

Open Meeting Law Complaint: City Council President Winslow, Submitted: March 6, 2024

On 2/26/24, a separate Open Meeting Law Complaint was submitted to the City Council Chair and Clerk by this Complainant. In response, and apparently in relation to the 2/26/24 Complaint, a Malden Assistant City Solicitor sent three emails to Complainant prior to the City Council meeting to review that 2/26/24 Open Meeting Law Complaint.

On 3/4/24 at 1:59 PM, an Assistant City Solicitor caused an email to be delivered in response to the Complainant, with a copy to Council Chair Stephen Winslow <swinslow@cityofmalden.org>. This read, "On behalf of the city council president [sic], pursuant to 940 C.M.R. 29.05(6), we request additional information from you substantiating this open meeting Law complaint against the malden city council [sic], before investigating and resolving it."

The cited regulation makes clear, "the chair may request [additional information] from the complainant within seven business days of receiving the complaint." There is no allowance for delegation of authority or responsibility by the chair to legal counsel in this matter. Open Meeting Law makes explicit in other areas where delegation to legal counsel for handling Open Meeting Law matters involving a response, which may only be made after review by the public body.

On 3/4/24 at 5:02 PM, the same individual (without visibly copying any other City Official or public body member) delivered a further email in response to the complaint "seeking evidence substantiating your allegations." This email response by legal counsel included a long five-point list of interrogational and invasive requests seeking personal communications predating the complaint by nearly two months. The email added a sixth request that Complainant "testify under oath before a notary public who will transcribe your testimony".

The nature of these email requests establishes an atmosphere and burden of compulsory legal process on the public, press and private citizens not in Open Meeting Law. These emails call for Discovery and Deposition procedures during routine administrative proceedings; this is something new. Malden's practice here also establishes and employs a protocol and process "for the purpose of obtaining information from or records of members of the news media".

On 3/5/24 at 3:24 PM, a third email from the same individual arrived (once again without visibly copying any other City Official or public body member) stating "I have only requested information from you, which the law allows."

Prior to these three emails responding to the 2/26/24 Complaint, there is no evidence the City Council met publicly to review the complaint. Action by the public body, as represented by legal counsel, is now predicated on Complainant acquiescing to pressure, provocation and demands for "additional information from you substantiating this open meeting Law complaint against the malden city council, before investigating and resolving it."

As we know, "[t]he complaint may be forwarded to legal counsel, and counsel may draft a response, prior to the public body meeting to review the Open Meeting Law complaint, but the

public body must meet to review the complaint before delegating authority to respond. See OML 2014-74; OML 2020-96.” [See OML 2020-160]

Additionally, “[p]roper procedure requires that a public body review a complaint before authorizing legal counsel to respond on its behalf. See OML 2017-132; OML 2012- 95; OML 2011-6. ... Forwarding a complaint to legal counsel prior to a meeting does not violate the law as long as the public body reviews the complaint and any draft response during a meeting, approves the draft response during that meeting, and then either decides to send the response itself or authorizes legal counsel to send the response. See OML 2018-134.” [OML 2019-163]

Based on the actions described, authority was delegated to legal counsel and actions in response were taken before the City Council met to review the complaint. This Complainant believes the actions described here violate the plain language and prior Determinations of Open Meeting Law, while undermining the intent of the law in multiple ways. [See OML 2014-25; OML 2014-55; OML 2014-74; OML 2019-163 and others; G.L. c. 30A, § 23(b); 940 CMR 29.05(5)]

In addition to any allegations of specific violation/s, the practices employed here hinder and outright impede the public body’s responsibility, accountability and public need to review, learn from, and resolve any complaints in the future. [The three emails are included herewith.]

At the time this Complaint is being filed, records indicate the City Council last met in a publicly noticed meeting on 2/27/24. The Assistant City Solicitor’s email responses stated they were acting at the direction of the Council President. Thus, this Complaint is filed specifically in the name of Council President Stephen Winslow, who is alleged to have approved this delegated response, without review of the public body, and therefore committed the violation/s.

ACTIONS REQUESTED

=====

1. Hold that all public bodies in Malden will follow Open Meeting Law.
2. Hold that the City Solicitor’s Office will follow Open Meeting Law.
3. Prohibit any such response to a complaint, or similar response, in the future.
4. Release all public records of this Complaint, whether created or received by a member or nonmember of the City Council.
5. Review and Respond to the 2/26/24 Complaint based on the facts and information provided in that Complaint.