

Alicia A. McNeil
City Solicitor



Zaheer A. Samee
Assistant City Solicitor

Christopher Mooney
Assistant City Solicitor

Prasanna Rajasekaran
Assistant City Solicitor

Mark E. Rumley
Special Counsel

SENT VIA EMAIL: info@opencommonwealth.org

April 1, 2026

Bruce Friedman
8 Marvin Street
Malden, MA 02148

Re: Open Meeting Law Complaint dated March 12, 2026.

Dear Mr. Friedman:

On March 12, 2026 you filed an Open Meeting Law Complaint with the Malden City Council alleging that the Malden City Council violated the Open Meeting Law with regard to executive session minutes regarding the dates of October 25, 2022, September 12, 2023, September 26, 2023, February 4, 2025, February 11, 2025, February 25, 2025, March 4, 2025, March 11, 2025, April 29, 2025, September 30, 2025, January 20, 2026, February 3, 2026, February 10, 2026 and February 17, 2016. Your specific allegations of violation are the following:

- a) the minutes were not regularly reviewed and released as required by the Open Meeting Law;
- b) the minutes were withheld in their entirety where no legal justification allowed withholding in their entirety;
- c) the stated reason(s) for withholding in their entirety fail under the Open Meeting Law. Most of each meeting record is neither privileged nor able to compromise any legal positions, most of each record is administrative in nature and should have been released; and
- d) the records were withheld in their entirety even after the body voted and agreed to release them in their entirety without redactions pending specific court dates, which expired on March 1 and March 2, 2026 respectfully.

Facts

I have set forth below the date of each executive session that you mention along with the corresponding Council paper number, the statutory basis for entering executive session, a cursory summation of the substance discussed in the executive session and resulting vote.

Date Exec Session	Statutory Basis	General Substance	Result
<u>October 25, 2022</u> Paper 425-22	G.L. c 30A § 21(a)(3) Litigation strategy Benevolent Botanicals and 926 Eastern Ave v City of Malden <i>Vote for Ex Session</i> 8-1	Discuss Case Status	Council vote 7-0 to exit executive session See 2/10/26 & 3/1/26 [regarding release of Benevolent minutes] See, 2/11/25 for review of minutes See, 2/10/25 for approval of 10/25/22 minutes
<u>September 12, 2023</u> Paper 316-23	G.L. c 30A § 21(a)(3) Litigation strategy Benevolent Botanicals and 926 Eastern Ave v City of Malden <i>Vote for Ex Session</i> 10-0	City Solicitor informed Council of an offer from Plaintiffs	Council voted 10-0 to exit executive session See, 2/11/25 for review of minutes See, 2/10/26 for approval of 2/12/25 minutes
<u>September 26, 2023</u> Paper 335-23	G.L. c 30A § 21(a)(3) Litigation strategy Benevolent Botanicals and 926 Eastern Ave v City of Malden <i>Vote for Ex Session</i> 9-0	City Solicitor informed Council of Plaintiff proposal to settle	Council voted 9-0 to exit executive session. See, 2/11/25 for review of minutes See, 2/10/26 for approval of 2/26/25 minutes

<u>February 4, 2025</u> Paper 61-25	G.L. c 30A § 21(a)(3) Litigation strategy Benevolent Botanicals and 926 Eastern Ave v City of Malden <i>Vote for Ex Session</i> 11-0	City Solicitor reviewed case before closing arguments in the trial and went over settlement offer	Council voted 6-5 to authorize City Solicitor to make a counter offer. See, 2/11/25 for review of minutes See, 2/10/26 for approval of 2/4/25 minutes
<u>February 11, 2025</u> Paper 83-25	G.L. c 30A § 21(a)(3) Litigation strategy Benevolent Botanicals and 926 Eastern Ave v City of Malden <i>Vote for Ex Session</i> 10-0	Council reviewed minutes of Oct 25, 2022, Sept 12, 2023, Sept 26, 2023 and February 4, 2025 to determine whether to release them	Council voted 9-0 to continue non- disclosure until the trial judge makes a ruling. See, 3/4/25 for approval of 2/11/25 minutes
<u>February 25, 2025</u> Paper 116-25	G.L. c 30A § 21(a)(3) Litigation strategy Benevolent Botanicals and 926 Eastern Ave v City of Malden <i>Vote for Ex Session</i> 10-0	Concerns raised over confidentiality and executive session and whether it has a negative effect on litigation and also discussion of settlement	Council voted 8-0 to table discussion for one week See, 2/10/26 for approval of 2/25/25 minutes
<u>March 4, 2025</u> Paper 117-25	G.L. c 30A § 21(a)(3) Litigation strategy Benevolent Botanicals and 926 Eastern Ave v City of Malden <i>Vote for Ex Session</i> 8-0	Discussion of settlement offer of Plaintiff Council approved minutes of 2/11/25	Council voted 9-0 to exit executive session See, 2/10/26 for approval of 3/4/25 minutes

March 11, 2025
Paper 142-25

G.L. c 30A § 21(a)(1) and 21(a)(7) to act on an Open Meeting Law Complaint brought by Councillor Sica against the City Councillor Karen Colon Hayes related to meeting of February 25, 2025
Vote for Ex Session
8-2

Discussion on commenting on social media and the duty of confidentiality regarding executive sessions

Council vote 10-0 to have Law Dept investigate complaint and report back.
See, 2/10/26
for approval of 3/11/25 minutes
Paper 143-25
Review of minutes of 3/4/25, 2/25/25 2/11/25; 2/4/25; 9/26/23; 9/12/23; and 10/25/22

April 29, 2025
Paper 222-25

G.L. c 30A § 21(a)(1) and 21(a)(7) to act on an Open Meeting Law Complaint brought by Councillor Sica against the City Councillor Karen Colon Hayes related to meeting of February 25, 2025
Vote for Ex Session
11-0

Council reviewed a response received from Asst City Solicitor Zaheer Samee

Council voted 8-2 to request revisions in Asst City Solicitor Samee's draft
See, 2/10/26
for approval of 4/29/25 minutes

September 30, 2025
Paper 365-25

G.L. c 30A § 21(a)(3) Tufts Construction Inc. v City of Malden & Yem Lip
Vote for Ex Session
9-1

To discuss the Tufts case and packets of documents delivered to each City Councillor by an anonymous person regarding the "mistrial" entered in the Tufts case

Council voted 9-0 to exit executive session
See, 2/3/26 for Approval and Release

January 20, 2026
Paper 39-26

G.L. c 30A § 21(a)(3) Litigation strategy re Tufts v City & Lip
Vote for Ex Session
10-0

To inform City Council of a tentative agreement to settle that includes monetary and non-monetary provisions

Council voted 10-0 to exit executive session
See, 2/3/26 for Approval and Release

<u>February 3, 2026</u> Paper 77-26	G.L. c 30A § 21(a)(7) Periodic Review of Exec Session Minutes of Tufts Construction Inc v City of Malden <i>Vote for Ex Session</i> 10-0	Whether to release minutes from Exec Sessions that were held on September 30,2025 and January 20, 2026	Council Voted 11-0 to release 9/30/25, 1/20/26*, 2/3/26, as redacted upon the Court's acceptance of the Settlement Agreement See, 2/17/26 for approval of 2/3/26 minutes
<u>February 10, 2026</u> Paper 102-26	G.L. c 30A § 21(a)(7) Benev. Botanicals & 926 Eastern Avenue v. City of Malden, and Periodic Review <i>Vote for Ex Session</i> 10-1	Discussed Judge Rubin's decision in Botanical case Council approved the minutes of 4/29/25, 3/11/25, 3/4/25, 2/25/25, 2/11/25, 2/4/25, 9/26/23, 9/12/23 and 10/25/22	Council voted 10-1 to retain minutes in non-disclosure until the City Solicitor has determined that the time frame for appeal has been exhausted See, 2/17/26 for approval See, 3/3/26 for Release Approval
<u>February 13, 2026</u>	City filed appeal in Benevolent case		
<u>February 17, 2026</u> Paper 108-26	G.L. c 30A § 21(a)(7) Review of Open Meeting request of Bruce Friedman, Also, Benevolent Botanicals & 926 Eastern Avenue v. City of Malden and the Tufts Construction Case <i>Vote for Ex Session</i> 10-1		Council voted to release the minutes of Feb 3, 2026 whole and unredacted upon the Court's acceptance of the settlement agreement in the Tufts case. Council Approved minutes of 2/3/26, 2/10/26 See, 3/3/26 for Release Approval

March 2, 2026

City withdraws appeal in Benevolent case

March 3, 2026

Communication from
Council President.
The executive session
Minutes from 2/10 and
2/17 “shall be released in
accordance with post
judgement action

March 12, 2026

City Clerk released minutes from 9/30/25, 1/20/26, 2/3/26,
2/17/26, 2/10/26, 2/25/25, 3/4/25, 3/11/25, 4/29/25, 10/25/22,
9/12/23, 9/26/23, 2/4/25, 2/11/25

Analysis

Allegation: a) the minutes were not regularly reviewed and released as required by the Open Meeting Law;

Response: The City Council acted in compliance with the Open Meeting Law by reviewing and releasing minutes as required by the Open Meeting Law.

Reasoning:

According to the Open Meeting Law, “if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety.”

Each of the Executive Session minutes listed in your complaint pertains to litigation in one of two cases: Benevolent Botanicals & 926 Eastern Avenue v. City of Malden, Massachusetts Land Court, Docket No. 22 MISC 000076, and Tufts Construction v. City of Malden & Yem Lip, Middlesex County Superior Court, Docket No.2181CV01248. The Executive Sessions were properly entered into under Open Meeting Law Exemption 3, “[t]o discuss strategy with respect to collective bargaining or litigation.” See G. L. c. 30A, § 21(a).

The Open Meeting Law further states, “if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege” applies. G. L. c. 30A, § 22(f).

In the Tufts matter, the Council voted to release Executive Session minutes pertaining to the Tufts case upon the Court’s acceptance of the settlement agreement. While a tentative settlement had

215 Pleasant Street, Malden, MA 02148 | Phone: 781-397-7106 | legal@cityofmalden.org

Strong Past... Proud Future

been agreed to between the parties as of January 20, 2026, the details of the settlement had not been finalized, and the case remained open on the court's docket until a final settlement agreement was reached. On March 16, 2026, a joint stipulation of dismissal was filed by the parties, but the Court is yet to accept the parties' stipulation for procedural reasons.¹ Nevertheless, the Executive Session minutes were released on March 12, 2026, because, by that date, the parties had finalized the settlement terms and were prepared to file the stipulation of dismissal.

In the Benevolent matter, the City filed a notice of appeal of the Land Court's decision on February 13, 2026. On March 2, 2026, the City withdrew its notice of appeal. On March 3, 2026, the City Council released a communication stating that Executive Session minutes pertaining to Benevolent would be released "in accordance with post judgment actions." The City Solicitor expected to receive notice from the Court that the City's withdrawal had been accepted, and the case had been formally closed, before releasing the minutes – this is what "post judgment actions" referred to. However, after speaking with a Land Court clerk, the City Solicitor learned that the Court would not make any further docket entries on the case, and that the case was effectively closed. The City Solicitor immediately notified the City Clerk to release the Benevolent Executive Session minutes, which the City Clerk has done.

We find no violation of the Open Meeting Law in the release of the Benevolent or Tufts minutes. In both cases, the City rightfully withheld from disclosure the entirety of the minutes while the cases were in active litigation because publication could have jeopardized the City's litigating position. See G. L. c. 30A, § 22(f). Once the City understood that litigation had ended, and release of the minutes could no longer jeopardize its litigation position, it promptly designated the minutes for release.

We also find no violation of the Open Meeting Law in the City's review of these minutes. The Open Meeting Law requires City Council to "at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure." See G. L. c. 30A, § 22(f). Because City Council knew it could not disclose minutes from the Benevolent and Tufts cases so long as litigation was ongoing, any review of these minutes before the end of litigation would have been purely formalistic and unnecessary. Once litigation ended in both cases, the minutes were released within two weeks. It should also be noted that the Benevolent minutes were reviewed for release on February 11, 2025. There was no violation for failure to review minutes.

Allegation: b) the minutes were withheld in their entirety where no legal justification allowed withholding in their entirety;

Response: The City Council acted in compliance with the Open Meeting Law to withhold release of the minutes during the pendency of two particular civil actions entered against the City in the Land Court and the Superior Court

Reasoning:

As mentioned above, of the fourteen executive sessions upon which you have made an allegation

¹ The stipulation of dismissal was entered after the court dismissed the case without prejudice on March 10th because the 30-day nisi period had expired. The court has stated that the dismissal must be vacated before the stipulation can be accepted.

of an Open Meeting law violation, all of them pertained to matters in litigation, or to review of past Executive Session minutes discussing litigation. Both cases, Tufts and Benevolent, were entered in court prior to the first executive session on which you allege an Open Meeting Law violation. Each time City Council entered executive session, the Council identified ongoing litigation as the reason for entering into the session under G.L. c 30A § 21(a)(3), or a periodic review of minutes under G.L. c 30A § 21(a)(7).

When each case ended, either in a withdrawal of appeal, as was the case in Benevolent or in settlement as was the case with Tufts, the minutes were released because “release” would no longer compromise the purpose for which the executive session was initially called. See discussion supra.

Allegation: c) the stated reason(s) for withholding in their entirety fail under the Open Meeting Law. Most of each meeting record is neither privileged nor able to compromise any legal positions, most of each record is administrative in nature and should have been released.

Response: The City Council did not violate the Open Meeting Law by withholding the Executive Session minutes in their entirety.

Reasoning:

The Open Meeting Law gives public bodies the right to withhold Executive Session minutes “in their entirety” when “an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21” until publication would jeopardize the City’s litigating position. G. L. c. 30A, § 22(f). As explained above, publication would have jeopardized the City’s litigating position in the Benevolent and Tufts case so long as litigation was ongoing. The moment the City could be certain that litigation had ended, it released the minutes. The City had no obligation to redact and release, in piecemeal fashion, those minutes that pertained merely to administrative matters, when the general purpose of the Executive Session was to protect the City’s litigating position and litigation was ongoing.

Allegation d) the records were withheld in their entirety even after the body voted and agreed to release them in their entirety without redactions pending specific court dates, which expired on March 1 and March 2, 2026 ,respectfully.

Response: The City Council acted in compliance with the Open Meeting Law by consistently deciding to withhold release of the minutes until the two particular civil actions entered against the City concluded.

Reasoning:

In the Benevolent case, the judgment was entered on January 29, 2026, and the appeal of the City of Malden was withdrawn on March 2, 2026. As explained above, the body voted to release the minutes in accordance with post-judgment actions. This referred to an entry on the docket confirming that the City’s withdrawal had been accepted. Once it was clear that

no such notice would be entered, the City promptly released the minutes.

As explained above, the settlement agreement in the Tufts case was not finalized by March 1st, and it was not appropriate to release minutes at that stage.

The minutes for these Executive Sessions were released in their entirety, except for one redaction made to the January 20, 2026, minutes. That redaction was necessary because the information was attorney-client privileged information that could impact future litigation. There was nothing improper about that redaction. See G. L. c. 30A, §22(f) (minutes “shall be disclosed unless the attorney-client privilege” applies).

Conclusion

For the above stated reasons, the Malden City Council did not violate the Open Meeting Law with regard to executive session minutes on the dates you have specified.

Respectfully,

/s/ Mark Rumley

Mark E. Rumley
Special Counsel

/s/ Prasanna Rajasekaran

Prasanna Rajasekaran
Assistant City Solicitor

cc: Attorney General's Office