

# Open Meeting Law

Balancing government transparency  
with government efficiency

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## Purpose of Open Meeting Law

- Ensures transparency of public policy deliberations
  - Provides notice about when public meetings are held
  - Deliberations generally open to public
  - Permits public to attend and record meetings
  - Requires public bodies to keep records of their meetings
- Allows government to efficiently manage its operations
  - Conduct certain deliberations in executive session
  - Keep confidential certain records of executive session

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## Attorney General's Role

- Provide training to public officials and members of public bodies
- Provide guidance on Open Meeting Law requirements
- Investigate Open Meeting Law Complaints
- Make findings and bring enforcement actions

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## What's New?

- Shifts all enforcement responsibility to Attorney General
- New Division of Open Government 
- Creates Open Meeting Law Advisory Commission 
- Expands notice posting requirements
- Expands record keeping requirements
- Requires certification by members of public body within 2 weeks of qualification for office 
- Requires presentment of complaints to public body
- Attorney General may permit remote participation 



## Division of Open Government

- Provide guidance to public officials
- Issue advisory opinions interpreting the law
- Distribute educational materials and require members of public bodies to certify that they understand the law and the consequences for violating it
- Conduct trainings to help public officials understand the law
- Investigate complaints from members of the public alleging violations of the law
- Take remedial actions and impose fines on public bodies for intentional violations





# Meeting

## Definition

Deliberation by public body with respect to any matter within the body's jurisdiction

• Excludes:

- On-site inspection provided no deliberation
- Attendance by a quorum at an event provided no deliberation
- Attendance by a quorum at meeting of another public body provided no deliberation
- Meeting of a quasi-judicial board for sole purpose of making a decision in an adjudicatory proceeding





# Deliberation

## Definition

An oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction

### •Excludes:

- Distribution of meeting agenda, scheduling or procedural information
- Distribution of reports or documents to be discussed
- Distributor should not express opinion of member of public body





# Public Body

## Definition

A multi-member board, commission, committee or sub-committee ... however created, elected, appointed or otherwise constituted, established to serve a public purpose ...

### •Excludes:

- Legislature and its committees
- Bodies of Judicial branch
- Bodies created by a constitutional officer solely to advise the constitutional officer
- Bodies that do not serve a public purpose
- Groups that are not established with the "jurisdiction" to make decisions or recommendations collectively, i.e., not empowered to act as a body\* (\*For discussion purposes)

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## Examples: Public Bodies

- **Local:** Board of Selectmen, School Committee, Planning Board, Board of Health
- **Regional:** Regional School Committee, Regional Water Commission
- **County:** Board of County Commissioners, County Retirement Board
- **State:** Open Meeting Law Advisory Commission, Board of Library Commissioners, Board of Higher Education





## Examples: NOT Public Bodies

**Local:** Neighborhood watch association; department staff meetings; private hospital board of trustees; private school board of directors, Boy/Girl Scout troop, parent-teacher organization, Republican/Democratic town committee

**Regional:** Regional high school boosters club

**State:** Judicial Nominating Commission (created by Governor to advise Governor); House of Representatives, State Senate, House Ways and Means Committee, Joint Committee on Public Service, Mass. Municipal Association





## Meeting Notices

- Except in an emergency, a public body must post notice of meeting at least 48 hours in advance, excluding Saturdays, Sundays, and legal holidays, except in emergencies
- Notice must include date, time and place of meeting
- Must include listing of topics the chair reasonably anticipates will be discussed at the meeting
- Topics must give enough specificity so that the public will understand what will be discussed





## Meeting Notices - Continued

- Public bodies are encouraged to update the notice when made aware of new topic within the 48 hour period before the meeting
- Chairs should not post notices so far in advance that there is a high likelihood that new topics will arise, unless the chair updates the notice with any such new topics 48 hours in advance of the meeting
- “Emergency” is a sudden, generally unexpected occurrence or set of circumstances demanding immediate action
- In an emergency, a public body shall post notice as soon as reasonably possible prior to a meeting





## Meeting Notices: Local Public Bodies

- Local public body must file notice with municipal clerk
- Notice must be posted in a manner conspicuously visible to the public at all hours in or on municipal building where clerk's office located
- Notice may be posted on bulletin board, electronic display, or loose-leaf binder
- Attorney General will be approving alternative posting methods





## Meeting Notices: County, District and Regional Public Bodies

- Regional or district public bodies must post notice in each city or town within the region or district in the manner prescribed for local public bodies
- For a regional school district, the secretary of the regional school district is the clerk of the school district and shall file the notice with the clerk of each city or town in the district
- County public bodies must post notice with the office of the county commissioner and a copy of the notice posted in a manner conspicuously visible to the public at all hours in a place or places designated by the county commissioners





## Meeting Notices: State Public Bodies

- For meetings of a state public body, notice must be posted on a website in accordance with procedures established for this purpose by the Attorney General's Office in consultation with the Information Technology Division of the Executive Office of Administration and Finance
- Until procedures are established, state public bodies must continue to post meetings notices with Executive Office of Administration and Finance





## Proposed Alternative Methods of Notice

- Public bodies may post notice of meetings on the municipal website, **AND**, post notice or provide Internet access in an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours
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## Proposed Alternative Methods of Notice – Continued

- Public bodies may post notice of meetings in a newspaper of general circulation in the municipality, **AND**, post notice or a copy of the newspaper containing the meeting notice at an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours
- Public bodies may place a computer monitor or electronic bulletin board displaying meeting notices on or in a door or window of the municipal building in which the clerk's office is located in such a manner as to be visible to the public from outside the building
- Public bodies may provide an audio recording of meeting notices, available to the public by telephone at all hours





## Public Participation

- Public may attend open session of meeting
- Public may not address public body without permission of chair or otherwise disrupt meeting
- Public may make audio or video recording of open session upon notification to chair and subject to reasonable requirements
- Chair must inform other attendees of recording at beginning of meeting
- If a person continues to disrupt a meeting after clear warning from the chair, the chair may order the person to leave the meeting. If the person does not leave, the chair may authorize a constable or other officer to remove that person.

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## Meeting Minutes

- Meeting minutes required:
  - Minutes must state the date, time, place of the meeting, and list of members present
  - Minutes must include a summary of discussion of each topic
  - Decisions made and actions taken including a record of all votes; secret ballots are not allowed; votes in executive session must be by roll call
  - List of documents and other exhibits used by the body at the meeting





## Open Session Records

- Meeting minutes shall be created and approved in a timely manner
- Documents and exhibits used by public body must be retained
- Minutes, even if still in draft form, and other materials and exhibits used by the public body must be disclosed to public within 10 days of request unless exempt from disclosure





## Executive Session



- Must convene open session prior to going into executive session
- Majority of members of public body must vote to go into executive session and a roll call vote is taken and recorded
- Chair must publicly state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called
- Chair must announce whether open session will reconvene at end of executive session
- Must maintain accurate records of executive session including roll call of votes taken
- May not discuss any matter other than purpose for which executive session is lawfully called

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## Purposes for Executive Session

1. Discuss reputation, character, health, discipline, charges, complaints, but not professional competence of individual
2. Conduct strategy sessions in preparation for negotiations, to conduct collective bargaining sessions or contract negotiations, with nonunion personnel
3. Discuss strategy for collective bargaining or litigation\*
4. Security personnel or devices 
5. Criminal misconduct
6. Acquisition of real property\*
7. Comply with law or grant-in-aid requirement
8. Preliminary screening for employment\*
9. Confer with mediator on litigation or decision
10. Trade secrets in the course of activities conducted by a public body as an energy supplier 

\*If holding an open meeting would have a detrimental effect and the chair so declares on record beforehand.

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## Executive Session Minutes

- Must be disclosed once publication will no longer defeat the purpose for having entered into executive session, unless within an exemption to the public records law, or attorney-client privileged
- Must be reviewed periodically by the chair or public body to determine if purpose of executive session remains
- Must be provided within 10 days in response to a request, unless a review has not yet been undertaken, in which case the minutes must be reviewed by the board at its next meeting or within 30 days, whichever comes first





## Executive Session Records

- Not required to disclose the minutes, notes or other materials used in a executive session for so long as the disclosure of those records would defeat lawful purposes of the executive session
- Periodic review to determine whether continued nondisclosure is warranted; determination must be included in subsequent meeting minutes
- Documents and exhibits used by public body must be retained
- Detailed requirements for review/disclosure of executive session minutes

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## Exempt From Public Disclosure

The following materials are exempt from public disclosure:

- Materials used in a performance evaluation of an individual bearing on his/her professional competence that were not created by members of the body for purposes of evaluation
- Materials used in deliberations about employment or appointment of individuals, including applications and supporting materials but excluding resumes, which must be disclosed





# Proposed Complaint Process

## Overview

- All complaints shall be in writing, using the form prescribed by the Director and available on the Division's website. The complaint shall be filed with the public body within 30 days of the alleged violation or, if it could not reasonably have been known at the time, then within 30 days of the date the complainant reasonably should have discovered the alleged violation
- Public body has 14 business days from filing to review the complaint and take remedial action
- Complainant may file a complaint with AGO at least 30 days after s/he has filed the complaint with the public body, but the AGO may decline to investigate a complaint which is not filed within 90 days of the date of the alleged violation, or if it could not reasonably have been known at the time, then within 90 days of the date the complainant reasonably should have discovered the alleged violation
- Division of Open Government will investigate the complaint if facially sufficient and determine if the public body violated the OML
- If the Division determines the public body violated the law, it may issue an order to the public body to take remedial action

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## Proposed Complaint Process

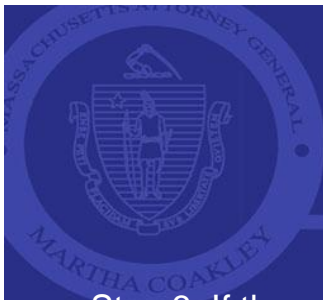
Step 1: Complaint shall be filed in writing with the public body within 30 days of the alleged violation, or if it could not reasonably have been known at the time, then within 30 days of the date the complainant reasonably should have discovered the alleged violation

- Complaint Form, found at the Division of Open Government website, filled out and sent to chair of public body or town clerk if a local public body

Step 2: Public body has 14 business days in which to respond and inform Division of Open Government of remedial action taken

- Public body may request from the Director an extension of time to respond, if the public body has good cause





## Proposed Complaint Process - Continued

Step 3: If the complainant is not satisfied with the resolution of the complaint by the public body, he/she may file the complaint with the Division of Open Government at least 30 days after the complaint is filed with the public body. The Division may decline to investigate any complaint filed more than 90 days after the alleged violation, or if it could not reasonably have been known at the time, then not more than 90 days of the date the complainant reasonably should have discovered the alleged violation.

Step 4: Division will investigate complaint if facially sufficient to determine whether a violation occurred

Step 5: Division may compel production of documents or convene hearing to take testimony



## Proposed Complaint Process - Continued

Step 6: Attorney General will determine whether there has been a violation of the Open Meeting Law, whether the violation was intentional, and whether it has been adequately remedied by the public body

Step 7: If the Attorney General finds a violation, the Attorney General may resolve the matter by an informal resolution such as a phone call or letter, or by a formal finding and ruling, and may issue an order requiring the public body to take remedial action

Step 8: Subject of complaint may file an appeal of an enforcement order in Superior Court



## Remedies

- Compel immediate and future compliance
- Compel attendance at training
- Nullify any action taken in violation of the Open Meeting Law
- Impose a civil penalty of up to \$1,000 on a public body for each intentional violation
- Reinstate an employee and make whole
- Compel public release of minutes or other materials
- Other appropriate relief





## Alternative Complaint Process

- Attorney General or 3 or more registered voters may initiate a civil action to enforce the Open Meeting Law
- Must file in Suffolk Superior Court for state public bodies
- For all other public bodies, must file in superior court in any county in which the public body acts or meets





## Resources

### Attorney General's Open Meeting Law Website

<http://www.mass.gov/ago/openmeeting>

- Open Meeting Law G.L. c. 30 A, §§ 18-25
- Up-to date regulations
- Training materials & training schedule
- Advisory opinions
- Letter rulings

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