



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
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July 31, 2025

OML 2025 – 106

VIA EMAIL ONLY

Cindy Amara, Esq.
City Solicitor, City of Somerville
City Hall
93 Highland Avenue
Somerville, MA 02143

camara@somervillema.gov

RE: Open Meeting Law Complaint

Dear Attorney Amara:

This office received a complaint from Laura Ortiz on March 12, 2025, alleging that the Somerville City Council (the “Council”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Council on January 11, 2025, and you responded on behalf of the Council by letter dated January 30, 2025. The complaint alleges that the Council deliberated outside of a posted meeting regarding a letter to Governor Maura Healey about the state’s emergency shelter policy.

Following our review, we find that the Council violated the Open Meeting Law in the way alleged. In reaching this determination, we reviewed the Open Meeting Law complaint, the Council’s response and amended response, and the request for further review. We also reviewed materials forwarded by the complainant with her request for review. Finally, we communicated with your office via email.

FACTS

We find the facts to be as follows. On or about December 13, 2024, a letter was sent to Governor Maura Healey regarding changes to the state’s emergency shelter policy (“the Letter”).¹ The Letter was signed by elected officials of 39 municipalities, including councilors

¹ There were prior iterations of the Letter as well. Some of the communication may have concerned those prior iterations, not the one that was sent on December 13, 2024. A complaint alleging deliberation outside a meeting

constituting a quorum of the Council. Neither the Council nor any of its members (“Councilors”) contributed to the preparation of the Letter.² According to the Council, of the nine Councilors who assented to have their name added to the letter, “most did so independently without any communication to or from other Councilors.” However, at least one Somerville City Councilor did communicate with a quorum of the Council. City Councilor Willie Burnley, Jr. received the letter as a .pdf attachment from the Chief of Staff to the Worcester City Council. Councilor Burnley then blind copied the letter to seven other Councilors with the message “In case you wanted to sign on.” The Council has 11 members; therefore, six members constitute a quorum. Councilors communicated their assent directly to the Worcester City Council, without copying other Somerville City Councilors. Two Councilors also responded independently to Councilor Burnley. Councilors were not copied on the Letter when it was sent to the Governor.

DISCUSSION

I. The Council deliberated about the Letter outside a meeting.

The Open Meeting Law was enacted “to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based.” Ghiglione v. Sch. Comm. of Southbridge, 376 Mass. 70, 72 (1978). Except when convened in executive session, “all meetings of a public body shall be open to the public.” G.L. c. 30A, § 20(a). A “meeting” is defined, in relevant part, as “a deliberation by a public body with respect to any matter within the body’s jurisdiction.” G.L. c. 30A, § 18. The Open Meeting 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; . . .” Id.

Here, one Councilor received the Letter as an email attachment and forwarded it to a quorum of the Councilors. In so doing, the Councilor engaged in deliberation. First, sharing the Letter via email “[i]n case you wanted to sign on” constituted communication. Second, for the reasons set forth below, the communication was on public business within the Council’s jurisdiction.

The elected officials who signed the Letter explicitly reference the role their respective municipalities play in providing services to the unhoused population. Indeed, it is in their capacity as elected officials that the signatories press their request that the Governor rescind certain restrictions. The Letter opens with the statement that “We are writing as elected officials representing 39 cities and towns. . . .” Signatories’ town and office are listed at the end of the letter. The nine Somerville City Councilors are identified as such. In support of the request that the Governor’s administration rescind recently enacted policies regarding access to shelters, and that it “invest more robustly in homelessness prevention and rehousing supports,” the signatories note that, among other things, the new shelter restrictions “leave[] municipalities to absorb the

may be found to be untimely if filed more than 30 days after the alleged violation. See G.L. c. 30A, § 23(b) (requiring that complaint be filed within 30 days of the date of the alleged violation). However, we do not consider the timeliness of the complaint, as it was not raised by the Council.

² It appears that the Letter was prepared by member(s) of the Worcester and / or Salem City Council(s). The Letter is also the subject of four other determinations issued contemporaneously herewith.

cost of Emergency Rooms, Fire, Police, and Inspectional Services.” The Letter closes with a call for the Governor to “work with state and local leaders to develop thoughtful and humane policies. We are committed to working with you to build solutions that will benefit and better the livelihood of all our residents in Massachusetts.” Where the signatories express concern about the extra strain on municipal services and ask the Governor to work with them to “develop thoughtful and humane policies” and “build solutions,” the Letter, and the email forwarding it, touches on public business within the Council’s jurisdiction.

The Council maintains that the Letter and email forwarding it deal only with state policy, which does not fall within the Council’s jurisdiction. A topic falls outside the scope of a body’s jurisdiction where: (i) it does not involve the public body’s exercise of governmental business, policy, or administration; (ii) it relates to personal matters, such as the safety and well-being of public body members and/or their families; and (iii) collective action by the body, such as taking a vote, is not anticipated on the topic. See OML 2018-1.³ For example, where a local public body has no authority over, and plays no role in determining the location of a federal post office or the parking available at a store, those topics fell outside the body’s jurisdiction. See OML 2023-22. Additionally, we have said that a topic is outside the jurisdiction of a public body if it is a political statement not likely to come before the body. See OML 2014-135.

Ultimate authority over a policy is not required to find that a discussion of that policy falls within the body’s jurisdiction. See OML 2023-152 (“Even if the Council has no direct oversight or authority over the Police Department, it nonetheless has broad authority to set policy and to set the goals for the Town Manager, and its jurisdiction is similarly broad.”); OML 2022-37 (“Here, even if the Board does not have ultimate authority to appoint or approve the appointment of the Director of Public Health, a discussion of the qualifications and suitability of the candidates for Director of Public Health, the person who would head the Department of Public Health which in turn carries out the Board’s directives, is a discussion that by its nature involves the Board’s exercise of governmental business, policy, and administration.”); OML 2021-54 (question of whether to paint over pictures of biblical story of Noah’s ark on town playground was a matter of public business within selectboard’s jurisdiction even though Town Administrator was the town’s chief executive officer with authority over town playground). Moreover, jurisdiction of a public body is not so limited as to include only matters requiring a vote. See OML 2020-160.

Although the Letter here requests rescission of state policy regarding shelters, that state policy directly impacts municipal policy, decision making, and resource allocation, as explained in the Letter. In that regard, the subject of the Letter is similar to letters the Princeton selectboard sent to Governor Charlie Baker and the Wachusett Regional School District, urging each to adopt a mask mandate and vaccine mandate in response to COVID-19. We found the subject of those letters to be within the selectboard’s jurisdiction even though the selectboard had no authority to establish mask and vaccine policies on behalf of Governor Baker or the regional school district. See OML 2022-23.

³ Open Meeting Law determinations may be found at the Attorney General’s website, www.mass.gov/ago/openmeeting.

We appreciate that Councilor Burnley blind copied his colleagues and used neutral language when forwarding the letter, apparently in an attempt not to violate the Law. Nonetheless, the Letter itself discussed a matter within the Council's jurisdiction. A one-way communication from one public body member to a quorum on matters within the body's jurisdiction constitutes deliberation for purposes of the Open Meeting Law, even if no other public body member responds. See OML 2021-178; OML 2016-104; OML 2012-73. The Open Meeting Law does not carve out an exception to the definition of "deliberation" for discussions that do not result in a decision or vote. See OML 2021-178; OML 2020-93.

Finally, the email circulating the Letter is not excepted from the Law's definition of "deliberation" as the distribution was not done in anticipation of a discussion at a meeting. See G.L. c. 30A, § 18 (establishing that "'deliberation' shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting [sic] or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed"). In short, because circulation of the Letter via email constituted written communication among a quorum on public business within the Council's jurisdiction, and it did not fall within the narrow exceptions to the definition of deliberation, we find that the Council violated the Open Meeting Law.

II. The violation is not intentional.

The complainant maintains that the Council's violation is "deliberate and willful" and asks that we fine the Council, among other remedies requested. Upon the finding of a violation, the attorney general may issue an order to impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation. See G.L. c. 30A, § 23(c). An intentional violation is an "act or omission by a public body or a member thereof, in knowing violation of [the Open Meeting Law]." 940 CMR 29.02. An intentional violation may be found where the public body acted with deliberate ignorance of the law's requirement or has previously been advised that certain conduct violates the Open Meeting Law. Id. We do not find this violation to be intentional. There is no evidence that the Council willfully violated the Open Meeting Law when it acted as it did. Moreover, the Council has not been previously warned about the violation that is the subject of this complaint.

CONCLUSION

For the reasons stated above, we find that the Council violated the Open Meeting Law when it deliberated outside a posted meeting. We order immediate and future compliance with the Open Meeting Law, and we caution that similar future violations may be considered evidence of intent to violate the law.

We also order the release of any written communication, including emails, between Councilors about the Letter and order the Council to certify to this office within **forty-five (45) days** of the date of this letter that it has done so, or that there are no written communications

other than those already produced in response to the Open Meeting Law Complaint. See 940 C.M.R. 29.07(4).⁴

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 Council or with our office. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Matthew Lindberg
Assistant Attorney General
Division of Open Government

cc: Laura Ortiz (via email: ladeslortz@yahoo.com)
Somerville City Clerk (via email: cityclerk@somervillema.gov)

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.

⁴ The Council may publicly release the emails by reading their content during a meeting and listing the emails in the meeting minutes, or by referencing the emails during a meeting and posting the emails along with the minutes on the municipal website.