



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL  
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January 27, 2025

OML 2025 – 3

**VIA EMAIL ONLY**

Elisabeth C. Goodman, Esq.  
Cain Hibbard & Myers PC.  
EGoodman@cainhibbard.com

**RE: Open Meeting Law Complaint**

Dear Attorney Goodman:

This office received a complaint from Christian Tobin, Fire Chief of the Dalton Fire District, on September 7, 2024,<sup>1</sup> alleging that the Dalton Fire District Board of Water Commissioners (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Board on or about August 1, and you forwarded a response from the Board by email on August 25.<sup>2</sup> The complaint raises several allegations. With respect to a July 30 Board meeting, the complaint alleges that the Board improperly deliberated prior to the meeting, that the notice for the meeting included an insufficiently specific topic, and that the meeting was held at an inaccessible location. The complaint additionally alleges that Melanie Roucoulet, who serves as Treasurer/Clerk, destroys audio recordings of Board meetings.

Following our review, we find that the Board violated the Open Meeting Law by improperly deliberating prior to its July 30 meeting and by holding its July 30 meeting at a location that was inaccessible to members of the public with disabilities. We do not find that the Board violated the Open Meeting Law in the other ways alleged. In reaching this determination, we reviewed the Open Meeting Law complaint, the Board’s response, the request for further review, and the notice for and minutes of the Board’s July 30 meeting. We also communicated with legal counsel for the Board via email.<sup>3</sup>

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<sup>1</sup> All dates are in 2024, unless otherwise stated.

<sup>2</sup> We remind the Board of its obligation to respond to an Open Meeting Law complaint within 14 business days of receipt of the complaint. G.L. c. 30A, § 23(b); 940 CMR 29.05(5). We note, however, that if a public body needs additional time to respond to a complaint, it may request an extension of time from this office, provided that the 14 business days has not yet expired. See id.

<sup>3</sup> For the sake of clarity, we refer to you in the third person.

### ***Deliberation Outside of a Properly Noticed Meeting***

The Open Meeting Law requires that all deliberations of a public body occur during a properly noticed meeting that is, unless lawfully held in executive session, open to the public. See G.L. c. 30A, § 18 (defining “meeting” as “a deliberation by a public body with respect to any matter within the body’s jurisdiction”), 20. The Law defines “deliberation” broadly as “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.” G.L. c. 30A, § 18. In general, for purposes of the Open Meeting Law, a quorum of a public body “is a simple majority of the members of the public body.” Id.

The complaint alleges that prior to its July 30 meeting the Board met with Treasurer/Clerk Melanie Roucoulet to “coordinate before the public meeting . . . .” The complaint further alleges that such discussions are a regular occurrence. In its response, the Board does not deny that it met prior to the July 30 meeting. Instead, the Board acknowledges that it has a practice of gathering in Ms. Roucoulet’s office prior to its formal meetings “to discuss . . . New Correspondence . . . and also to sign . . . Treasury and Payroll Warrants.” Finally, the Board commits to ceasing such gatherings going forward. Based on this information, we find that the Board violated the Open Meeting Law by improperly deliberating prior to its July 30 meeting.

### ***Sufficiency of Meeting Notice Topic***

The Open Meeting Law requires that, “[e]xcept in an emergency, . . . a public body shall post notice of every meeting at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays.” G.L. c. 30A, § 20(b). Meeting notices must include, among other things, a list of the topics that the chair, and any other individual authorized to create the notice, reasonably anticipates 48 hours (excluding weekends and legal holidays) in advance of the meeting will be discussed at the meeting. See G.L. c. 30A, § 20(b); OML 2022-206; OML 2020-152.<sup>4</sup> The topics for discussion must be listed on the notice with “sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting,” 940 CMR 29.03(l)(b), so that the public can make an informed decision about whether to attend the meeting to observe an anticipated discussion. See OML 2023-86; OML 2019-95; OML 2018-22; OML 2015-74.

In general, a generic notice topic, such as “General Business,” “New Business,” “Old Business,” or “Update,” without additional information, will fail to meet the level of specificity required for a meeting notice. See OML 2019-92; OML 2021-126 (finding the notice topic “Covid-19 Update” lacked sufficient specificity). In the past, when a meeting notice included as a topic a report or presentation by somebody who is not a member of the public body, such as “Superintendent’s Report” or “Administrator’s Report” or “Report from Department Heads,” we have declined to find a violation of the Open Meeting Law for lack of specificity where the chair did not anticipate the specific nature of the deliberations. Nonetheless, we encourage chairs, as a best practice, to solicit from the presenter details regarding the precise matters to be discussed

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<sup>4</sup> Open Meeting Law determinations may be found at the Attorney General’s website, [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting).

and to include such details on the meeting notice. See OML 2018-33; OML 2012-19 (“[B]est practice dictates that the Chair make reasonable efforts to ascertain what the Superintendent plans to discuss and include all matters that are reasonably anticipated in the meeting notice.”). On the other hand, if a public body chair, or other individual authorized to create the notice, actually knows in advance the specific nature of the topics to be discussed during a report, that information must be included on the meeting notice. See OML 2020-152.

The complaint alleges that the following notice topic failed to comply with the requirements of the Open Meeting Law because it lacked sufficient specificity:

Water Department Report

- Report at Meeting.

The Board has explained that the water department report was presented by the Water Superintendent, Robert Benlien. Additionally, the Board explained that Ms. Roucoulet was responsible for creating the notice for the July 30 meeting and that neither Ms. Roucoulet nor the chair of the Board, James Driscoll, knew what Mr. Benlien would discuss during the report. Because neither Chair Driscoll nor Ms. Roucoulet anticipated the nature of the topics that would be discussed under the Water Department report, we find that the notice for the July 30 meeting did not violate the Open Meeting Law. We commend the Board for its commitment going forward to inquire of Mr. Benlien what he anticipates discussing during his reports so that additional detail can be included on future meeting notices.

***Accessibility of Meetings***

The Open Meeting Law states that, unless a lawful executive session has been convened, “all meetings of a public body shall be open to the public.” G.L. c. 30A, § 20(a). Access must include the opportunity to be physically present as well as to see and hear what is being discussed by the members of the public body. See OML 2014-3; OML 2013-189; OML 2012-66. For a meeting to be truly “open to the public,” it must be held at a location that is accessible to persons with disabilities. See G.L. c. 30A, § 20(a); OML 2023-43; OML 2015-38; OML 2012-49 (meetings of public bodies must be held in locations that are compliant with the Americans with Disabilities Act (“ADA”)). This means that public bodies must hold public meetings in locations where both the building and the meeting room are accessible. See 28 C.F.R. § 35.150 (2011); Dep’t of Justice, Americans with Disabilities Act: Title II Technical Assistance Manual, at 5.1000 (1993); see also OML 2019-90. We have explained that meetings of public bodies that are held in person must be held in ADA-compliant locations, even in the absence of any particular request or known accessibility need. See, e.g., OML 2024-130 (explaining that a public body violated the Open Meeting Law when it held a meeting in a non-ADA compliant location, even though there was no evidence any person was unable to attend as a result); OML 2023-43 (same).<sup>5</sup>

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<sup>5</sup> Additional accommodations may be required in certain circumstances. Title II of the ADA requires that municipal services, including public meetings, be made accessible to people with disabilities; therefore, additional reasonable accommodations must be provided to people with disabilities upon request. 42 U.S.C. §§ 12131-12165 (1990); OML 2014-109; OML 2012-49.

We understand the complaint to allege that the Board's July 30 meeting was held in a location that was inaccessible to individuals with disabilities. The Board does not dispute this allegation, instead explaining that its "[p]ublic Meetings are held upstairs but if a resident with disabilities shows up the meeting would be moved down to the bay where our Annual meetings are held." Therefore, we find that the Board violated the Open Meeting Law by holding its July 30 meeting in a location that was inaccessible to members of the public with disabilities. See OML 2024-130; OML 2023-43.

### ***Destruction of Recordings***

Finally, the complaint alleges that Ms. Roucoulet, as Treasurer/Clerk, has violated record retention schedules by destroying audio recordings of Board meetings. The Open Meeting Law does not require that public bodies audio or video record their meetings, nor does it address retention of audio or video recordings of meetings, and therefore we find no violation of the Open Meeting Law with respect to this allegation. See OML 2020-75. Rather, the retention of recordings of meetings is governed by the Municipal Records Retention Schedule. Municipal Records Retention Schedule, § 01.080. Complaints involving municipal records retention may be resolved by contacting the Supervisor of Records within the Secretary of the Commonwealth's Office. See OML 2017-79.

For the reasons stated above, we find that the Board violated the Open Meeting Law by improperly deliberating prior to its July 30 meeting and by holding its July 30 meeting at a location that was inaccessible to members of the public with disabilities. We order the Board's immediate and future compliance with the Law and caution that similar future violations could be considered evidence of an intent to violate the Law.

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

Sincerely,



Elizabeth Carnes Flynn  
Assistant Attorney General  
Division of Open Government

cc: James Driscoll, Chair, Dalton Fire District Board of Water Commissioners  
(via email: James.Driscoll@daltonfiredistrict.org)  
Melanie Roucoulet, Treasurer/Clerk  
(via email: Melanie.Roucoulet@daltonfiredistrict.org)  
Heather Hunt, Town Clerk (via email: hhunt@dalton-ma.gov)  
Christian Tobin (via email: [REDACTED])

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