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March 10, 2026

Ryan O'Malley
215 Pleasant St.
Malden, MA 02148
BY EMAIL: romalley@cityofmalden.org

Re: Open Meeting Law Complaint by Ryan O'Malley on Feb 19, 2026

Mr. O'Malley:

This is a response on behalf of the Malden city council to your open meeting law complaint dated February 19, 2026.

1. There was no improper deliberation as alleged in the complaint.

Your complaint alleges that the city council improperly deliberated about certain topics when it met in executive session held on February 10, 2026, because those topics were not listed on the meeting agenda notifying the public about the purpose of the executive session. More specifically, you allege that at the Feb 10, 2026 executive session the City Solicitor stated she would be filing a notice of appeal from a decision and judgment in the litigation captioned *Benevolent Botanicals LLC, et al. v. City of Malden, et al.*, 22 MISC 00076 ("Benevolent litigation"), and there followed "some debate" concerning the litigation.

The February 10, 2026 City Council agenda was posted and released to the public on February 6, 2026. The agenda stated:

102-26 Order: That the City Council will vote whether to go into Executive Session with legal counsel for the City, in accordance with Exemption Seven Massachusetts General Laws Chapter 30A Section 21(a)(7), to comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements, in order to act on the periodic review of those Executive Session minutes listed herein to determine if release of records is appropriate at this time or if continued non-disclosure is warranted. Council vote is required prior to release of the Executive Session minutes of the following dates:

- April 29, 2025, Paper 222-25
- March 11, 2025, Paper 142-25
- March 4, 2025, Paper 117-25
- February 25, 2025, Paper 116-25
- February 11, 2025, Paper 83-25
- February 4, 2025, Paper 61-25
- September 26, 2023, Paper 335-23

- September 12, 2023, Paper 316-23
- October 25, 2022, Paper 425-22

(Roll Call Required)

“Before entering the executive session, the chair must state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called.” OML 2019-86 *Ware Board of Selectmen* at 6; G.L. c. 30A, s. 20(b). As you correctly recognize, it is exemption G.L. c. 30A, §21(a)(3) which authorizes a public body to meet in closed session for the purposes of discussing strategy if an open meeting may have a detrimental effect on the public body’s “bargaining or litigating position.”

Every one of the nine papers above for which executive session minutes are listed for review in paper 102-26 concerned in some way the Benevolent litigation. In fact, a review of each of the nine papers reveals that seven of them had originally listed exemption §21(a)(3) as the reason for entering into executive session. It is difficult to imagine how it would be possible to discuss whether to release minutes for executive sessions originally entered into under exemption §21(a)(3) for the purpose of discussing litigation strategy without at least briefly discussing whether the litigation strategy still warranted keeping them confidential. The decision to file a notice of appeal in order to preserve appellate rights is certainly encompassed within litigation strategy. Thus, the two topics of litigation strategy and whether to release executive session minutes about litigation strategy are inextricably linked.¹

Also helpful is the Atty. Gen.’s statement: “In some instances, there may be overlap in the posting requirements of the Open Meeting Law and other statutes. In most cases, the information required by the controlling statute will satisfy the Open Meeting Law meeting notice requirements, however for specific questions please contact the Division of Open Government.”² It so happens that in some instances various exemptions for entering executive session may overlap, and this instance certainly seems to be an example of how exemption §21(a)(3) (for bargaining and litigation strategy) and §21(a)(7) (to comply with “any general or special law” etc.) could overlap. The Atty. Gen.’s office has explained that a “public body may convene in executive session to review and approve executive session minutes under Purpose 7, citing to the Open Meeting Law, G.L. c. 30A, §§ 22(f), (g).... In the alternative, a public body may convene in executive session to review and approve executive session minutes by citing to the original purpose of that executive session.” OML 2026-18 *Pioneer Valley Performing Arts Charter Public School Board of Trustees* at 4. Similar to the Atty. Gen.’s determination in *Pioneer Valley*, review of the minutes of the February 10, 2026 executive session shows that even though it may have “occasionally threatened to evolve into a general discussion” of litigation strategy “rather than the minutes themselves,” nevertheless, “any discussion of litigation fell within the context of a release of

¹ Any member of the public who seriously wanted to understand what the topic of the February 10, 2026 executive session could certainly review on the city’s website the papers listed and understand that the papers being discussed involved prior executive sessions that dealt with strategy in the Benevolent litigation.

² <https://www.mass.gov/info-details/frequently-asked-questions-about-the-open-meeting-law#frequently-asked-questions-about-meeting-notices> (last accessed 2-24-2026)

the executive session minutes, as the discussion ended with a vote to continue to withhold the minutes" in light of a potential appeal. *Id.* at 5.

Finally, your allegation that the notice of appeal in the Benevolent litigation filed by the City Solicitor is "most alarming," has nothing to do with the open meeting law. Nothing in the open meeting law either explicitly or implicitly prevents a city solicitor from filing a notice of appeal in order to preserve a city's appellate rights. The City Solicitor is not even a member of a public body.

2. In the future, the City Council should cite the specific special or general law which applies when entering into executive session for purpose 7.

You also allege that the improper deliberation was intentional and that the public body "knowingly chose to enter executive session under Exemption 7 rather than Exemption 3" presumably because multiple Councilors "had requested an update on Benevolent litigation." In your words, "This was not a simple mistake of picking the wrong exemption, rather it was an attempt to restrict the City Council's ability to be meaningfully involved in and informed on the Benevolent matter...."

The Atty. Gen. has stated that a "public body entering executive session under Purpose 7 must state the specific law that requires the public body to keep the declarations confidential unless doing so would compromise the purpose for the closed-door session." OML 2026-18 at 4. It has further explained that the specific law under which a public body "may convene in executive session to review and approve executive session minutes under Purpose 7" is G.L. c. 30A, §§22(f), (g). *Ibid.* Alternatively, the public body may cite "to the original purpose of that executive session" whose minutes are being reviewed. *Ibid.*

It seems no city councilor made a proposal to add exemption §21(a)(3) as a basis for entering executive session on February 10, 2026. Ironically, you as a member of the City Council also failed to propose that the council update its agenda to add the Benevolent litigation as a topic for executive session, even though you were likely better situated than most councilors to do so. After all, on January 29 at 5:02 PM you wrote to the City Solicitor requesting an "an immediate update" on "this important matter."

Although you state, "*This was not a simple mistake of picking the wrong exemption,*" based on the Atty. Gen.'s decisions and the facts, it is something even less: it is a simple mistake of not specifying the precise reason for the exemption. There was no conspiracy to improperly deliberate or prevent deliberation. In fact, the February 10 meeting minutes reveal that the council planned to discuss the Benevolent litigation in the future after adequate time to carefully review a 63 page Land Court decision. And indeed on February 24, 2026, the council entered executive session under exemption 21(a)(3) for the purpose of discussing strategy in the Benevolent litigation. Therefore, any violation in failure in specificity in the notice has been at least partially remedied.

3. Conclusion

Insofar as the Benevolent litigation was discussed at the February 10, 2026 executive session, there was no improper deliberation in violation of the open meeting law because the decision to not yet release prior executive session minutes was inextricably linked to whether the city would file a notice of appeal and litigation strategy. Indeed, it was impossible to deliberate on the issue of whether prior executive session minutes relating to the Benevolent litigation should be released without also discussing, at least briefly, the current status of the litigation and likely next steps by the city.

There was a simple instance of the exemption cited on the agenda not being sufficiently specific, and the violation was unintentional. In the future, when entering executive session to review minutes, the council should cite G.L. c. 30A, §§22(f), (g) and §21(a)(7), or the original purpose of the prior executive sessions.

Sincerely,

A handwritten signature in black ink that reads "Zaheer A. Samee". The signature is written in a cursive style with a large initial 'Z'.

Zaheer A. Samee

cc: Attorney General's Office (with complaint and exhibits)
Malden City Council