



2

OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

(617) 349-4260

FAX (617) 349-4269

tty/TDD (617) 492-0235

D. MARGARET DRURY
CITY CLERK

DONNA P. LOPEZ
DEPUTY CITY CLERK

TO: The Honorable, The City Council
FROM: D. Margaret Drury, City Clerk *DM*
RE: Open Meeting Law Complaint from George F. "Jack" Welch, Jr.
DATE: October 17, 2011



On October 3, 2011, the City Council referred an Open Meeting Complaint from George F. "Jack" Welch, Jr. to the City Clerk to confer with the City Solicitor to recommend to the City Council a response to the complaint. After conferring with the Law Department, I am recommending that the City Council vote to authorize the City Clerk to send the attached proposed response to the complaint to Amy Nable, Assistant Attorney General on behalf of the City Council.

Thank you for your attention to this matter.



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D. MARGARET DRURY
CITY CLERK

DONNA P. LOPEZ
DEPUTY CITY CLERK

October 17, 2011

Amy Nable, Assistant Attorney General
Director of 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 George F. "Jack" Welch, Jr. dated October 3, 2011

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 George F. "Jack" Welch, Jr. As required, a copy of Mr. Welch's complaint dated October 3, 2011 is attached as Exhibit A. In his Complaint, Mr. Welch appears to allege what he considers to be three Open Meeting Law issues: (1) he requests verification from the City Clerk that the City Councilors each signed a Certificate of Receipt of Open Meeting Law Materials; (2) he alleges that he has a right to be heard by the City Councilors when the City Council considers his Open Meeting Law complaint; and (3) he alleges that it is a violation of the Open Meeting Law that the City Council voted on February 14, 2011 to schedule a training for itself on the new Open Meeting Law by the end of April 2011 and has not to date scheduled or held such a training.

With regard to the first issue raised, copies of the Certificates of Receipt of Open Meeting Law Materials signed by each of the nine Cambridge City Councilors are attached as Exhibit B. While these Certificates were signed on October 3, 2011, the new statute (GLc.30A, §§18-25), new regulations (940 CMR 29.00), and the computer link to the Attorney General's Open Meeting Law Guide were all first given to each City Councilor by the Executive Assistant to the City Council, City Clerk, and Assistant City Clerk ("Sandra, Margaret & Donna") on October 25, 2010. See transmittal memorandum with attachments attached as Exhibit C. The statute and regulations were again given to each City Councilor on October 3, 2011 along with the March 24, 2011 Open Meeting Law Guide and the City Councilors signed the Certificates on that date. No Certificates of Receipt were required by the Clerk in October 2010 because she reasonably believed based on the statutory and regulatory language that only when the City Councilors were elected and took office in January 2012 would they be required to sign the new Certificates of Receipt. It appears that not until the Attorney General's revised Open Meeting Law Guide dated March 24, 2011 (at p.1) was it specified that members of public bodies whose terms began prior to July 1, 2010 and expire after July 1, 2011 should have completed the Certificate of Receipt by January

14, 2011. This is no longer an issue because Certificates of Receipt from each City Councilor have been signed.

With regard to the second issue, Mr. Welch appears to claim that the City Council must allow him to speak at the time the Council considers his Open Meeting Law complaint. This is incorrect. There is no requirement in the Open Meeting Law that a public body allow a complainant to be heard on his/her Open Meeting Law complaint. See GLc.30A, §23(b). The public body is required to "review the complaint's allegations" and "take remedial action, if appropriate." 940 CMR 29.05(5). The public body may request information from the complainant if it so chooses. 940 CMR 29.05(4). Mr. Welch's reference to Cambridge's Plan E Charter (specifically, GLc.43, §98) which allows members of the public a reasonable opportunity to be heard at a City Council meeting in regard to matters considered thereat is not properly a subject of this complaint because the Charter section is not a part of the Open Meeting Law over which the Attorney General's office has been given jurisdiction. In any event, while the Charter section might allow Mr. Welch to speak about his complaint pursuant to City Council rules during the regular public comment period at the beginning of the meeting at which his complaint is considered, the Charter does not require that a hearing be held on his complaint during which he has a right to be heard.

The third issue raised is similarly without merit. Mr. Welch asserts that it was a violation of the Open Meeting Law for the City Council to vote on February 14, 2011 to hold an Open Meeting Law training for itself to be held before the end of April 2011, and not to hold it. First, nothing in the Open Meeting Law requires that public bodies conduct live training sessions. It cannot be a violation of the Open Meeting Law to fail to do something that is not required by it. Second, this portion of the complaint fails for being untimely. The complaint was filed on October 3, 2011, well beyond thirty days after the alleged violation occurred. If it were a violation not to hold the training by the end of April, the violation would have occurred as of May 1, 2011; the time limit for filing an Open Meeting Law complaint on that issue would have expired on May 31, 2011. See GLc.30A, §23(b). Third, if the City Council decides to schedule an Open Meeting Law training, such a training does not constitute a public meeting at all as long as the members present do not deliberate. See GLc.30A, §18 definition of "Meeting." Therefore, Mr. Welch would not necessarily even have a right to be present at such a training.

As required by 940 CMR 29.05(5), the City Council reviewed the allegations of this Open Meeting Law complaint within 14 business days of receiving it. At its meeting of October 17, 2011, the City Council voted to adopt this letter as its response and resolution. Mr. Welch is being informed of the City Council's action by copy of this letter.

Very truly yours,

D. Margaret Drury

cc. George F. "Jack" Welch, Jr.
164 Auburn Street, Apt. 2
Cambridge, MA 02139



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: George F. "Jack" Last Name: Welch Jr

Address: 164 Auburn St. Apt. 2

City: Cambridge State: MA Zip Code: 02139

Phone Number: +1 (617) 686-9049 Ext. _____

Email: JWelchBoss@aol.com

Organization or Media Affiliation (if any): Voter & Citizen of Cambridge Pursuant To Section 98 of Plan A Charter

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

- Individual
- Organization
- Media

Public Body that is the subject of this complaint:

- City/Town
- County
- Regional/District
- State

Name of Public Body (including city/ town, county or region, if applicable): The Nine Member Cambridge Mass City Council Per Section 98 of Cambridge Plan E Charter

Specific person(s), if any, you allege committed the violation: Cambridge Mayor David Maher, Chair of the Cambridge City Council and City Councilors, Siedel and Toomey, Co Chair, Cambridge City Council Committee on Government and Rules

Date of alleged violation: 2/14/11 -to date

OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

2011 OCT - 3 - 9:35

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

Beginning on February 14, 2011 and continuously to the present David Maher, Mayor of the Cambridge City Council has violated my rights as a citizen of Cambridge under the Open Meeting Law and Section 98 of the Cambridge Plan E Charter to be heard at the meeting of the Cambridge City to go over the changes of the Open Meeting Law described in the attached copy of the February 14, 2011 Order of the City Council by failing actually give pubic notice of said hearing and failing to hold said hearing. (READ ATTACHED COPY OF CITY COUNCIL'S FEBRUARY 14, 2011 OPEN MEEING LAW ORDER)

Beginning on February 14, 2011 and continuously to the present Cambridge City Councilors Siedel and Toomey, Co-Chairs of the Cambridge City Council's Committee on Government Operations and Rules have violated my rights as a citizen of Cambridge under the Open Meeting Law and Section 98 of the Cambridge Plan E Charter to be heard at the meeting of the Cambridge City to go over the changes of the Open Meeting Law described in the attached copy of the February 14, 2011 Order of the City Council by failing actually give pubic notice of said hearing and failing to hold said hearing (READ ATTACHED COPY OF CITY COUNCIL'S FEBRUARY 14, 2011 OPEN MEEING LAW ORDER)

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

I want the Nine members of the Cambridge City Council to comply with its February 14, 2011 Open Meeting Law Order by adding to the agenda of the Monday October 3, 2011 Regular City Council Meeting a review the changes in the Open Meeting Law and to order stricken from the City Council Rules all rules not in compliance with the Massachusetts Open Meeting Law or Section 98 of the Cambridge Plan E City Charter re Citizens rights to be heard.

Review, sign, and submit your complaint

Read this important notice and sign your complaint.

Under most circumstances your complaint will be considered a public record and be available to any member of the public upon request.

I understand that when I submit this complaint the Attorney General's Office cannot give me legal advice and cannot act as my personal lawyer.

I certify that the information contained on this form is true to the best of my knowledge.

Signed: George S. Welch Jr

Date: October 3, 2011

For Use By Public Body
Date Received by Public Body:

For Use By AGO
Date Received by AGO:

MEMORANDUM

Date: October 3, 2011
To: D. Margaret Drury, Cambridge Ma. City Clerk
From: Jack a/k/a George F. Welch Jr., Cambridge Registered Voter And Open Meeting Law
Complainant v. The Cambridge Mayor and The Co-Chairs of the Cambridge City
Council Committee on Government Operations and Rules
Re: (I.) Filing of Corrected Complaint & (II) Request For Verification of Compliance By
The Nine Members of the Cambridge City Council With The Certification Requirements
of the Open Meeting Law & (III) Objection To Complaint Being Treated As a
Communication By The Mayor And The City Council & (IV) Recommendation That
The Vice Mayor or Any Four Members of the Cambridge City Council Comply With
The February 14, 2011 Open Meeting Law Update Order By Calling A Special
Meeting Pursuant To Section 98 of the City Plan E Charter At A Time Not to Interfere
With The Religious Holidays And Before The Next Regular Meeting of the Cambridge
City Council on October 17, 2011.

2011 OCT - 3 A 9:35
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

Dear Hon. Cambridge City Clerk Drury:

I. To comply with the Open Meeting Law Complaint filing procedures please find attached the complaint which I filed with you on Thursday September 30, 2011 set out in the Attorney General Open Meeting Law Complaint form. This is a request that you provide each member of the City Council with a copy of the attached complaint and this Memorandum before the City Council meeting tonight, October 3, 2011, showing that I complied with the Open Meeting Complaint procedure and that my Open Meeting Law Complaint is properly before the City Council for the actions which I have set out below.

II. This is a request for your verification that each member of the Cambridge City Council has completed the Certification of Receipt of Open Meeting Law materials and that they understand the requirements of the Open Meeting Law and the consequence for violating it. If any member of City Council has not filed with you the Open Meeting Law Certificate please so indicate in your response to this request.

III. Please bring to the attention of the Mayor and the other members of the City Council that I object to my Open Meeting Law Complaint being treated as a Communication on the grounds that unlike matters on the Council's Communications Agenda, violation of my rights to be heard on Section 98 of the City's Plan E Charter when the Council considers my Open Meeting Law complaint would be another violation of the Open Meeting Law and the consequences for this additional violation could be used by the Attorney General to show intent to violate the Massachusetts Open Meeting Law.

IV Based upon absence of any Cambridge public record that the Mayor or City Council Committee on Government Operations and Rules has complied with the Council's February 14, 2011 Open Meeting Law Update Order and for the reasons above, I recommend that the Vice Mayor or Any four Members of the Cambridge City Council interested in being re-elected comply with the Council's February 14, 2011 Open Meeting Law Update Order by calling a special meeting pursuant to Section 98 of the City Plan E Charter at a time not to interfere with the religious holidays and before the next regular meeting of the Cambridge City Council on October 17, 2011.

Thank you in advance for your prompt response.

Jack George J Welch Jr. Oct 3, 2011

Jack a/k/a George J. Welch Jr.

Open Meeting Law Complainant

164 Auburn Street Apt. 2

Cambridge MA 02139

(617) 686-9049

JWelchBoss@aol.com

CERTIFICATE OF RECEIPT OF OPEN MEETING LAW MATERIALS

I, Leland Chung who qualified for the office of
(Name)
City Council on 10/3/11 certify pursuant
(Office) (Date)

to G.L. c. 30A, § 20(g), that I have received copies of the following Open Meeting Law materials:

- 1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;
- 2) regulations promulgated by the Attorney General under G.L. c. 30A, § 25; and
- 3) educational materials promulgated by the Attorney General under G.L. c. 30A, § 19(b), explaining the Open Meeting Law and its application.

I have read and understand the requirements of the Open Meeting Law and the consequences for violating it. I further understand that the materials I have received may be revised or updated from time to time, and that I have a continuing obligation to implement any changes in the Open Meeting Law during my term of office.

Leland Chung
(Name)
Cambridge City Council
(Name of Public Body)
10/3/11
(Date)

Pursuant to G.L. c. 30A, § 20(g), an executed copy of this certificate shall be retained, according to the relevant records retention schedule, by the appointing authority, city or town clerk, or the executive director or other appropriate administrator of a state or regional body, or their designee.

CERTIFICATE OF RECEIPT OF OPEN MEETING LAW MATERIALS

I, Hermiitta Davis who qualified for the office of
(Name)
City Council on 10/3/11 certify pursuant
(Office) (Date)

to G.L. c. 30A, § 20(g), that I have received copies of the following Open Meeting Law materials:

- 1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;
- 2) regulations promulgated by the Attorney General under G.L. c. 30A, § 25; and
- 3) educational materials promulgated by the Attorney General under G.L. c. 30A, § 19(b), explaining the Open Meeting Law and its application.

I have read and understand the requirements of the Open Meeting Law and the consequences for violating it. I further understand that the materials I have received may be revised or updated from time to time, and that I have a continuing obligation to implement any changes in the Open Meeting Law during my term of office.

Hermiitta Davis
(Name)

Cambridge City Council
(Name of Public Body)

10/3/11
(Date)

Pursuant to G.L. c. 30A, § 20(g), an executed copy of this certificate shall be retained, according to the relevant records retention schedule, by the appointing authority, city or town clerk, or the executive director or other appropriate administrator of a state or regional body, or their designee.

CERTIFICATE OF RECEIPT OF OPEN MEETING LAW MATERIALS

Marjorie Decker who qualified for the office of
(Name)

Gay Quimil on 10/3/11 certify pursuant
(Office) (Date)

to G.L. c. 30A, § 20(g), that I have received copies of the following Open Meeting Law materials:

- 1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;
- 2) regulations promulgated by the Attorney General under G.L. c. 30A, § 25; and
- 3) educational materials promulgated by the Attorney General under G.L. c. 30A, § 19(b), explaining the Open Meeting Law and its application.

I have read and understand the requirements of the Open Meeting Law and the consequences for violating it. I further understand that the materials I have received may be revised or updated from time to time, and that I have a continuing obligation to implement any changes in the Open Meeting Law during my term of office.

Gay Quimil
(Name)
Colomb City Council
(Name of Public Body)
10/3/11
(Date)

Pursuant to G.L. c. 30A, § 20(g), an executed copy of this certificate shall be retained, according to the relevant records retention schedule, by the appointing authority, city or town clerk, or the executive director or other appropriate administrator of a state or regional body, or their designee.

CERTIFICATE OF RECEIPT OF OPEN MEETING LAW MATERIALS

I, Craig Kelley, who qualified for the office of
(Name)
City Council, on 10/3/11, certify pursuant
(Office) (Date)

to G.L. c. 30A, § 20(g), that I have received copies of the following Open Meeting Law materials:

- 1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;
- 2) regulations promulgated by the Attorney General under G.L. c. 30A, § 25; and
- 3) educational materials promulgated by the Attorney General under G.L. c. 30A, § 19(b), explaining the Open Meeting Law and its application.

I have read and understand the requirements of the Open Meeting Law and the consequences for violating it. I further understand that the materials I have received may be revised or updated from time to time, and that I have a continuing obligation to implement any changes in the Open Meeting Law during my term of office.

Craig A. Kelley
(Name)

Cambridge City Council
(Name of Public Body)

10/3/11
(Date)

Pursuant to G.L. c. 30A, § 20(g), an executed copy of this certificate shall be retained, according to the relevant records retention schedule, by the appointing authority, city or town clerk, or the executive director or other appropriate administrator of a state or regional body, or their designee.

CERTIFICATE OF RECEIPT OF OPEN MEETING LAW MATERIALS

I, David P. Maker who qualified for the office of
(Name)
City Council on 10/3/11, certify pursuant
(Office) (Date)

to G.L. c. 30A, § 20(g), that I have received copies of the following Open Meeting Law materials:

- 1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;
- 2) regulations promulgated by the Attorney General under G.L. c. 30A, § 25; and
- 3) educational materials promulgated by the Attorney General under G.L. c. 30A, § 19(b), explaining the Open Meeting Law and its application.

I have read and understand the requirements of the Open Meeting Law and the consequences for violating it. I further understand that the materials I have received may be revised or updated from time to time, and that I have a continuing obligation to implement any changes in the Open Meeting Law during my term of office.

David P. Maker
(Name)
Cambridge City Council
(Name of Public Body)
10/3/11
(Date)

Pursuant to G.L. c. 30A, § 20(g), an executed copy of this certificate shall be retained, according to the relevant records retention schedule, by the appointing authority, city or town clerk, or the executive director or other appropriate administrator of a state or regional body, or their designee.

CERTIFICATE OF RECEIPT OF OPEN MEETING LAW MATERIALS

I, Denneth E. Reeves, who qualified for the office of
(Name)
City Council, on 10/13/11, certify pursuant
(Office) (Date)

to G.L. c. 30A, § 20(g), that I have received copies of the following Open Meeting Law materials:

- 1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;
- 2) regulations promulgated by the Attorney General under G.L. c. 30A, § 25; and
- 3) educational materials promulgated by the Attorney General under G.L. c. 30A, § 19(b), explaining the Open Meeting Law and its application.

I have read and understand the requirements of the Open Meeting Law and the consequences for violating it. I further understand that the materials I have received may be revised or updated from time to time, and that I have a continuing obligation to implement any changes in the Open Meeting Law during my term of office.

Denneth E. Reeves
(Name)
Camb City Council
(Name of Public Body)
10/13/11
(Date)

Pursuant to G.L. c. 30A, § 20(g), an executed copy of this certificate shall be retained, according to the relevant records retention schedule, by the appointing authority, city or town clerk, or the executive director or other appropriate administrator of a state or regional body, or their designee.

CERTIFICATE OF RECEIPT OF OPEN MEETING LAW MATERIALS

I, Denise Simms who qualified for the office of
(Name)
City Council on 10/3/11 certify pursuant
(Office) (Date)

to G.L. c. 30A, § 20(g), that I have received copies of the following Open Meeting Law materials:

- 1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;
- 2) regulations promulgated by the Attorney General under G.L. c. 30A, § 25; and
- 3) educational materials promulgated by the Attorney General under G.L. c. 30A, § 19(b), explaining the Open Meeting Law and its application.

I have read and understand the requirements of the Open Meeting Law and the consequences for violating it. I further understand that the materials I have received may be revised or updated from time to time, and that I have a continuing obligation to implement any changes in the Open Meeting Law during my term of office.

E. Jeanne Simms
(Name)
Cambridge City Council
(Name of Public Body)
10/3/11
(Date)

Pursuant to G.L. c. 30A, § 20(g), an executed copy of this certificate shall be retained, according to the relevant records retention schedule, by the appointing authority, city or town clerk, or the executive director or other appropriate administrator of a state or regional body, or their designee.

CERTIFICATE OF RECEIPT OF OPEN MEETING LAW MATERIALS

I, Sam Seidel, who qualified for the office of
(Name)
City Council, on 10/3/11 certify pursuant
(Office) (Date)

to G.L. c. 30A, § 20(g), that I have received copies of the following Open Meeting Law materials:

- 1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;
- 2) regulations promulgated by the Attorney General under G.L. c. 30A, § 25; and
- 3) educational materials promulgated by the Attorney General under G.L. c. 30A, § 19(b), explaining the Open Meeting Law and its application.

I have read and understand the requirements of the Open Meeting Law and the consequences for violating it. I further understand that the materials I have received may be revised or updated from time to time, and that I have a continuing obligation to implement any changes in the Open Meeting Law during my term of office.

[Signature]
(Name)
Cambridge City Council
(Name of Public Body)
10/3/11
(Date)

Pursuant to G.L. c. 30A, § 20(g), an executed copy of this certificate shall be retained, according to the relevant records retention schedule, by the appointing authority, city or town clerk, or the executive director or other appropriate administrator of a state or regional body, or their designee.

CERTIFICATE OF RECEIPT OF OPEN MEETING LAW MATERIALS

Timothy J. Tronzo
(Name) who is qualified for the office of
City Council
(Office) on 10/3/11
(Date) certify pursuant

to G.L. c. 30A, § 20(g), that I have received copies of the following Open Meeting Law materials:

- 1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;
- 2) regulations promulgated by the Attorney General under G.L. c. 30A, § 25; and
- 3) educational materials promulgated by the Attorney General under G.L. c. 30A, § 19(b), explaining the Open Meeting Law and its application.

I have read and understand the requirements of the Open Meeting Law and the consequences for violating it. I further understand that the materials I have received may be revised or updated from time to time, and that I have a continuing obligation to implement any changes in the Open Meeting Law during my term of office.

Timothy J. Tronzo
(Name)
Camb. City Council
(Name of Public Body)
10/3/11
(Date)

Pursuant to G.L. c. 30A, § 20(g), an executed copy of this certificate shall be retained, according to the relevant records retention schedule, by the appointing authority, city or town clerk, or the executive director or other appropriate administrator of a state or regional body, or their designee.

Exhibit C

10/25/10 - Copy sent to
the Mayor + All
Councilors. nA



CITY OF CAMBRIDGE • OFFICE OF THE CITY COUNCIL

October 25, 2010

Hello,

On Thursday, we attended an Open Meeting Law Training Session during which time important statutory changes to the Open Meeting Law, that took effect in July, were discussed. We have highlighted the most significant points of which we believe you should be made aware.

Sandra, Margaret & Donna

THE COMMONWEALTH OF MASSACHUSETTS
OPEN MEETING LAW, G.L. c. 30A, §§ 18-25

* * *

Chapter 28 of the Acts of 2009, sections 17–20, repealed the existing state Open Meeting Law, G.L. c. 30A, §§ 11A, 11A-1/2, county Open Meeting Law, G.L. c. 34, §9F, 9G, and municipal Open Meeting Law, G.L. c. 39, §§ 23A, 23B, and 23C, and replaced them with a single Open Meeting Law covering all public bodies, G.L. c. 30A, §§ 18-25, enforced by the Attorney General.

* * *

SECTION 18: [DEFINITIONS]

As used in this section and sections 19 to 25, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Deliberation”, 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; provided, however, that “deliberation” shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

“Emergency”, a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

“Executive session”, any part of a meeting of a public body closed to the public for deliberation of certain matters.

“Intentional violation”, an act or omission by a public body or a member thereof, in knowing by violating the open meeting law.

“Meeting”, a deliberation by a public body with respect to any matter within the body’s jurisdiction; provided, however, “meeting” shall not include:

(a) an on-site inspection of a project or program, so long as the members do not deliberate;

(b) attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;

(c) attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate;

(d) a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it; or

(e) a session of a town meeting convened under section 10 of chapter 39 which would include the attendance by a quorum of a public body at any such session.

“Minutes”, the written report of a meeting created by a public body required by subsection (a) of section 23 and section 5A of chapter 66.

“Open meeting law”, sections 18 to 25, inclusive.

“Post notice”, to display conspicuously the written announcement of a meeting either in hard copy or electronic format.

“Preliminary screening”, the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

“Public body”, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that “public body” shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or

bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

"Quorum", a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

SECTION 19. [DIVISION OF OPEN GOVERNMENT AND ADVISORY COMMISSION]

(a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor.

(b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in:

- (1) the general background of the legal requirements for the open meeting law;
- (2) applicability of sections 18 to 25, inclusive, to governmental bodies;
- (3) the role of the attorney general in enforcing the open meeting law; and
- (4) penalties and other consequences for failure to comply with this chapter.

(c) There shall be an open meeting law advisory commission. The commission shall consist of 5 members, 2 of whom shall be the chairmen of the joint committee on state administration and regulatory oversight; 1 of whom shall be the president of the Massachusetts Municipal Association or his designee; 1 of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designee; and 1 of whom shall be the attorney general or his designee.

The commission shall review issues relative to the open meeting law and shall submit to the attorney general recommendations for changes to the regulations, trainings, and educational initiatives relative to the open meeting law as it deems necessary and appropriate.

(d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. 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 an open meeting law violation by the attorney general;
- (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.

SECTION 20. [NOTICE, REMOTE PARTICIPATION, PUBLIC PARTICIPATION, CERTIFICATION]

(a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be

printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or town within such district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general by posting on a website in accordance with procedures established for this purpose.

The attorney general shall have the authority to prescribe or approve alternative methods of notice where the attorney general determines such alternative will afford more effective notice to the public.

(d) The attorney general may by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

(e) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the chair shall inform other attendees of any such recordings.

(f) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(g) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain such certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

SECTION 21. [EXECUTIVE SESSIONS]

(a) A public body may meet in executive session only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

- i. to be present at such executive session during deliberations which involve that individual;
- ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- iii. to speak on his own behalf; and

iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;

5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;

7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;

8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;

9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:

(i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and

(ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or

10. to discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

(b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:

1. the body has first convened in an open session pursuant to section 21;

2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;

3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;

4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and

5. accurate records of the executive session shall be maintained pursuant to section 23.

SECTION 22. [MINUTES, RECORDS]

(a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.

(b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.

(c) Minutes 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.

(d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.

(e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.

(f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

When the purpose for which a valid executive session was held 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 said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

(g)(1) The public body, or its chair or designee, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure. Such determination shall be announced at the body's next meeting and such announcement shall be included in the minutes of that meeting.

(2) Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body's next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

SECTION 23. [COMPLAINTS, REMEDIES]

(a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.

(b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.

(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. The attorney general may, and before imposing any

civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to:

- (1) compel immediate and future compliance with the open meeting law;
- (2) compel attendance at a training session authorized by the attorney general;
- (3) nullify in whole or in part any action taken at the meeting;
- (4) impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation;
- (5) reinstate an employee without loss of compensation, seniority, tenure or other benefits;
- (6) compel that minutes, records or other materials be made public; or
- (7) prescribe other appropriate action.

(d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.

(e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance.

(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.

Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets.

In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (b).

In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under this subsection, the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by the open meeting law; provided, however, that no civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law.

(g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel.

(h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

SECTION 24. [INVESTIGATIONS, HEARINGS]

(a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an investigation, any person, public body or any other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the

person, public body or any other state, regional, county, municipal or other governmental official or entity being investigated does not voluntarily provide relevant information to the attorney general within 30 days of receiving notice of the investigation, the attorney general may: (1) take testimony under oath concerning such alleged violation of the open meeting law; (2) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law; and (3) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.

(b) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least 10 days prior to the date of such taking of testimony or examination.

(c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (2) delivering a duly-executed copy to the principal place of business in the commonwealth of the person to be served; or (3) mailing by registered or certified mail a duly-executed copy addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(d) Each such notice shall: (1) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (2) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (3) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (4) prescribe a return date within which the documentary material is to be produced; and (5) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(e) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.

(f) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same; provided, however, that such material or information may be disclosed by the attorney general in court pleadings or other papers filed in court.

(g) At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

SECTION 25. [REGULATIONS, LETTER RULINGS, ADVISORY OPINIONS]

(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.

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[Home](#) > [Government](#) > [The Open Meeting Law](#) >

940 CMR 29.00: Open Meetings

[29.01 Purpose, Scope and Other General Provisions](#)

[29.02 Definitions](#)

[29.03 Notice Posting Requirements](#)

[29.04 Certification](#)

[29.05 Complaints](#)

[29.06 Investigation](#)

[29.07 Resolution](#)

[29.08 Advisory Opinions](#)

[29.09 Other Enforcement Actions](#)

SEE ALSO:

Open Meeting Law Guide

http://www.mass.gov/Cago/docs/Government/OML_Guide_07012010.pdf

29.01: Purpose, Scope and Other General Provisions

(1) **Authority.** The Attorney General promulgates 940 CMR 29.00, relating to the Open Meeting Law, pursuant to M.G.L. c. 30A, § 25 (a) and (b).

(2) **Purpose.** The purpose of 940 CMR 29.00 is to interpret, enforce and effectuate the purposes of the Open Meeting Law, M.G.L. c. 30A §§ 18 through 25.

(3) **Severability.** If any provision of 940 CMR 29.00 or the application of such provision to any person, public body, or circumstances shall be held invalid, the validity of the remainder of 940 CMR 29.00 and the applicability of such provision to other persons, public bodies, or circumstances shall not be affected thereby

(4) **Mailing.** All complaints, notices (except meeting notices) and other materials that must be sent to another party shall be sent by one of the following means: first class mail, email, hand delivery, or by any other means at least as expeditious as first class mail.

[To Top](#)

29.02: Definitions

As used in 940 CMR 29.00, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

Commission means the Open Meeting Law Advisory Commission, as defined by G.L. c. 30A, § 19(c).

Emergency means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

Intentional Violation means an act or omission by a public body, or a member of a public body, that knowingly violates M.G.L. c. 30A, §§ 18 through 25. Conduct in violation of M.G.L. c. 30A, §§ 18 through 25, shall be considered evidence of an intentional violation where the body or member has previously been informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to 940 CMR 29.07 or 940 CMR 29.08 that the conduct violates M.G.L. c. 30A, §§ 18 through 25.

Person means all individuals and entities, including governmental officials and employees. **Person** does not include public bodies.

Post notice means to place a written announcement of a meeting on a bulletin board, electronic display, website, cable television channel, newspaper or in a loose-leaf binder in a manner conspicuously visible to the public, including persons with disabilities, at all hours, in accordance with 940 CMR 29.03.

Public body has the identical meaning as set forth in M.G.L. c. 30A, § 18, that is, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body;

5. Public bodies may provide an audio recording of meeting notices, available to the public by telephone at all hours.

(3) Requirements Specific to Regional or District Public Bodies.

- (a) Notice shall be filed and posted in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.
- (b) As an alternative method of notice, a regional or district public body may post a meeting notice on the regional or district public body's website. A copy of the notice shall be filed and kept by the chair of the public body or the chair's designee.

(4) Requirements Specific to Regional School Districts.

- (a) The secretary of the regional school district committee shall be considered to be its clerk. The clerk of the regional school district shall file notice with the municipal clerk of each city and town within such district and each such municipal clerk shall post the notice in the manner prescribed for local public bodies in that city or town.
- (b) As an alternative method of notice, a regional school district committee may post a meeting notice on the regional school district's website. A copy of the notice shall be filed and kept by the secretary of the regional school district committee or the secretary's designee.

(5) Requirements Specific to County Public Bodies.

- (a) Notice shall be filed and posted in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.
- (b) As an alternative method of notice, a county public body may post a meeting on the county public body's website. A copy of the notice shall be filed and kept by the chair of the county public body or the chair's designee.

(6) Requirements Specific to State Public Bodies. Notice shall be posted on a website in accordance with procedures established by the Attorney General in consultation with the Information Technology Division of the Executive Office for Administration and Finance for the purpose of providing the public with effective notice. A copy of each notice shall also be sent by first class or electronic mail to the Secretary of State's Regulations Division. The chair of each state public body shall notify the Attorney General in writing of its Internet notice posting location and any change thereto. The public body shall consistently use the most current notice posting method on file with the Attorney General.

To Top

29.04: Certification

- (1) For local public bodies, a document including M.G.L. c. 30A, §§18 through 25; a document including 940 CMR 29.00; and educational materials prepared by the Attorney General explaining M.G.L. c. 30A, §§18 through 25, and its application, shall be delivered by the municipal clerk to each member of a public body, whether elected or appointed, upon taking the oath of office, if required, and in every case before entering into performance of the office. Within two weeks after receipt of such materials, the member shall certify, on the form prescribed by the Attorney General, receipt of such materials. The municipal clerk shall maintain the signed certification for each such person, indicating the date the person received the materials.
- (2) For regional, district, county or state public bodies, a document including M.G.L. c. 30A, §§18 through 25; a document including 940 CMR 29.00; and educational materials prepared by the Attorney General explaining M.G.L. c. 30A, §§18 through 25, and its application, shall be delivered by the appointing authority, executive director or other appropriate administrator or their designees, to each member of a public body, whether elected or appointed, upon taking the oath of office, if required, and in every case before entering into the performance of the office. Within two weeks after receipt of such materials, the member shall certify, on the form prescribed by the Attorney General, receipt of such materials. The appointing authority, executive director or other appropriate administrator, or their designees, shall maintain the signed certification for each such person, indicating the date the person received the materials.

To Top

29.05: Complaints

(1) All complaints shall be in writing, using the form approved by the Attorney General and available on the Attorney General's website. A public body need not, and the Attorney General will not, investigate or address anonymous complaints.

(2) Public bodies, or the municipal clerk in the case of a local public body, should provide any person, on request, with an Open Meeting Law complaint form. If a paper copy is unavailable, then the public body should direct the requesting party to the Attorney General's website, where an electronic copy of the form will be available for downloading and printing.

(3) For local public bodies, the complainant shall file the complaint with the chair of the public body, who shall disseminate copies of the complaint to the members of the public body. The complainant shall also file a copy of the complaint with the municipal clerk, who shall keep such filings in an orderly fashion for public review on request during regular business hours. For all other public bodies, the complainant shall file the complaint with the chair of the relevant public body, or if there is no chair, then with the public body. The complaint shall be filed within 30 days of the alleged violation of M.G.L. c. 30A, §§18 through 25, or if the alleged violation of M.G.L. c. 30A, §§18 through 25, could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered.

(4) The public body shall review timely complaints to ascertain the time, date, place and circumstances which constitute the alleged violation. If the public body needs additional information to resolve the complaint, then the chair may request it from the complainant within seven business days of receiving the complaint. The complainant shall respond within 10 business days after he or she receives the request. The public body will then have an additional 10 business days after receiving the complainant's response to review the complaint and take any remedial action pursuant to 940 CMR 29.05(5).

(5) Within 14 business days after receiving the complaint, unless an extension has been granted by the Attorney General as provided in 940 CMR 29.05(5)(a) and (b), the public body shall review the complaint's allegations; take remedial action, if appropriate; and send to the Attorney General a copy of the complaint and a description of any remedial action taken. The public body shall simultaneously notify the complainant that it has sent such materials to the Attorney General and shall provide the complainant with a copy of the description of any remedial action taken.

(a) Any remedial action taken by the public body in response to a complaint under 940 CMR 29.05(5) shall not be admissible as evidence that a violation occurred in any later administrative or judicial proceeding against the public body relating to the alleged violation.

(b) If the public body requires additional time to resolve the complaint, it may obtain an extension from the Attorney General by submitting a written request within 14 business days after receiving the complaint. The Attorney General will grant an extension if the request demonstrates good cause. Good cause will generally be found if, for example, the public body cannot meet within the 14 business day period to consider proposed remedial action. The Attorney General shall notify the complainant of any extension and the reason for it.

(6) If at least 30 days have passed after the complaint was filed with the public body, and if the complainant is unsatisfied with the public body's resolution of the complaint, the complainant may file a complaint with the Attorney General. When filing a complaint with the Attorney General, the complainant shall include a copy of the original complaint along with any other materials the complainant believes are relevant. The Attorney General may decline to investigate complaints filed with the Attorney General more than 90 days after the alleged violation of M.G.L. c. 30A, §§18 through 25, unless an extension was granted to the public body or the complainant demonstrates good cause for the delay.

(7) The Attorney General shall acknowledge receipt of all complaints and will resolve them within a reasonable period of time, generally 90 days. If additional time is necessary to resolve a particular complaint, the Attorney General will notify the complainant and the public body.

(8) If a complaint appears untimely, is not in the proper form, or is missing information, the Attorney General shall return the complaint to the complainant within 14 business days of its receipt, noting its deficiencies. The complainant shall then have 14 business days to correct the deficiencies and resubmit the complaint to the Attorney General. If the deficiencies are not corrected, no further action on the complaint will be taken by the Attorney General.

[To Top](#)

29.06: Investigation

Whenever the Attorney General has reasonable cause to believe that a violation of M.G.L. c. 30A, §§18 through 25, has occurred that has not been adequately remedied, then the Attorney General may conduct an investigation.

(1) The Attorney General shall notify the public body or person that is the subject of a complaint and an investigation of the existence of the investigation within a reasonable period of time. The Attorney General shall also notify the public body or person of the nature of the alleged violation

(2) Upon notice of the investigation, the subject of the investigation shall provide the Attorney General with all information relevant to the investigation. The subject may also submit a memorandum or other writing to the Attorney General, addressing the allegations being investigated.

If the subject of the investigation fails to voluntarily provide the necessary or relevant information within 30 days of receiving notice of the investigation, the Attorney General may issue subpoenas to obtain the information in accordance with M.G.L. c. 30A, §24, to:

- (a) Take testimony under oath;
- (b) Examine or cause to be examined any documentary material; or
- (c) Require attendance during such examination of documentary material by any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material.

Any documentary material or other information produced by any person pursuant to 940 CMR 29.06 shall not, unless otherwise ordered by a court of the Commonwealth for good cause shown, be disclosed without that person's consent by the Attorney General to any person other than the Attorney General's authorized agent or representative. However, the Attorney General may disclose the material in court pleadings or other papers filed in court, or, to the extent necessary, in an administrative hearing or other action taken to conduct or resolve the investigation pursuant to 940 CMR 29.00.

To Top

29.07: Resolution

(1) No Violation. If the Attorney General determines, after investigation, that the M.G.L. c. 30A, §§18 through 25, has not been violated, the Attorney General shall terminate the investigation and notify, in writing, the subject of the investigation and any complainant

(2) Violation Resolved Without Hearing. If the Attorney General determines after investigation that M.G.L. c. 30A, §§18 through 25, has been violated, the Attorney General may resolve the investigation without a hearing. The Attorney General shall determine whether the relevant public body, one or more of its members, or both, were responsible, and whether the violation was intentional or unintentional. The Attorney General will notify, in writing, any complainant of the investigation's resolution. Upon finding a violation of M.G.L. c. 30A, §§18 through 25, the Attorney General may take one of the following actions:

- (a) Informal action. The Attorney General may resolve the investigation with a telephone call, letter or other appropriate form of communication that explains the violation and clarifies the subject's obligations under M.G.L. c. 30A, §§18 through 25, providing the subject with a reasonable period of time to comply with any outstanding obligations.
- (b) Formal order. The Attorney General may resolve the investigation with a formal order. The order may require:
 1. Immediate and future compliance with M.G.L. c. 30A, §§18 through 25;
 2. Attendance at a training session authorized by the Attorney General;
 3. That minutes, records or other materials be made public; or
 4. Other appropriate action.

Orders shall be available on the Attorney General's website.

(3) Violation Resolved After Hearing. The Attorney General may conduct a hearing where the Attorney General deems appropriate. The hearing shall be conducted pursuant to 801 CMR 1.00, et seq., as modified by any regulations issued by the Attorney General. At the conclusion of the hearing, the Attorney General shall determine whether a violation of M.G.L. c. 30A, §§18 through 25, occurred, whether the public body, one or more of its members, or both, were responsible, and whether the violation was intentional or unintentional. The Attorney General will notify, in writing, any complainant of the investigation's resolution. Upon a finding that a violation occurred, the Attorney General may order:

- (a) Immediate and future compliance with M.G.L. c. 30A, §§18 through 25;
- (b) Attendance at a training session authorized by the Attorney General;
- (c) Nullification of any action taken at the relevant meeting, in whole or in part;

- (d) Imposition of a fine upon the public body of not more than \$1,000 for each intentional violation;
- (e) That an employee be reinstated without loss of compensation, seniority, tenure or other benefits;
- (f) That minutes, records or other materials be made public; or
- (g) Other appropriate action.

Orders issued following a hearing shall be available on the Attorney General's website.

(4) A public body or any member of a body aggrieved by any order issued by the Attorney General under 940 CMR 29.07 may obtain judicial review of the order through an action in Superior Court seeking relief in the nature of certiorari. Any such action must be commenced in Superior Court within 21 days of receipt of the order.

[To Top](#)

29.08: Advisory Opinions

The Attorney General may issue advisory opinions on request or at his or her own initiative to provide guidance to public bodies and the public on changes to M.G.L. c. 30A, §§18 through 25, court decisions interpreting M.G.L. c. 30A, §§18 through 25, or other developments concerning M.G.L. c. 30A, §§18 through 25.

- (1) The Attorney General shall ordinarily make a draft advisory opinion available for comment on the Attorney General's website at least 60 days prior to the planned issuance of the opinion. Notice of the posting shall be provided to the Commission.
- (2) Comments on the draft advisory opinion shall be submitted, in writing, to the Attorney General at least 30 days prior to the planned issuance of the opinion.
- (3) Action taken by a public body in good faith compliance with an advisory opinion, provided that the circumstances are not materially different, shall not constitute an intentional violation of the M.G.L. c. 30A, §§18 through 25.

[To Top](#)

29.09: Other Enforcement Actions

Nothing in 940 CMR 29.06 or 29.07 shall limit the Attorney General's authority to file a civil action to enforce M.G.L. c. 30A, §§18 through 25 pursuant to M.G.L. c. 30A, §23(f).

[To Top](#)



The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108

OPEN MEETING LAW COMPLAINT FORM

Instructions for completing the Open Meeting Law Complaint Form

The Office of the Attorney General's Division of Open Government is responsible for interpreting and enforcing the Open Meeting Law. Pursuant to G.L. c. 30A, §23, the Open Meeting Law requires that, prior to filing a complaint with the Attorney General, complaints must first be filed with the public body that is alleged to have committed the violation. The complaint must be filed with the public body within 30 days of the alleged violation, or if the alleged Open Meeting Law violation could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered. The complaint must set forth the circumstances which constitute the alleged violation, giving the public body an opportunity to remedy the alleged violation.

Please complete the entire form, providing as much information as possible, to assist the public body in responding to your complaint. You may attach additional materials to your complaint if necessary. The public body may request additional information if necessary. The Division of Open Government will not, and public bodies are not required to, investigate anonymous complaints.

Complaints alleging a violation of the Open Meeting Law by a local public body must be filed with the clerk of the city or town where the alleged violation occurred. Complaints alleging a violation by a county, regional or state public body must be filed with the chair of the public body.

If you are not satisfied with the action taken by the public body in response to your complaint, you may file a copy of your complaint with the Attorney General 30 days after filing your complaint with the public body. The complaint must include this form and any documents relevant to the alleged violation. A complaint may be filed either by mail or by hand with the:

Office of the Attorney General
Division of Open Government
One Ashburton Place
Boston, MA 02108

The Attorney General may decline to investigate a complaint that is filed with the Attorney General more than 90 days after the alleged OML violation, unless an extension was granted to the public body or the complainant demonstrates good cause for the delay.



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: _____ Last Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Ext. _____

Email: _____

Organization or Media Affiliation (if any): _____

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual Organization Media

Public Body that is the subject of this complaint:

City/Town County Regional/District State

Name of Public Body (including city/
town, county or region, if applicable): _____

Specific person(s), if any, you allege
committed the violation: _____

Date of alleged violation: _____

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

Review, sign, and submit your complaint

Read this important notice and sign your complaint.

Under most circumstances your complaint will be considered a public record and be available to any member of the public upon request.

I understand that when I submit this complaint the Attorney General's Office cannot give me legal advice and cannot act as my personal lawyer.

I certify that the information contained on this form is true to the best of my knowledge.

Signed: _____

Date: _____

