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March 13, 2024

Brian DeLacey
Malden News Network
1 Earl St.
Malden, MA 02148
BY U.S. MAIL and EMAIL

Re: Open Meeting Law complaint
Public body: Malden City Council
Date of alleged violation: ~ February 20, 2024

Mr. DeLacey:

Your complaint dated February 26, 2024 alleged that the Malden City Council violated the Open Meeting Law, G.L. c. 30A, §§ 18-25 and 940 C.M.R. 29.00 et seq. by failing to review the response by this office to your January 22, 2024 Open Meeting Law complaint, and by “serial communication arising through a non-member (i.e., the city solicitor’s office”). Pursuant to 940 C.M.R. 29.05(5), on behalf of the Malden City Council, this letter is a response to your complaint.

I. The City Council reviewed your January 22, 2024 Open Meeting Law complaint and authorized the office of the city solicitor to respond; there is no requirement that the City Council first review the response.

The Atty. Gen.’s Open Meeting Law regulations state

Within 14 business days after receiving the complaint, unless an extension has been granted..., The public body shall meet to review the complaint allegations; take remedial action, if appropriate; and sent to the complainant a response and a description of any remedial action taken.

940 C.M.R. 29.05(5).

The minutes of the January 30, 2024 meeting reflect that with respect to your Open Meeting Law complaint of January 22, 2024, the council acted as follows:

Paper 55-24. The Malden City Council will address the Open Meeting Law complaint submitted January 22, 2024 by Brian DeLacey, 1 Earl Street, Malden against City Council regarding their meeting of January 2, 2024. A motion was made by Councillor O’Malley, seconded by Councillor Taylor, that the communication be received and filed. The motion carried by a unanimous vote.

A motion was made by Councillor Crowe, seconded by councillor Colón Hayes, that the communication be referred to the Legal Department to respond on behalf of the body. The motion carried by a unanimous vote.

Thus, this is not a situation where the City Council completely removed itself from the process of responding to your complaint. Your complaint was received and reviewed by the Malden City Council. It was referred to the city solicitor's office for a response. A response was submitted to you and the attorney general on February 20, 2024.¹ There is no requirement that the City Council substantively discuss your complaint in any level of detail. While the council certainly may review a *draft* response to your complaint before you receive it, there is no requirement that it do so. The City Council in this instance never requested to review any draft response, but rather authorized the city solicitor to send a response.

In any event, the response sent by the city solicitor's office to you was reviewed and ratified at the March 12, 2024 City Council meeting. Therefore, even if there was any violation in not reviewing a draft before the response was sent, the violation was cured and appropriately remedied by ratifying the response in an open meeting.

II. There was no "serial communication" among a quorum of the City Council by way of the city solicitor's office.

You allege that there was "serial communication arising through a non-member" by pointing to my February 20, 2024 response to your earlier Open Meeting Law complaint, in which it was written "As part of my investigation, I spoke with every city councilor present at the January 2, 2024 meeting...." The city council delegated to my office the task of responding to your complaint at its January 30, 2024 meeting. Unfortunately, that left only about 10 days to complete the investigation and respond in time. Seeking to do a thorough investigation, I attempted to speak with every city councilor regarding the allegations in the prior complaint. Because of the busy schedules of many of the city councilors, and with some being out of the country on vacation, the interviews were not completed until February 16, 2024. Every one of these interviews was conducted one-on-one between me and the council member; no other council members, indeed no other person, was privy to these interviews. The one-on-one interviews were intended to preserve the integrity of the investigation and avoid the risk of deliberation.

The Open Meeting Law provides that "[e]xcept as provided in section 21, all meetings of a public body shall be open to the public." G.L. c. 30A, § 20(a). A meeting is defined in the law as "deliberation by a public body with respect to any matter within the body's jurisdiction," subject to certain exceptions. G.L. c. 30A, § 18. "Deliberation" in turn is defined (subject to certain exclusions) as "an oral or written

¹ This assistant city solicitor acknowledges that the response was untimely, as it was due by February 9, 2024 (only 10 days after being referred), and will be mindful of deadlines in the future. Unfortunately, this office a couple of years ago was staffed by 4 to 5 attorneys (one full time city solicitor, three part-time assistant city solicitors, and one special counsel), but has recently been decimated and is down to only 2 to 3 attorneys (one full time city solicitor, one part-time assistant city solicitor, and one special counsel). The staffing shortage has created an enormous challenge to keep up with important matters (leave aside the frivolous and petty ones) that a municipal law department must attend to.

communication to 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.

It is plain that communication between a non-member, such as an assistant city solicitor, and member of a public body does not qualify as deliberation under the Open Meeting Law. As explained, the interviews between me and each council member were conducted separately one-on-one. Therefore, it is puzzling, to say the least, how these interviews could qualify as communications between a quorum of the council, when you do not even allege that any council members communicated with each other. Even if, these one-on-one interviews, as you falsely allege, “polled input and opinion of a quorum of the Council and provided deliberative guidance to the Solicitor’s Office on how the public body should respond,” such a procedure is still not communication “*between or among* a quorum.” Therefore, it still would not qualify as deliberation in violation of the Open Meeting Law.

If you are implying that the mere fact of separately interviewing a member of a public body for the purpose of investigating a matter that might come before it is a per se violation of the Open Meeting Law, such a position leads to absurdities. Suppose, for example, that an investigative journalist researching a story separately contacts and speaks one-on-one to several members of a public body, seeking their opinion and thoughts on a matter which may come before it. Is there an open meeting law violation simply because a quorum of the public body spoke to the journalist? Of course not. But your position leads to such absurdities. It would entail that no person – not even an attorney – could ever speak one-on-one to more than a quorum of a public body for the purpose of investigating and responding to an Open Meeting Law complaint. This would seriously interfere with, if not completely deprive, a public body of the benefit of advice of counsel in many instances. Surely, the Open Meeting Law was never designed to lead to such ridiculous results.

III. You have failed to respond to the requests for additional information and evidence supporting the alleged violations, which proves that the allegations are baseless.

The Atty. Gen.’s Open Meeting Law regulations provide:

If the public body needs additional information to resolve the complaint, then the chair may requested from the complainant within seven business days of receiving the complaint. The complainant shall respond within 10 business days after receiving the request. The public body will then have an additional 10 business days after receiving the complainant’s response to review the complaint and take any remedial action....”

940 C.M.R. 29.05(6).

On March 4, and again on March 5, 2024, my office requested that you provide ANY additional information substantiating your allegation of serial communication in your Open Meeting Law complaint. What evidence did you offer? Nothing.

IV. Conclusion

There are no facts to reasonably support the violations alleged in your complaint. There was no Open Meeting Law violation.

Sincerely,

Zaheer A. Samee

Encl: Letter ZAS to Delacey dated Feb. 20, 2024
City Council Agenda for March 12, 2024 meeting

Cc: Massachusetts Attorney General, Division of Open Government (with copy of complaint)
Carol Ann Desiderio, City Clerk

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