



Wayland Public Schools
Wayland, Massachusetts 01778

SCHOOL COMMITTEE

Chris Ryan, Chair
Ellen Grieco, Vice Chair
Jeanne Downs
Erin Gibbons
Jessica Polizzotti

March 30, 2023

Via FIRST CLASS MAIL and email

Ms. Carrie Benedon, Director
Division of Open Government
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
openmeeting@state.ma.us

Re: Response to Open Meeting Law Complaint against the Wayland School Committee filed by Mr. George Harris on March 8, 2023

Dear Ms. Benedon:

On March 8, 2023, the Wayland School Committee (“the Committee”) received an Open Meeting Law Complaint (“the Complaint”) from Mr. George Harris alleging that the School Committee violated the Open Meeting Law at its February 8, 2023 and March 1, 2023 meetings. Pursuant to M.G.L. c. 30A, § 23(b), a copy of the Complaint is attached hereto as Exhibit A.

The Complaint alleges that the Committee violated the Open Meeting Law at its February 8, 2023 and March 1, 2023 meetings by not providing adequate detail of the specific purpose of its executive sessions. The Complaint further alleges that at its March 1, 2023 meeting, the Committee discussed non-union positions in a budgetary context which should have occurred in open session. However, Mr. Harris subsequently sent the Committee an email on March 14, 2023 in which he withdrew the portion of the complaint regarding the non-union positions agenda item (Exhibit B). As a result, this response will not address that allegation of the Complaint.

The Committee responded to a similar complaint from Mr. Harris filed February 14, 2023 and has attached that response for your reference (Exhibit C).

FACTUAL BACKGROUND

- On December 14, 2022, the Superintendent of Schools (“Superintendent”) filed a Demand for Arbitration pursuant to his employment contract. The demand alleged that the Committee violated the Superintendent’s employment contract in relation to its handling of complaints received

concerning the Superintendent. Those complaints were discussed at the Committee's October 26, 2022 meeting in executive session.

- On January 19, 2023, the Superintendent, through his legal counsel, sent a communication to the Committee's legal counsel which contained a draft of a complaint to the Massachusetts Commission Against Discrimination ("MCAD") against the Committee and the Town.
- The Committee convened in executive session on February 8, 2023, pursuant to M.G.L. c. 30A, § 21(a)(3), to discuss with its legal counsel strategy relative to issues and matters involving both the Superintendent's Demand for Arbitration, as well as the litigation imminently threatened in the draft MCAD complaint provided by the Superintendent's counsel.
- On February 10, 2023, the Superintendent filed a complaint with the MCAD against the Committee and the Town and notified the Committee via email of his filing.
- The Committee convened in executive session on March 1, 2023, pursuant to M.G.L. c. 30A, § 21(a)(3), to discuss strategy relative to both the Superintendent's Demand for Arbitration, as well as the MCAD complaint filed by the Superintendent.

ANALYSIS

In its response to Mr. Harris's February 14, 2023 Open Meeting Law Complaint, the Committee has previously acknowledged that the meeting notice for its February 8, 2023 meeting should have included additional information regarding the specific litigation to be discussed in executive session. The Committee hereby further acknowledges that the meeting notice for its March 1, 2023 meeting similarly should have included additional information regarding the specific litigation to be discussed. While the notices for both meetings correctly identified M.G.L. c. 30A, § 21(a)(3) and a discussion of strategy with respect to litigation as the purpose for the executive sessions, when identifying the specific litigation to be discussed, the notice for February 8 should have identified the litigation threatened by the Superintendent through his draft MCAD complaint and the notice for March 1 should have identified the litigation from the filed MCAD complaint, in addition to the arbitration which was identified for both meetings. Both pieces of litigation were discussed by the Committee on February 8 and March 1 and in retrospect the Committee should have separately identified both matters. The Committee will ensure that, in the future, its meeting notices for executive sessions under purpose 3 for discussion of litigation strategy adequately identify each potential piece of litigation to be discussed. The Committee has already implemented this change; the notice for the Committee's March 15, 2023 meeting includes the following information regarding the Committee's planned discussion of litigation under purpose 3:

9.7 Discuss strategy with respect to litigation where an open meeting may have a detrimental effect on the litigating position of the committee, pursuant to M.G.L. c. 30A § 21(a)(3). (Easy v. Wayland School Committee, et al. MCAD Complaint).

The Complaint additionally suggests that the meeting notices should have identified: (1) "whether the arbitration is ongoing or anticipated" (Complaint at p. 3); (2) "whether it dealt with previous litigation matters or a new matter" (Complaint at p. 3); and (3) "whether such arbitration concerns or does not concern a collective bargaining issue" (Complaint at p. 4). The Open Meeting Law does not require that a meeting notice include such details with respect to litigation matters under purpose 3. Nor does the Open Meeting Law require that a public body always include the identity of the parties involved in litigation to be discussed under purpose 3. A public body may withhold the specific name of the litigation matter if publicly disclosing that information would compromise the purpose for which the executive session was called, and

the judgment of a public body as to whether the inclusion of such information would compromise the purpose for the executive session is entitled to deference. See Attorney General's Guide to the Open Meeting Law, at p. 12.

In the present case, at the time of the February 8 executive session, neither the Demand for Arbitration or the threatened MCAD litigation were public documents, the Demand for Arbitration having been filed directly with the American Arbitration Association by the Superintendent's counsel, and the threatened MCAD litigation having been sent confidentially by the Superintendent's counsel to the Committee's counsel. While the Committee acknowledges that it should have included additional information regarding the specific litigation to be discussed at its February 8 executive session, given the multiple pieces of litigation, threatened and actual, as well as an ongoing investigation into complaints about the Superintendent, the Committee made the judgment that disclosure of the specific details of the litigation matters at that time would compromise the purpose for the executive session, which was to allow the Committee to discuss strategy related to these matters confidentially without premature public disclosure. With respect to the March 1 executive session, at which time the Superintendent's MCAD Complaint against the Committee had been made public, the Committee acknowledges it should have included additional detail similar to the notice for its March 15 meeting, as noted above.

CONCLUSION

The Committee acknowledges that its meeting notices for February 8 and March 1 should have included more information regarding the specific litigation matters to be discussed and will ensure that its notices contain adequate information identifying all such litigation matters in the future.

Thank you for your attention to this matter.

Sincerely,

Chris Ryan
Chair, Wayland School Committee

cc: Mr. George Harris
Wayland School Committee