position with respect to any particular proposal that is presently before or likely to come under consideration by the City Council in this legislative session. Moreover, each of the Councilors against whom the Complaint is brought denies having deliberated inappropriately.

Even the newspaper article cited by Mr. Levy as support for his complaint belies the claim he makes. In that article, Vice Mayor Benzan is quoted as saying that "[e]veryone on the slate is absolutely committed to Cambridge and dedicated to work despite having sometimes opposing opinions…[t]he group has a diversity and a wide range of opinions, and we're willing to work together." The article makes clear that the message of the Slate is not a substantive message; it is instead intended to communicate to voters that the members of the Slate have committed to working together in a collaborative manner going forward, based on their experience of having worked together in the past. It also makes clear that the members of the Slate have differing opinions on substantive issues. There is no factual basis upon which to conclude that the members of the Slate have discussed or deliberated regarding any substantive issue, let alone on any specific issue currently pending before the Council or likely to come before the Council in what remains of the current legislative session, and as such, there is no factual basis upon which to conclude that any Open Meeting Law violation occurred.[1]

2. The remedy requested by Mr. Levy is inappropriate.

Even if the Complaint had any merit whatsoever, the remedies requested in the Complaint are inappropriate and appear designed solely as a campaign strategy to disadvantage the Slate members in their re-election bids. There is no basis in the Open Meeting Law for requiring the Slate members to "publicize all slate-related communications" regardless of the subject matter, to "publicly acknowledge their intentional and deliberate violation of the law," or to "immediately dissolve the slate."

As required by 940 CMR 29.05(5), the City Council reviewed the allegations of this Open Meeting Law complaint within the time extension allowed by the Division of Open Government. At its meeting of October 19, 2015, the City Council voted to adopt this letter as its response and resolution. Mr. Levy is being informed of the City Council's action by copy of this letter.

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[1] Mr. Levy's reference to a prior finding of an Open Meeting Law violation involving five of the Slate members is irrelevant to the question of whether the Slate members violated the Open Meeting Law in this instance. Moreover, even to the extent that the prior finding might be relevant to the determination of an appropriate remedy for a recurring violation, there is no such relevance here where the allegations bear no relationship to one another.

Very truly yours,

Donna P. Lopez
City Clerk

cc: Ilan Levy
148 Spring Street
Cambridge, MA 02141

C. C. 106

City of Cambridge

MASSACHUSETTS

In City Council October 19, 2015

COMMUNICATIONS & REPORTS FROM CITY OFFICIALS # 1

	YEA	NAY	ABSENT	PRESENT
Vice Mayor Dennis A. Benzan	✓			
Mr. Dennis J. Carlone				✓
Mr. Leland Cheung	✓			
Mr. Craig Kelley	✓			
Mr. Nadeem A. Mazen		✓		
Mr. Marc C. McGovern	✓			
Ms. E. Denise Simmons	✓			
Mr. Timothy J. Toomey, Jr.	✓			
Mayor David P. Maher	✓			
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