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Open Meeting Law Guide



COMMONWEALTH OF MASSACHUSETTS

OFFICE OF ATTORNEY GENERAL

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and release the minutes, if appropriate, no later than its next meeting or within 30 days, whichever occurs first. In such circumstances, the body should still respond to the request within 10 days, notifying the requestor that it is conducting this review.

What is the Attorney General's role in enforcing the Open Meeting Law?

The Attorney General's Division of Open Government is responsible for enforcing the Open Meeting Law. The Attorney General has the authority to receive and investigate complaints, bring enforcement actions, issue advisory opinions, and promulgate regulations.

The Division of Open Government regularly seeks feedback from the public on ways in which it can better support public bodies to help them comply with the law's requirements. The Division of Open Government offers periodic online and in-person training on the Open Meeting Law and will respond to requests for guidance and information from public bodies and the public.

The Division of Open Government will take complaints from members of the public and will work with public bodies to resolve problems. While any member of the public may file a complaint with a public body alleging a violation of the Open Meeting Law, a public body need not, and the Division of Open Government will not, investigate anonymous complaints.

What is the Open Meeting Law complaint procedure?

Step 1. Filing a Complaint with the Public Body

Individuals who allege a violation of the Open Meeting Law must first file a complaint *with the public body* alleged to have violated the OML. The complaint must be filed within 30 days of the date of the violation, or the date the complainant could reasonably have known of the violation. The complaint must be filed on a Complaint Form available on the Attorney General's website, www.mass.gov/ago/openmeeting. When filing a complaint with a local public body, the complainant must also file a copy of the complaint with the municipal clerk.



Step 2. The Public Body's Response

Upon receipt, the chair of the public body should distribute copies of the complaint to the members of the public body for their review. The public body has 14 business days from the date of receipt to review the complainant's allegations, take remedial action if appropriate, notify the complainant of the remedial action, and forward a copy of the complaint and description of the remedial action taken to the Attorney General. While the public body may delegate responsibility for responding to the complaint to counsel or another individual, it must first meet to do so.

The public body may request additional information from the complainant. The public body may also request an extension of time to respond to the complaint. A request for an extension should be made within 14 business days of receipt of the

complaint by the public body. The request for an extension should be made in writing to the Division of Open Government and should include a copy of the complaint and state the reason for the requested extension.

Step 3. Filing a Complaint with the Attorney General's Office

A complaint is ripe for review by the Attorney General 30 days after the complaint is filed with the public body. This 30-day period is intended to provide a reasonable opportunity for the complainant and the public body to resolve the initial complaint. It is important to note that complaints are *not* automatically treated as filed for review by the Attorney General upon filing with the public body. A complainant who has filed a complaint with a public body and seeks further review by the Division of Open Government must file the complaint with the Attorney General after the 30-day local review period has elapsed but before 90 days have passed since the date of the violation or the date that the violation was reasonably discoverable.

When filing the complaint with the Attorney General, the complainant must include a copy of the original complaint and may include any other materials the complainant feels are relevant, including an explanation of why the complainant is not satisfied with the response of the public body. Note, however, that the Attorney General will not review allegations that were not raised in the initial complaint filed with the public body. Under most circumstances, complaints filed with the Attorney General, and any documents submitted with the complaint, will be considered a public record and will be made available to anyone upon request.

The Attorney General will review the complaint and any remedial action taken by the public body. The Attorney General may request additional information from both the complainant and the public body. The Attorney General will seek to resolve complaints in a reasonable period of time, generally within 90 days of the complaint becoming ripe for review by our office. The Attorney General may decline to investigate a complaint that is filed with our office more than 90 days after the date of the alleged violation.

When is a violation of the law considered "intentional"?

Upon finding a violation of the Open Meeting Law, the Attorney General may impose a civil penalty upon a public body of not more than \$1,000 for each intentional violation. G.L. c. 30A, § 23(c)(4). An "intentional violation" is an act or omission by a public body or public body member in knowing violation of the Open Meeting Law. G.L. c. 30A, § 18. In determining whether a violation was intentional, the Attorney General will consider, among other things, whether the public body or public body member 1) acted with specific intent to violate the law; 2) acted with deliberate ignorance of the law's requirements; or 3) had been previously informed by a court decision or advised by the Attorney General that the conduct at issue violated the Open Meeting Law. 940 CMR 29.02. If a public body or public body member made a good faith attempt at compliance with the law but was reasonably mistaken about its requirements or, after full disclosure, acted in good faith compliance with the advice of counsel, its conduct