



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: bdelacey@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: Jadeane Sica, Barbara Murphy

Date of alleged violation: 3/10/20-4/14/20

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

See attached description of alleged violation/s and reasons which support belief of intentionality. Included in that attachment is a digital signature to accompany this submission.

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

Note: This text field has a maximum of 500 characters.

> Acknowledge all Council email deliberation violations which occurred during the period of 3/1/20 - 4/14/20;
> Publish the record of all virtual votes taken of the Council (who voted, who did not, by what media, and on which matter) as described in various emails to a quorum of the Council, during the period of 3/1/20 - 4/14/20;
> Publish any emails exchanged between a quorum of the Council, during the period of 3/1/20 - 4/14/20, to serve as minutes of a running meeting during that timeframe.

Review, sign, and submit your complaint

I. Disclosure of Your Complaint.

Public Record. Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

Publication to Website. As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

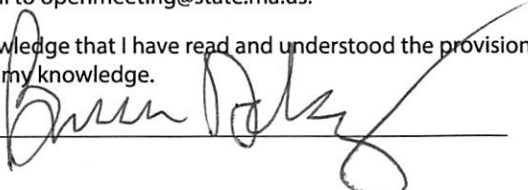
II. Consulting With a Private Attorney.

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: 

Date: _____

For Use By Public Body
Date Received by Public Body:

For Use By AGO
Date Received by AGO:

Description of alleged violation

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This complaint involves alleged violations occurring in the timeframe of 3/10/20 - 4/14/20. This period of time was a declared state of emergency when a variety of email exchanges took place on important matters of business properly before the Council during a public health crisis. The documentary record indicates the prevalent concern of residents on some matters: for instance, some "come up repeatedly [on] what we can do as a city to assist residents". Other non-public email to a quorum addressed "the right course of action for the City Council as a body", clearly a matter of business before the Council.

The City Council did not convene for a properly called public body meeting at any point during this time period. During this time, one or more councilors engaged in impermissible deliberations.

The law defines deliberation as "an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.

In the facts and documentation provided here, we find email sent directly to a quorum - as well as serial communication whereby a quorum communicated in non-contemporaneous manner - outside of a public meeting. This included multiple email communications initiated by the Council President.

The following excerpts highlight exchanges believed to be representative of violations involving a quorum of the Council (full emails are available):

03/12/20 - jsica @ 3:52 PM to quorum of Council -

"As a result, all Boards and Commissions that are not statutorily required to meet or that do not have a critical vote or deadline are cancelled until further notice. Kate Fallon is working with the Planning Board and Board of Appeal to determine which matters are time sensitive as far as statutory requirements and will try to see if they can be waived. Additionally, Kate informed us that there is emergency legislation pending that will relax open meeting law requirements. As far as the City Council, all Committee meetings are cancelled until further notice."

3/24/20 @ 3:38 PM - jsica to quorum of Council -

"I've had discussions with several of you and want to communicate with you all as a group so we can be as unified as possible on the right course of action for the City Council as a body."

3/28/20 @ 5:36 PM - jsica to quorum of Council -

"I have heard back from just all of you regarding how to move forward. At this time the majority of Councillors would like not to have meetings conducting business as usual until at least April 7th to adhere to the governors shelter in place. ... I have spoken to City Solicitor Fallon and we can have no more than 5 on a call at one time."

4/2/20 - bmurphy @ 12:30 PM to quorum of Council - "Personally I disagree with DPH's recommendation. This is a life and death situation for many ... Just my thoughts on the topic."

4/5/20 - jsica @ 11:28 AM to quorum of Council -

"Moving Forward" communication "From: Council President Jadeane Sica" and "To: Members of the Malden City Council" - "I have been in communication with each of you and it's that

feedback , and the consensus opinion, that led to us taking a pause along with all other city bodies. ... I hope this memo addresses many different topics of interest to all of us, and some clarity on what I think our path from here is."

These relate to non-public email deliberations, which were only available to the public recently. A public records request was filed in February 25, 2021, #2021-0066. A response providing the emails was only provided by the City on or about 7/22/21.

The alleged violation/s could not have reasonably been known at the time they occurred since they were contained in non-public email. This complaint is being filed within 30 days of the date on which the alleged violation could reasonably have been discovered. 940 CMR 29.05(4).

If you believe the alleged violation was intentional, please say so and include reasons:

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These actions appear to show evidence of intentionality, specifically:

> An email on 3/12/20 references involvement of the City Solicitor: "Additionally, [the City Solicitor] informed us that there is emergency legislation pending that will relax open meeting law requirements."

> An email on 3/24/20 states: "I am sure you are all aware that that [sp] Governor published an executive order relaxing some of the requirements of the open meeting law. However, most aspects still apply."


> An email on 3/28/20 indicates awareness of quorum limits on the Council and some efforts to construct meeting groups to avoid hitting those limits: "I have spoken to City Solicitor Fallon and we can have no more than 5 on a call at one time."

> The City Council received Determination OML 2019-140 dated 11/5/19 on a similar aspect of Open Meeting Law and email deliberation. That Determination stated, "a similar violation in the future may be considered evidence of intent to violate Open Meeting Law." This appears to document one or more similar violations.

What action do you want the public body to take?

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See original complaint form

A handwritten signature in black ink, appearing to be the initials 'PD' or a similar stylized mark.

Signed, August 2, 2021