



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

MARTHA COAKLEY  
ATTORNEY GENERAL

(617) 727-2200  
www.mass.gov/ago

June 4, 2013

OML 2013 – 76

Nancy Glowa, Esq.  
City Solicitor  
City of Cambridge  
Office of the City Solicitor  
795 Massachusetts Avenue  
Cambridge, MA 02139

**RE: Open Meeting Law Complaint**

Dear Attorney Glowa:

This office received a complaint from Tom Stohlman, dated December 28, 2012, alleging that the Cambridge City Council (the "Council") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Council on or about December 4, 2012, and the Council responded to the original complaint by letter dated December 17, 2012.<sup>1</sup> In his complaint, Mr. Stohlman alleges that on November 29, 2012, the Council engaged in a deliberation outside of a properly posted meeting when four councilors crafted an order to appoint a new City Manager, which was then emailed to the remaining five councilors for co-sponsorship prior to the next Council meeting.

We reviewed the December 4, 2012 complaint; the Council's December 17, 2012 response; the December 28, 2012 complaint filed with our office requesting further review; and your February 8, 2013 letter to our office. We also reviewed the notice for and minutes from the Council's December 3, 2012 meeting, and viewed portions of an audiovisual recording of that meeting. Finally, we spoke by telephone with Cambridge City Clerk Donna Lopez.

Following our review, we find that the Council violated the Open Meeting Law. However, we note that the primary violation concerns a practice addressed for the first time in this determination and in a companion determination, also issued today. See OML 2013-75. Thus, we do not ascribe any wrongful intent to the violation and we offer a detailed discussion as guidance.

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<sup>1</sup> On December 10, 2012, the complainant submitted a letter to the Council supplementing his initial complaint with questions concerning a committee of the Council. In its December 17, 2012 response to the complaint, the Council provided clarification on the issues raised in that letter, and the complainant found the response satisfactory. We therefore do not review those allegations here.



## FACTS

Based upon our review of the material listed above, the facts are as follows. The Council is comprised of nine members, thus five members constitute a quorum. On November 29, 2012, Councilor David Maher sent an email to Donna Lopez, City Clerk, asking her to “share the attached order with [his] colleagues and ask if they would like to co-sponsor.” An order (the “Order”) regarding the appointment of Richard Rossi as City Manager for a three year term was attached to the email, and noted that it was co-sponsored by Councilors Maher, Cheung, Reeves and Toomey. Ms. Lopez then sent an email to the remaining five councilors, with a copy to Councilor Maher and Paula Crane, an assistant, stating, “Dear Mayor Davis, Vice Mayor Simmons, Councilors Decker, Kelley and vanBeuzekom, Councilor Maher has requested that I share the attached order with my colleagues and ask if they would like to co-sponsor...Please respond to me or Paula if you wish to be a co-sponsor.” Mayor Davis and Councilor Decker each responded by telephone to Ms. Lopez and asked to be added as co-sponsor. Vice Mayor Simmons also called Ms. Lopez to be added as a co-sponsor, but she had already missed the deadline to respond. Ms. Lopez, who drafted the meeting notice alone, did not share the list of final co-sponsors before it was posted on the City website.

On December 3, 2012, the Council convened in open session. The meeting notice, posted on the designated City website on November 30, 2012 (a day late due to a power outage), contained a link to a “Policy Order and Resolution List.” Under that header, the following topic for discussion was listed: “6. 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.”<sup>2</sup> Although not reflected in the meeting minutes, the Council began its discussion about the Order, which lasted about an hour, with an explanation of how councilors seek co-sponsors for their orders and then, specifically, the history of how this Order came before the Council. Generally, councilors seeking to add co-sponsors to an order will reach out to Ms. Lopez by telephone or email to ask her to send out a request to the remaining councilors. Councilors must respond to such requests by 3 P.M. on the Thursday before the regularly scheduled Council meetings, which are held on Mondays. According to Ms. Lopez, the Council has used this process “for years.” Following this discussion, the Council approved the Order by roll call vote.

The December 3, 2012 meeting minutes note the outcome of the discussion regarding each item on the agenda but, apart from the public comment period, the minutes do not include any summary of the discussion that occurred.

## DISCUSSION

The Open Meeting Law requires that all meetings of a public body be properly noticed and open to members of the public, unless an executive session is convened. See G.L. c. 30A, §§ 20(a)–(b), 21. The Law’s purpose is “to eliminate much of the secrecy surrounding deliberations and decisions on which public policy is based.” Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). A “meeting” is defined, in relevant part, as “a deliberation by a public

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<sup>2</sup> We note that after each meeting, Ms. Lopez updates the online meeting notice to reflect the outcome. In this instance, the notice was amended as follows, “Order Adopted.”

body with respect to any matter within the body's jurisdiction." G.L. c. 30A, § 18. The law defines "deliberation" 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; 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.*" Id. (emphasis added)

Generally, sending an email with proposed language for an order to be considered at an upcoming meeting is not deliberation because it constitutes distribution of "reports or documents that may be discussed at a meeting." G.L. c. 30A, § 18. However, here we find that the email communication sent by Ms. Lopez at Councilor Maher's request crossed the line into impermissible deliberation. While the email was sent by a person who was not a member of the Council, and the Councilors responded to her individually, the attachment relayed the opinion of the four original co-sponsors – that is, their support of the Order – to the remaining five Councilors. Thus, the email constituted communication between or among a quorum of the Council, facilitated by Ms. Lopez. A public body may not use a non-member, such as a staff member, to communicate on matters that it would otherwise save for discussion at an open meeting. See District Attorney for the Northern District v. School Committee of Wayland, 451 Mass. 561, 570-571 (2009) ("Governmental bodies may not circumvent the requirements of the open meeting law by conducting deliberations via private messages, whether electronically, in person, over the telephone, or in any other form.") Additionally, the email contained a request for the opinions of the remaining five councilors, namely whether they wished to co-sponsor the Order, in effect expressing their support for the measure. As discussed below, a non-member may send such a request, provided the responses are directed only to that non-member. We caution the Council that this type of open-ended request could easily lead to an inadvertent or intentional reply to all recipients containing a public body member's opinion on the matter under review.

While we acknowledge that this practice has been used for years, it does not comply with the current Open Meeting Law. However, we note that the Council can bring this practice into compliance with just a minor modification. If the Council wishes to announce the sponsors of an order at the time it is introduced, Ms. Lopez, or another Council administrator, could send an email by blind carbon copy to the Council members, attaching a specific piece of legislation (which should not include the names of any co-sponsors) and requesting sponsorships. See OML 2013-75. That same staff person could then compile the sponsorships, and announce the result during a meeting. The results should not be made public prior to the meeting, however, including in a publicly-posted meeting notice. While the change is admittedly minor, it would enable the Council to compile sponsorship information without members conducting an improper poll outside of a meeting (which is deliberation). See OML 2011-35. Alternatively, a Council member who introduces an order can request sponsors during a meeting, or at a prior meeting before the order is introduced.

Finally, while not raised in the complaint, we find that the Council's meeting minutes were not sufficient for purposes of the Open Meeting Law. The Open Meeting Law requires that a public body "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.” G.L. c. 30A, § 22(a). Minutes should contain enough detail and accuracy so that a member of the public who did not attend the meeting could read the minutes and have a clear understanding of what occurred. OML 2013-16; OML 2012-29. Apart from the “Public Comments” section, the minutes of the Council’s December 3, 2012 meeting do not include any summary of the meeting discussion or otherwise provide an explanation of how the Council reached a decision regarding any item on the agenda. Accordingly, we order the Council to draft and approve revised minutes for the December 3, 2012 meeting that contain a summary of the discussion with sufficient detail and accuracy so that a member of the public who did not attend the meeting could read the minutes and have a clear understanding of what occurred.

#### CONCLUSION

For the reasons stated above, we find that the Council violated the Open Meeting Law by engaging in deliberation outside of a properly posted meeting, and by failing to include sufficient detail in its meeting minutes. We order immediate and future compliance with the Open Meeting Law, and caution that future similar violations may be considered evidence of intent to violate the Law. Additionally, we order the Council to draft and approve the revised minutes of its December 3, 2012 meeting within thirty (30) days of the date of this letter.

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

Sincerely,



Hanne Rush  
Assistant Attorney General  
Division of Open Government

cc: Tom Stohlman  
Cambridge City Council

**This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by this order 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 this order.**