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March 14, 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: ~ March 4, 2024**

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Mr. DeLacey:

Your complaint dated March 6, 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. This letter is the City Council's response to you.

As best as I can understand, you allege a violation because

1. with authorization from the chair of the Malden City Council, I requested from you information substantiating your complaint, and/or
2. the public body responded to your complaint without first reviewing it at a meeting.

The first is not a violation, and the second is false.

First, there is nothing in the law or regulations prohibiting the chair of the public body from authorizing counsel to request information from the complainant pursuant to 940 C.M.R. 29.05(6). The regulations do say that "If the public body requires additional time to resolve the complaint, it may obtain an extension from the Attorney general by submitting a written request within 14 business days after receiving the complaint. A request may be submitted by the chair, the public body's attorney, or any person designated by the public body or the chair." 940 C.M.R. 29.05(5)(b). But wait! There is no mention in the regulations of the chair of a public body authorizing an attorney to make a request for additional information under 940 C.M.R. 29.05(6). Therefore, does the omission imply that it is prohibited based on the legal maxim that the expression of one thing implies the exclusion of similar things? Not so, because one should "not employ the conventions of statutory construction in a mechanistic way that upends the common law and fundamentally makes no sense." *Suffolk Constr. Co. v. Div. of Cap. Asset Mgmt.*, 449 Mass. 444, 458 (2007). It stands to reason, that if a public body's attorney or even *any person designated by its chair* may request additional time to respond, the public body's attorney should also be able to request additional information from the complainant substantiating a complaint. It would be silly to allow the public body to act through its attorney in one

instance and not the other. Also consider that 940 C.M.R. 29.05(5) states that the public body shall “send to the complainant a response” without mentioning that an attorney may respond on its behalf – does it therefore imply that the public body cannot delegate the response to its attorney? Would it not be absurd that the only thing an attorney is allowed to do is request additional time to respond? I guess I must have wasted three years in law school, not to mention my tuition and interest on my student loans, just so I can request extension of deadlines. The law may be silly on rare occasions, but it is never presumed to be silly. Like statutes, regulations should “be construed, wherever possible, in accordance with sound judgment and common sense.” *Ibid.* (internal quotes and cites omitted). You have pointed to nothing in the law that prohibits the chair of a public body authorizing its counsel to request information in this manner.

Second, the March 4 and 5, 2024 communications between you from my office were not a response to your complaint. They simply asked that you produce any information substantiating your complaint, including specific categories of documents, and even offered you the opportunity to come testify under oath and have your testimony transcribed. You seem to be confusing a request for information about a complaint with a response to the complaint. The public body has only seven days from the date of the complaint for its chair to request information from the complainant. There is no requirement that there be a meeting to review the complaint before requesting more information.

Finally, you complain that my information request establishes an “atmosphere of compulsory legal process on the public, press and private citizens.” On behalf of my client, I can only try to understand what your allegations are, investigate if there is any substance to them, and respond appropriately. There is nothing remotely compulsory about my information request. You have a right to complain. And a public body has a right to request specific substantiating information for the purpose of investigation. More importantly, one would expect any conscientious member of the public who thinks there is an open meeting law violation to offer something, *anything*, specific beyond pure speculation and bare naked conclusions.

Once again, there are no facts to reasonably support the violations alleged in your complaint, which is as airy as the “atmosphere” which seems to disturb you. There was no Open Meeting Law violation.

Sincerely,

  
Zaheer A. Samee

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