

## PROCEDURES / DESCRIPTION OF ALLEGED VIOLATION

It appears one or more Open Meeting Law violations occurred in handling an Open Meeting Law complaint, which had been filed against the City Council on January 22, 2024. An agenda for the Council's meeting on 1/30/24 had docket #55-24 to discuss the 1/22/24 complaint. The record of that business item does not reflect deliberations taking place on any other day (e.g. to review a written response, or deliberate on how to respond.)

Why does Complainant believe this is an important issue to address? Because, generally speaking, divergence from Open Meeting Law is not in the public interest. If there is confusion, ambiguity, or differing interpretations, it is helpful to all parties - especially the public interest - to clarify things. As we know, the goal of Open Meeting Law is clear:

"The Open Meeting Law was enacted "to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based." Ghiglione v. School Board of Southbridge, 376 Mass. 70, 72 (1978)."

Therefore, Complainant alleges the first procedural violation arises since the City Council never (apparently) reviewing or approving the draft response on the 1/22/24 Complaint, prior to the Solicitor's office sending that response to the AGO and Complainant. It's well known that:

"Proper 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. Once a public body has reviewed a complaint during a meeting, its decision to simply refer the complaint, rather than discuss its substance, is the public body's prerogative. See OML 2019-40; OML 2017-96. 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]

The second apparent violation relates to the public body's serial communication arising through a non-member (ie. the City Solicitor's office) who has acknowledged serially communicating with all members of the City Council related to docket #55-24, the 1/22/24 matter. The nonmember noted in their 2/20/24 response to the AGO,

"As part of my investigation, I spoke with every city councilor present at the January 2, 2024 meeting. ... These interviews were not recorded, and therefore no transcriptions exist. Further these communications are protected by the attorney-client privilege and are not subject to disclosure."

Those communications polled input and opinion of a quorum of the Council and provided deliberative guidance to the Solicitor's Office on how the public body should respond. The response to the Open Meeting Law Complaint is ultimately and legally the obligation and responsibility of the public body. Guidelines from the AGO, and prior Determinations, consistently and clearly indicate that the approach taken here violates Open Meeting Law:

"[W]e have stated in the past that communication between counsel and a quorum of a public body may occur only during a properly noticed open meeting or during an executive session held for one of the ten enumerated purposes." [OML 2018-139]

This has been repeatedly communicated over a long period of time:

"Communication between counsel and a quorum of a public body may occur only during a properly posted open meeting or during an executive session held for one of the ten enumerated purposes. See District Attorney for Plymouth District v. Board of Selectmen of Middleborough, 395 Mass 629, 633 (1985); OML 2014-97; 2012-55; OML 2011-27; OML 2010-6." [OML 2017-72]

The decisions made to follow the divergent approach was intentional.

## ACTION REQUESTED

1. Have the City Council acknowledge violations as described and ensure future reviews and responses of Open Meeting Law Complaints are handled as required by Open Meeting Law.
2. Release minutes of this serially-deliberated meeting at a Council meeting, with adequate minutes including a summary of the discussions (opinions, responses to questions, action to be taken etc.) on each subject with each Councillor, and a list of all documents and exhibits "used" - such as email, text messages, etc.