

THOMAS J. STOHLMAN JR.



2012 DEC 31 AM 11 39

OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

December 28, 2012

Dear Ms. Lopez,

Here is a hard copy of my letter to Ms. Amy Nable of the MA Attorney General's office in response to your letter regarding my Open Meeting Law Complaint. Please forward a copy to the City Council as appropriate. I will be sending a PDF by email too.

Thanks,



Tom Stohlman

2012 DEC 31 AM 11 39

December 28, 2012

OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

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

Re: My Open Meeting Law complaint against the Cambridge City Council dated
December 4, 2012

Dear Ms. Nable,

I have received the Cambridge City Clerk's response on behalf of the Cambridge City Council to your office regarding my Open Meeting Law (OML) Complaint dated December 4, 2012. In short, the Cambridge City Council disagrees that it violated the Open Meeting Law. I am not satisfied with their response and would like your office to ascertain whether an Open Meeting law violation has occurred.

Facts

There is no dispute over the facts in my complaint, only the conclusions. In the complaint (City Council Response Exhibit A, attached) I state:

"A Councilor or group of Councilors crafts a policy order, complete with arguments and reasons for the order. The order is then passed among the Council by the City Clerk. Other councilors may sign on to the order as co-sponsors. The order is then placed on the agenda prior to the meeting, complete with the list of the Councilors who have sponsored it."

Under the heading "FACTS", on page 3, paragraphs 2&3, the City Council Response states as fact, two opinions based on the facts:

- 1) A listing of Councilors who sponsor a policy Order is not an accurate indicator of how they will vote on the Order.
- 2) There was no deliberation on Policy Order O-6 before the December 3, 2012.

I disagree with both opinions. I will follow the City Council Response's "DISCUSSION" outline (page 4) in my argument.

Discussion

From the City Council response (in **BOLD**):

"1. The City Clerk's practice of contacting City Councilors about policy orders does not constitute serial deliberation in violation of the Open Meeting Law."

I cannot find a material difference between Councilors exchanging non-procedural emails with each other on a matter before a meeting and having the City Clerk act as an agent in the exchange of such emails/correspondence between Councilors.

"1.a. A quorum of Councilors did not communicate with each other on public business within its jurisdiction."

The moment that a quorum of the Councilors see each others' reasoning and their willingness to sponsor an order, they are deliberating (City Council Response Exhibit E, attached). The fact that it is being done by an agent, the City Clerk, or anyone else doesn't make it legal.

"1.b. The distribution of the meeting agenda with Policy Order O-6 did not express the opinion of Councilors on the Policy Order."

I have now reviewed hundreds of City Council orders over the last two years, specifically the hundreds of orders which have a quorum of the Council as sponsors. I may have missed one, but I could not find an order where the order did not pass if sponsored by a quorum. There are also numerous examples in which orders sponsored by less-than-a-quorum are tabled, withdrawn or fail.

Indeed, as the City Council Response demonstrates, although there are very rare examples, it is hard to find an order among the hundreds offered by a quorum of the Council where there is any variance in the correlation between individual councilor sponsorship and support. In fact, a review of such orders shows that even though lack-of-sponsorship sometimes means that a Councilor has just missed the deadline to sign on, this lack-of-sponsorship has a strong correlation to opposition.

For example, Order O-10 at the September 10, 2012 meeting is used as support for the Council's argument. The order was sponsored by all 9 Councilors, but only 6 voted in the affirmative, no other votes were recorded. Since there was no roll call vote, it is impossible to tell if the remaining three votes were against or merely not expressed.

Of the 23 other orders that meeting which contained a quorum of the Council as sponsors and did record a vote at that 9/10/2012 meeting, all 23 follow an exact correlation between sponsorship-support and lack-of-sponsorship-opposition in the recorded votes.

The Council's response states that sponsorship only means that a Councilor is supportive of the Order being placed on the agenda. I think there is ample evidence that there is a strong correlation between sponsorship and the Councilor's vote. Indeed, it is hard for me to understand any other reason for sponsorship of an order since any individual Councilor (without the consent of any other Councilor) may simply ask that an order be placed on the agenda for consideration.

Finally, I agree that strictly procedural materials are exempt from the prohibition of correspondence between Councilors. Indeed, a simple statement of the order in question would not seem to violate the OML. But the order in question (City Council Response Exhibit E, attached) follows an argumentative form of reasoning and conclusions. This seems like deliberation to me. That alone would appear to violate the OML. The statement of reasons to support an affirmative vote and inclusion of a desire to sponsor, I would argue, means an issue within the jurisdiction of the City Council was discussed and decided outside of a public meeting.

"2. The Supplemental Complaint fails because a quorum of the Government Operations and Rules Committee did not craft Policy Order O-6."

I agree. The issue raised in my December 10, 2012 "supplemental complaint" is resolved to my satisfaction. This "supplemental complaint" was based on information from the City Council Rules as adopted on 1/2/2012, and the City Council Website listing of the membership of the City Council's Government Operations and Rules Committee, which were in error. I thank the Council and the City Clerk for including it in their response at my request.

"3. Even if the practices complained of were violations of the Open Meeting Law, the Councilors' adoption of Policy Order O-6 should stand because the issue was fully heard and debated at the public meeting on December 3."

I believe the City Council violated the Open Meeting Law prior to their December 3, 2012 meeting and the vote to appoint a new City Manager. Even so, their response presents ample evidence that this violation was unintentional and not specific to the City Manager vote. Indeed, it appears the procedure which resulted in my complaint has been in place for many years.

I also believe the Council and the City Clerk's office tried to craft a procedure for drafting policy orders without running afoul of the OML. The Council and the City Clerk's office have also tried to publicize this process by making its conclusion available to the public via the Internet prior to the meeting.

The problem is that I still do not feel this procedure is either legal or an adequate substitute for actual public deliberation at a duly called public meeting.

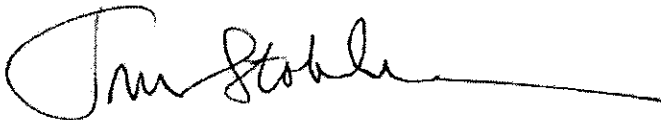
I originally asked for a revote of Policy Order O-10 of the December 3, 2012 meeting because of my concern for the validity of the Order. I also thought it would be a simple and effective way of the City Council acknowledging a violation had occurred.

The City Council Response states that the Courts have declared that legal deliberative action subsequent to illegal OML violations "cure" the violation. That makes sense to me, but it is a poor cure if it becomes the rationalization for continuing with procedures that violate the OML.

If the Attorney General's Office agrees with my complaint, I am open to remedies other than a re-vote or fines for the violation (and then, many violations in the past). I do not believe a re-vote will change the results of the original order and as a Cambridge taxpayer, I have no interest in my money being used for anything but a symbolic fine.

I would still ask that the Cambridge City Council acknowledge their procedure is a violation. I would also ask that they consult with your office on how to improve their procedure and change it to avoid the violation in the future.

Thank You,

A handwritten signature in black ink, appearing to read "Tom Stohlman", with a long horizontal flourish extending to the right.

Tom Stohlman
19 Channing Street
Cambridge, MA 02138
617-547-5246
tstohlman@alum.mit.edu

cc: Cambridge City Council, Cambridge City Clerk



OPEN MEETING LAW COMPLAINT FORM MAYOR

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

RECEIVED

DEC 04 2012

Please note that all fields are required unless otherwise noted. Per _____

10:30 AM

Your Contact Information:

First Name: Tom Last Name: Stohlman

Address: 19 Channing Street

City: Cambridge State: MA Zip Code: 02138

Phone Number: +1 (617) 547-5246 Ext. _____

Email: tstohlman@alum.mit.edu

Organization or Media Affiliation (if any): None

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): Cambridge City Council

Specific person(s), if any, you allege committed the violation: Cambridge City Council

Date of alleged violation: 11/29/2012

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.

I do not believe the Cambridge City Council intentionally violated the OML. They were following a well-established procedure which has been practiced for many years.

A Councillor or group of Councillors crafts a policy order, complete with arguments and reasons for the order. This order is then passed among the Council by the City Clerk. Other councillors may sign on to the order as co-sponsors. The order is then placed on the agenda prior to the meeting, complete with the list of Councillors who have sponsored it.

On November 29, 2012, this procedure was followed when four Councillors crafted an order to appoint a new City Manager (Policy Order O-6). They included in the order their reasons for supporting their preferred candidate. The order was then given to the City Clerk, who forwarded it to all of the five remaining Councillors. These Councillors could then inform the City Clerk of their desire to co-sponsor the order. The order, complete with the names of six councillors who chose to co-sponsor, then appeared on the City Council agenda for the December 3, 2012 meeting.

This procedure amounts to a serial deliberation under the Open Meeting Law and should not be allowed. The appointment of a new City Manager was, effectively, discussed and decided before being affirmed at the actual meeting by an 8-1 vote.

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.

Acknowledge that the procedure described above is a violation of the Open Meeting Law and change the practice to avoid serial deliberation in the future.

Re-vote a properly submitted policy order to appoint a new City Manager.

Review, sign, and submit your complaint

Read this important notice and sign your complaint.

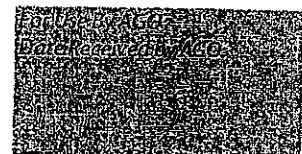
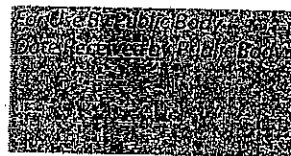
Under most circumstances your complaint will be considered a public record and be available to any member of the public upon request.

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: Cherry Mottwile

Date: 4 DEC 2012



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O-6
 IN CITY COUNCIL

December 3, 2012

COUNCILLOR MAHER
 COUNCILLOR CHEUNG
 COUNCILLOR REEVES
 COUNCILLOR TOOMEY
 MAYOR DAVIS
 COUNCILLOR DECKER
 VICE MAYOR SIMMONS

WHEREAS: City Manager Robert W. Healy has notified the City Council of his intent to retire as of June 30, 2013 after 32 years in that position; and

WHEREAS: The City of Cambridge's current executive leadership team led by Mr. Healy and Mr. Rossi has one of the longest tenures of any municipal leadership team not only in the Commonwealth but in the nation; and

WHEREAS: The City Council has committed to conducting an in depth "community visioning and engagement" process at this important juncture and prior to commencing a formal executive search; and

WHEREAS: The City Council would like to ensure that during these fiscally challenging and uncertain times Cambridge will continue to thrive and provide new opportunities; and

WHEREAS: The City Council would like to make this leadership transition as seamless as possible for residents, the business community and city staff; and

WHEREAS: Planning for the 2014 fiscal budget is fast approaching with initial meetings scheduled to begin on December 5, 2012; and

WHEREAS: The City will benefit from proven leadership, talent and experience as the City is currently in the process of a number of major initiatives including planning studies in Central and Kendall Squares and an aggressive capital improvement plan to rebuild several schools; now therefore be it

ORDERED: That the City Council hereby appoint Richard C. Rossi as City Manager of the City of Cambridge, Massachusetts beginning on July 1, 2013 for a period of three years ending on June 30, 2016; and be it further

ORDERED: That City Manager Robert W. Healy work collaboratively with Mr. Rossi in the development of the Fiscal Year 2014 budget, a budget that Mr. Rossi will ultimately be charged with administering; and be it further

ORDERED: That the City Council continue its work to develop a comprehensive "community visioning and engagement" process; and be it further

ORDERED: That a contract which sets forth, inter alia, the provisions specified above, shall be provided by the Chair of the Government Operations and Rules Committee to the City Council for approval no later than January 7, 2013.

In City Council December 3, 2012
Adopted by a yeas and nays vote:-
Yeas 8; Nays 1; Absent 0; Present 0.
Attest:- Donna P. Lopez, Interim City Clerk

A true copy;

ATTEST:-

Donna P. Lopez, Interim City Clerk

View Roll Call Votes from December 3, 2012

COUNCILLOR KELLEY VOTED IN THE NEGATIVE ON THIS MATTER.

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