



The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108



OPEN MEETING LAW COMPLAINT FORM

Instructions for completing the Open Meeting Law Complaint Form

The Attorney General's Division of Open Government interprets and enforces the Open Meeting Law, Chapter 30A of the Massachusetts General Laws, Sections 18-25. Below is the procedure for filing and responding to an Open Meeting Law complaint.

Instructions for filing a complaint:

- o Fill out the attached two-page form completely and sign it. File the complaint with the public body within 30 days of the alleged violation. If the violation was not reasonably discoverable at the time it occurred, you must file the complaint within 30 days of the date the violation was reasonably discoverable. A violation that occurs during an open session of a meeting is reasonably discoverable on the date of the meeting.
- o To file the complaint:
 - o For a local or municipal public body, you must submit a copy of the complaint to the chair of the public body AND to the municipal clerk.
 - o For all other public bodies, you must submit a copy of the complaint to the chair of the public body.
 - o Complaints may be filed by mail, email, or by hand. Please retain a copy for your records.
- o If the public body does not respond within 14 business days and does not request an extension to respond, contact the Division for further assistance.

Instructions for a public body that receives a complaint:

- o The chair must disseminate the complaint to the members of the public body.
- o The public body must meet to review the complaint within 14 business days (usually 20-22 calendar days).
- o After review, but within 14 business days, the public body must respond to the complaint in writing and must send the complainant a response and a description of any action the public body has taken to address it. At the same time, the body must send the Attorney General a copy of the response. The public body may delegate this responsibility to its counsel or a staff member, but only after it has met to review the complaint.
- o If a public body requires more time to review the complaint and respond, it may request an extension of time for good cause by contacting the Division of Open Government.

Once the public body has responded to the complaint:

- o If you are not satisfied with that the public body's response to your complaint, you may file a copy of the complaint with the Division by mail, e-mail, or by hand, but only once you have waited for 30 days after filing the complaint with the public body.
- o When you file your complaint with the Division, please include the complaint form and all documentation relevant to the alleged violation. You may wish to attach a cover letter explaining why the public body's response does not adequately address your complaint.
- o The Division will not review complaints filed with us more than 90 days after the violation, unless we granted an extension to the public body or you can demonstrate good cause for the delay.

If you have questions concerning the Open Meeting Law complaint process, we encourage you to contact the Division of Open Government by phone at (617) 963-2540 or by e-mail at openmeeting@state.ma.us.



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108



Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: Brian Last Name: DeLacey

Address: 1 Earl Street

City: Malden State: MA Zip Code: 02148

Phone Number: 6176945791 Ext. _____

Email: MaldenNewsNetwork@gmail.com

Organization or Media Affiliation (if any): Malden News Network

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual Organization Media

Public Body that is the subject of this complaint:

City/Town County Regional/District State

Name of Public Body (including city/town, county or region, if applicable): Malden City Council

Specific person(s), if any, you allege committed the violation: Malden City Council

Date of alleged violation: 1/2/24

DESCRIPTION OF THE ALLEGED VIOLATIONS

This complaint alleges four apparent violations of the Open Meeting Law by the Malden City Council. These all relate to the City Council meeting on 1/2/24. The relevant public body business on that meeting's agenda related the election of a Council President. The Complainant believes the behavior described here was well-informed and therefore intentional. Put plainly, the City Council should have known and done better.

Based on observation, information and belief, a quorum of City Council members engaged in conversations, deliberations or serial communications, outside of a posted meeting, prior to the City Council public body meeting held on 1/2/24. Additionally, notice in advance of the meeting and during the meeting was insufficiently detailed to inform the public of the location of the voting to take place for the Council President. Thus, non-public deliberations influenced the vote for Malden City Council President on 1/2/24.

It's clear this Complaint pertains to a matter of official Council business. According to the 2023 City Council rulebook: "Meetings of the City Council shall be presided over by the President, who shall be chosen annually by a majority vote of the Full City Council, made by roll call vote."

The alleged behavior, which violates Open Meeting Law, shaped Malden's city government for 2024. It is believed this includes determination of committee structure, assignments, public body leadership, interaction with the Mayor thru tradeoffs, negotiations, and possibly in consideration of other things of value. Such matters of public interest should be deliberated on in public, open meetings.

To be clear, although all the communications methods, means, and media are not reported here, it "does not strain logic to infer that discussions and, therefore, deliberations, occurred"¹ [OML 2011-27] Here are four areas of alleged Open Meeting Law violations from the 1/2/24 meeting:

First, a quorum of the Malden City Council deliberated outside a properly noticed public body meeting in selecting the 2024 Council President. This involved direct and indirect communications, contemporaneous and not. Intentional deliberation aided collective efforts to share preferences for which candidate should serve as the next Council President. Serial, non-public deliberation reached a quorum of a public body.

It is well known that "Governmental bodies may not circumvent the requirements of the open meeting law by conducting deliberations via private messages, whether

¹ See Otis Board of Selectman, OML 2011-27

electronically, in person, over the telephone, or in any other form.” [DISTRICT ATTORNEY FOR THE NORTHERN DISTRICT vs. SCHOOL COMMITTEE OF WAYLAND. 455 Mass. 561]²

What occurred in Malden’s January election of a Council President was a form of both contemporaneous and non-contemporaneous serial communication. It should be well known in the City of Malden that “A public body may not engage in a serial communication whereby a quorum communicates in a non-contemporaneous manner outside of a meeting, on a particular subject matter within the public body’s jurisdiction.”³ [OML 2015-3]

Others know this: “leadership ... is a matter of public business, and should have been discussed during an open meeting.”⁴ [OML 2015-3]

Second, a non-member - namely, Mayor Gary Christenson and/or his staff, or a proxy thereof - communicated with members of the City Council concerning voting for the Council President. This was done in a manner designed to convey Council President preferences, considerations and consequences of vote outcomes. This non-member’s communication appears to have been coordinated with one or more City Council members, resulting in reconsideration by Council members who would not otherwise be able to discuss this matter outside an open meeting⁵ [OML 2018-58].

The Mayor of Malden plays a unique and special role in the Malden City Council. The office powers include unique and formal access to City Council members as defined in the Council Rulebook and the City Charter. Thus, both formal and informal serial, and non-member communications of the Mayor deserve scrutiny and member-like consideration. [OML 2016-49 and OML 2016-31]

Third, based on information and belief, the Council meeting held on 1/2/24 was "merely a ceremonial acceptance" and plainly appears to be "a perfunctory ratification of secret decisions"⁶. Video from the celebratory meeting adds color and sound to the logic of the written description.

Fourth, the Malden City Council violated the Open Meeting Law when it met in seclusion, to vote on a Council President, during the inauguration ceremonies on January 2, 2024. The City Council left the auditorium, having been directed to RETIRE

² See DISTRICT ATTORNEY FOR THE NORTHERN DISTRICT vs. SCHOOL COMMITTEE OF WAYLAND. 455 Mass. 561, November 2, 2009 - December 31, 2009
<http://masscases.com/cases/sjc/455/455mass561.html>

³ See DETERMINATION - 1/15/2015 - OML 2015-3 - HARVARD PARKS AND RECREATION COMMISSION

⁴ See DETERMINATION - 1/15/2015 - OML 2015-3 - HARVARD PARKS AND RECREATION COMMISSION

⁵ See DETERMINATION - 4/25/2018 - OML 2018-58 - BREWSTER COASTAL ADVISORY GROUP

⁶ See See McCrea v. Flaherty, KEVIN MCCREA & others vs. MICHAEL F. FLAHERTY & another, 71 Mass. App. Ct. 637, December 6, 2007 - May 1, 2008, Suffolk County,
<http://masscases.com/cases/app/71/71massappct637.html>

by the inaugural hostess. No members of the public attended the meeting (which was not recorded) to elect a new Council President. The City Messenger, in their formal role, did attend.

The facts of January 2, 2024 are close and similar to those of January 6, 2020 whence a prior Determination and Violation of the Malden City Council was recorded. Even the language around this ceremonial phrasing remains familiar:

"Mr. Anderson, would you please RETIRE the City Council for organization and election of a President and the School Committee for election of a President and the Vice Chair ... " followed by pomp and circumstance of music and a parading exist of the auditorium, where attendees applauded from their stational seats, and newly elected city officials waved as they exited the auditorium while the audience sat still. [See prior violation from Malden's Inauguration on Jan 6, 2020, OML 2020-103].

As the AGO noted in OML 2020-102: "The Council "retired" out of public view, a word that suggests seclusion."

What action do you want the public body to take in response to the complaint?

The alleged behavior can easily be proven or disproven through simple interviews with City Council members and members of the Mayor's Office. I would like to see such simple interviews conducted and the transcribed notes released to the public. Here are the two general questions for members of the City Council and Mayor's Office (further detailed below) seeking answers:

- 1) Who did you speak with concerning the Council President election and nominating process prior to a vote being taken?;
- 2) Whose preferences for Council President were you aware of from the Council or the Mayor's Office?

These interviews are necessary, since such deliberations on preferences aren't likely to be intentionally recorded or shared, unless inadvertently by a hot mic. (See DETERMINATION - 6/20/2011 - OML 2011-26 - WAYLAND BOARD OF SELECTMEN)

Thus:

1. Interview all members of the City Council and the Mayor's Office, documenting the following:

- Which Councillors spoke directly with other Councillors (and whom did they speak with) prior to and related to the Council President vote?
- Which Councillors discussed committee assignments, roles, project priorities or the like with any other Councillor in relation to (or exchange for) voting in support of any individual candidate for Council President?
- Which City Official/s from the Mayor's Office interacted with Councillors (and whom did they speak with and what did they discuss) prior to and related to the Council President vote?
- Which City Official/s specifically asked individual Councillors to advocate for or oppose any Council Candidate? What consequences were uttered if preferences failed?
- Which Councillors made general statements prior to and related to the Council President vote, which they could reasonably anticipate would reach a quorum of the Council?
- The remedy is unclear at this time since "a perfunctory ratification of secret decisions" does not help to accomplish the purpose of the open meeting law, and will not operate as a cure. Thus, Complainant asks the Public Body what they think is fair and in the public interest.

This description was submitted by Brian DeLacey on 1/22/24. This Open Meeting Law complaint was submitted in my capacity as a representative of Malden News Network.