



The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108

RECEIVED
APR 15 2020

BY:

OPEN MEETING LAW COMPLAINT FORM

Instructions for completing the Open Meeting Law Complaint Form

The Attorney General's Division of Open Government interprets and enforces the Open Meeting Law, Chapter 30A of the Massachusetts General Laws, Sections 18-25. Below is the procedure for filing and responding to an Open Meeting Law complaint.

Instructions for filing a complaint:

- o Fill out the attached two-page form completely. Sign and date the second page. File the complaint with the public body within 30 days of the alleged violation. If the violation was not reasonably discoverable at the time it occurred, you must file the complaint within 30 days of the date the violation was reasonably discoverable. A violation that occurs during an open session of a meeting is reasonably discoverable on the date of the meeting.
- o To file the complaint:
 - o For a local or municipal public body, you must submit a copy of the complaint to the chair of the public body AND to the municipal clerk.
 - o For all other public bodies, you must submit a copy of the complaint to the chair of the public body.
 - o Complaints may be filed by mail, by email, or by hand. Please retain a copy for your records.
- o If the public body does not respond within 14 business days and does not request an extension to respond, contact the Division for further assistance.

Instructions for a public body that receives a complaint:

- o The chair must disseminate the complaint to the members of the public body.
- o The public body must meet to review the complaint within 14 business days (usually 20-22 calendar days).
- o After review, but within 14 business days, the public body must respond to the complaint in writing and must send the complainant a response and a description of any action the public body has taken to address the allegations in the complaint. At the same time, the body must send the Attorney General a copy of the complaint and a copy of the response. The public body may delegate this responsibility to an individual member of the public body, its counsel, or a staff member, but only after the public body has met to review the complaint.
- o If a public body requires more time to review the complaint and respond, it may request an extension of time for good cause by contacting the Division of Open Government.

Once the public body has responded to the complaint:

- o If you are not satisfied with the public body's response to your complaint, you may file a copy of the complaint with the Division by mail, by email, or by hand, but only once you have waited for 30 days after filing the complaint with the public body. Mail may be sent to: The Division of Open Government, Office of the Attorney General, One Ashburton Place - 20th Floor, Boston, MA 02108. Emails may be sent to: openmeeting@state.ma.us.
- o When you file your complaint with the Division, please include the complaint form and all documentation relevant to the alleged violation. You may wish to attach a cover letter explaining why the public body's response does not adequately address your complaint.
- o The Division will not review complaints filed with us more than 90 days after the violation, unless we granted an extension to the public body or you can demonstrate good cause for the delay.

If you have questions concerning the Open Meeting Law complaint process, we encourage you to contact the Division of Open Government by phone at (617) 963-2540 or by email at openmeeting@state.ma.us.



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: Alexander Last Name: Bowman

Address: 132 New Hartford Rd

City: Sandisfield State: MA

Zip Code: 4014473915

Phone Number: 4014473915 Ext.

Email: alexander.bowman@gmail.com

Organization or Media Affiliation (if any):

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): Sandisfield Board of Selectmen

Specific person(s), if any, you allege committed the violation:

Date of alleged violation: 3/17/2020

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

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.

See attached

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.

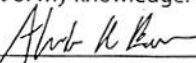
The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

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: 14 April 2020

For Use By Public Body
Date Received by Public Body:

For Use By AGO
Date Received by AGO:

Open Meeting Law (OML) Complaint Attachment

Alex Bowman - 2020-04-14 - Sandisfield Board of Selectmen (The Board)

This complaint alleges the following:

Intentional insufficient specificity for meeting notices

The agenda for the open session on 2020-03-18 included a single item: "Review, discuss and vote on the FY2021 budget".

In a letter dated March 5, Brian Riley of KP Law, Town Counsel to the Town of Sandisfield, responded to a separate OML complaint, declaring "the Board acknowledges that its meeting notice and minutes should include additional detail" and said it "has undertaken the remedial actions requested... which include increasing specificity for meeting agendas moving forward...". The letter also stated that "The Board therefore pledges to review the Attorney General's Guidelines with respect to its meeting notices...".

Contrary to the letter, this single item agenda for the town's ~\$3,500,000 budget does not include any additional detail about which items of the budget were possible topics for discussion. Agenda specificity provides the public with sufficient information about what business could be transacted, and should not be a vague statement to cover all the bases. Vague meeting agendas make it impossible for the public to know whether or not they need to attend.

The state has even provided clear guidance about specificity with a FAQ: "How detailed should meeting notices be where the public body intends to act on a large group of similar items (for example, annual license renewals or board appointments)?" A budget similarly falls under this question which includes the answers: "The notice must include details about each item, including the identity of the licensee or applicant or appointee, or the address that is the subject of an application to be considered by the public body" and "it is not acceptable for a meeting notice to refer members of the public to another location to find the required information"

The letter from Town Counsel indicated that they have undertaken remedial actions, yet The Board continues to post vague notices. This suggests that it is an intentional violation of the OML.

On 2020-03-17, the morning after the notice was posted, I emailed The Board alerting about the lack of specificity for the meeting notice with the text below:

Dear Board of Selectmen,

The posted agenda for the 2020-03-18 work session is not sufficiently descriptive. Specifically the state says that the *"detail is intended to provide members of the public with sufficient*

information to understand what business is being transacted by the public body and the opportunity to attend and observe deliberations in which they are interested."

1. Review, discuss and vote on the FY2021 budget

This is a \$3.5M budget. It affects a wide range of issues and many different areas of interest. A high-level blanket agenda item does not tell us anything. What items are likely up for discussion? Has there already been a note of areas that require discussion and perhaps those items can be the agenda of the meeting? Likely there is also a discussion about Prop 2.5 and potential areas for cutting budgets? Perhaps these could be items on the agenda?

From the Frequently Asked Questions page of the state's Open Meeting Law which describes a similar scenario regarding license applications:

<https://www.mass.gov/info-details/frequently-asked-questions-about-the-open-meeting-law>

How detailed should meeting notices be where the public body intends to act on a large group of similar items (for example, annual license renewals or board appointments)?

The notice must include details about each item, including the identity of the licensee or applicant or appointee, or the address that is the subject of an application to be considered by the public body. This level of detail is intended to provide members of the public with sufficient information to understand what business is being transacted by the public body and the opportunity to attend and observe deliberations in which they are interested.

This advice is consistent with our prior determinations. See OML 2016-167; OML 2011-11. We had, on limited occasions, advised public bodies that when identifying each annual appointment, license, or application to be considered at a meeting would result in the notice consisting of many pages that cannot fit on a bulletin board, a public body may instead reference on the notice that such additional information can be found at the municipal clerk's office or at another easily accessible location. However, the Suffolk Superior Court recently concluded that this approach is arbitrary, because the determination of whether it is practical to post a certain number of pages on a bulletin board is subjective. See *Town of Swansea v. Maura Healey*, Civil Action No. 2017-3269-E (Suffolk Sup. Ct. October 29, 2018). Accordingly, the specific information must be included on or with the notice itself; it is not acceptable for a meeting notice to refer members of the public to another location to find the required information. We encourage municipalities with limited posting space to consider adopting a website as the official notice posting method.

A member of the Board, George Riley, responded below, and the meeting notice was never updated.

Alex, If we were to take the guidance of the Open Meeting Law literally, the agenda would be about a dozen pages long. I have counted over 105 line items on the current budget, and we may examine any or all of them.

What you really need to know (as of today) is that we have just estimated the current budget as proposed by the Finance Committee will probably be about \$200,000 over our levy limit, and we will therefore

focus tomorrow on areas where we can reduce appropriations. The Select Board made a very preliminary review last night and will propose some cuts - most notably, eliminating a proposed 4th DPW employee - and the Fin Com may also propose some areas for reductions, but at this point, nothing is off the table.

Also that this will unfortunately not include the School budget, as that has already been approved and finalized by the School Committee. We will have to decide at Town Meeting, as last year, to vote yes or no on that.

That's as specific as we can possibly be at this point - and note that what I've just told you is information that postdates the agenda posting. The deadline for finalizing the Town Meeting Warrant is fast approaching, and the budget situation details are changing as we speak. The Town Administrator, Select Board and Finance Committee are all working simultaneously to finalize this and I expect the situation to continue to evolve over the next 36 hours.

George

The email further demonstrates that The Board does not intend to follow the specificity guidelines of the OML.

Requested action for the Board of Selectmen:

1. Increase specificity for meeting notices so the public can be reasonably advised.
2. All members and the administrative assistant who prepares the meeting notices attend in-person training.
3. Review the "Public Body Checklists" and FAQ provided on the mass.gov OML website.