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April 17, 2019

OML 2019 – 35

Timothy Luff
Assistant Superintendent
Natick Public Schools
13 East Central Street
Natick, MA 01760

RE: Open Meeting Law Complaints

Dear Mr. Luff:

This office received six complaints from Ronald Alexander December 3 and December 31, alleging that the Natick School Committee (the “Committee”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ Between March and October, Mr. Alexander filed approximately 600 separate open meeting law complaints with the Committee. This determination addresses complaints #5, #7, #22, #105, #602, and #603. The complaints were originally filed by the Committee on or about March 13, March 27, June 4, and October 17, and you responded to the complaints, on behalf of the Committee, by letter dated November 29, following mediation and then an extension of time granted by our office. In his complaints, Mr. Alexander alleges that the Committee failed to respond to his requests for certain meeting minutes;² failed to review executive session minutes in response to the requests; and failed to release its September 27 meeting minutes.

Following our review, we find that the Committee violated the Open Meeting Law by failing to properly respond to requests for meeting minutes within 10 days, but did not violate the Open Meeting Law in the other ways alleged. In reaching a determination, we reviewed the original complaint, the Committee’s response to the complaint, and the complaint filed with our office requesting further review. We also communicated with you by telephone and email on January 23, 29 and 30, 2019.³

¹ All dates in this letter refer to the year 2018, unless otherwise indicated.

² Specifically, Mr. Alexander sought the open and executive session minutes for meetings held on February 15 and March 12, and the open session minutes for meetings held on May 21 and September 27.

³ For purposes of clarity, we will refer to you in the third person hereafter.



FACTS

We find the facts as follows. The Committee held meetings on February 15, March 12, May 21, and September 27. The day after each meeting, the complainant submitted a request to the Committee for a copy of the open and executive session minutes from the meeting. The Committee convened in executive session during each of the meetings except for the one held on September 27. On March 12, Mr. Luff sent an email to the complainant providing him with the hyperlink to the webpage where the Committee's meeting minutes are posted. On March 21, the Committee created a draft of its March 12 minutes. On March 26, the Committee created a draft of its February 15 meeting minutes. On April 10, Mr. Luff sent another email to the complainant providing him with the hyperlink to the webpage where the Committee's meeting minutes are posted, and did so again on April 26. Mr. Luff's April 26 email explained that the complainant's requests for the February 15 and March 12 executive session minutes are denied, due to the ongoing confidential nature of the matters discussed. Because the meetings had only just occurred, the Committee did not conduct a separate review of those executive session minutes prior to Mr. Luff's response to determine whether release would defeat the lawful purposes for the executive sessions.

On June 1, the Committee created a draft of its May 21 meeting minutes. On June 15, Mr. Luff sent an email to the complainant providing him with the hyperlink to the webpage where the Committee's meeting minutes are posted, and again explained that his request for the executive session minutes is denied, due to the ongoing confidential nature of the matters discussed.

On October 17, the Committee created a draft of its September 27 meeting minutes. The next day, Mr. Luff provided a copy of this draft to the complainant by email and informed him that the Committee had not met in executive session during that meeting.

DISCUSSION

The Open Meeting Law requires that "[m]inutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days." G.L. c. 30A, § 22(c).

Executive session minutes may be withheld from disclosure to the public "as long as publication may defeat the lawful purposes of the executive session, but no longer." G.L. c. 30A, § 22(f). When the purpose for a valid executive session has been served, the minutes and any documents or exhibits used at the session must be disclosed unless the attorney-client privilege or an exemption to the public records law applies to withhold them, in whole or in part, from disclosure. See id. Public bodies have an obligation to review the minutes of executive sessions at reasonable intervals to determine if continued non-disclosure of minutes is warranted, and to announce that determination at the next meeting following its review. G.L. c. 30A, § 22(g)(1); see OML 2015-94; OML 2013-56.

Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body must respond to the request within 10 days following receipt and release any such minutes where publication would not defeat the lawful purposes of the executive session. See G.L. c. 30A, § 22(g)(2). If the body has not performed a review, it must do so and then release any non-exempt minutes, or portions thereof, not later than the body's next meeting or in 30 days, whichever first occurs. See id.; OML 2013-180.

The complaints allege that the Committee failed to timely respond to his requests for certain meeting minutes. The Committee responds that the minutes did not exist at the time of the complainant's requests. The Committee also points out that it had emailed the complainant several times with the hyperlink to the webpage where all of its meeting minutes are posted. We credit the Committee's account that minutes did not exist at the time it had received the complainant's requests. However, the Committee was still required to respond within 10 calendar days of each request with an explanation of whether the minutes did or did not exist in either approved or draft form. See OML 2017-50; OML 2016-71; OML 2015-173.⁴

The same rule applies for requests for executive session minutes. See G.L. c. 30A, § 22(g)(2) ("Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the public body shall respond to the request within 10 days following receipt[.]"). At the time the Committee received the requests for its February 15 and March 12 executive session minutes, they had not yet been created. Therefore, the Committee was not required to conduct a review of those minutes. However, the Committee should have notified the complainant of this fact within 10 days of the requests. See id. Because the Committee failed to send responses to the requests for both open and executive session minutes within 10 days, we find that it violated the Open Meeting Law.

With respect to the Committee's failure to timely release the September 27 minutes, we note that the Open Meeting Law requires public bodies to create and approve meetings minutes in a timely manner, and to provide them within 10 days of a request, if they exist in either draft or final form.⁵ See G.L. c. 30A, § 22(c). Here, there were no minutes to release because draft minutes of the September 27 meeting had not yet been created at the time the Committee received the request. However, the Committee approved the September 27 minutes in a timely manner. "Timely manner" means "within the next three public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay." See 940 CMR 29.11; OML 2018-48. Whenever possible, we recommend that minutes of a meeting be approved at the next meeting. See OML 2014-15; OML 2012-

⁴ Open Meeting Law determinations may be found at the Attorney General's website, www.mass.gov/ago/openmeeting.

⁵ The Open Meeting Law also does not require that public bodies post their meeting minutes to a website. However, the Supervisor of Records within the Office of the Secretary the Commonwealth requires that a municipal public records access officer, to the extent feasible, post commonly available public record documents on a website maintained by the municipality. See 950 CMR 32.04(5)(g).

91. The Committee reviewed and approved the September 27 minutes on October 15, its third meeting thereafter, and thus complied with the requirements under the Open Meeting Law.

We must determine whether the violation was, as the complainant urges, intentional. 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.* The complainant points to OML 2011-7 as evidence of the Committee’s intent to violate the law. However, that determination found a violation for the Committee’s sufficiency of topics listed on a meeting notice. This office has not issued any determinations that advised the Committee that a failure to comply with the requirements for responding to requests for minutes violated the Open Meeting Law. Because we find no evidence that the Committee acted with deliberate ignorance of the law and where the Committee had not been notified of its obligations prior to the events addressed in this letter, we decline to find that these violations were intentional. Additionally, we appreciate the considerable time and resources that the Committee spent responding to a substantial number of requests and complaints that the complainant had filed with the Committee between March and October. We commend the Committee for pledging to comply with the law’s requirements going forward.

CONCLUSION

For the reasons stated above, we find that the Committee violated the Open Meeting Law by failing to properly respond to a request for meeting minutes within 10 days. We order immediate and future compliance with the law’s requirements and we caution that similar future violations could be considered evidence of intent to violate the law.

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

Sincerely,



Hanne Rush
Assistant Attorney General
Division of Open Government

cc: Ronald Alexander
Natick School Committee

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.