



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

November 20, 2023

OML 2023 – 198

VIA EMAIL ONLY

Erin Gibbons
Chair, Wayland School Committee
41 Cochituate Road
Wayland, MA 01778

Erin_Gibbons@waylandps.org

RE: Open Meeting Law Complaint

Dear Ms. Gibbons:

This office received a complaint from George Harris on October 10, 2023, alleging that the Wayland School Committee (the “Committee”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Committee on or about August 4, 2023, and you responded on behalf of the Committee by letter dated August 24.¹ The complaint alleges that minutes of the Committee’s meetings held on June 5 and June 20 insufficiently summarized the interviews of candidates to fill a vacancy on the Committee, in violation of the Open Meeting Law. Mr. Harris further claims that the violations were intentional.

Following our review, we find that the Committee violated the Open Meeting Law and that the violations were intentional. In reaching this determination, we reviewed the Open Meeting Law complaint, the Committee’s response and the request for further review. We also reviewed the original and amended minutes of the Committee’s June 5 and June 20 meetings.

¹ All dates are in 2023, unless otherwise stated.

FACTS

We find the facts to be as follows. On June 5 and June 20, the Committee and the Wayland Select Board² jointly interviewed candidates to fill a vacancy on the Committee. The Committee's original minutes of the June 5 meeting described the interviews as follows:

The Committee and the Select Board agreed to hear from the four (4) candidates who were present and at a later time meet with Craig Gruber. There was discussion between the Committee and Select Board members with respect to how to engage with each of the individuals in a fair and equitable process for selection. Each of the four candidates present provided an opening statement and shared his/her/their intent and qualifications to join the School Committee. The Committee and Select Board members interviewed the candidates by each asking a question.

Similarly, the Committee's original minutes of the June 20 meeting described the interviews as follows:

Select Board Chair Whitney described the process for filling the vacancy and noted that one candidate, C. Gruber, was not available at the previous meeting due to military service when each of the other four (4) potential appointees were interviewed. C. Gruber was asked to address the Committee and the Select Board. C. Gruber provided an opening statement addressing his intent and qualifications for joining the School Committee. The Committee members and the Select Board proceeded to ask questions of C. Gruber as they did at the previous meeting with the other four (4) applicants.

On August 23, the Committee approved amended minutes of the June 5 and June 20 meetings, incorporating detail of what each candidate said during his or her interview.

DISCUSSION

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). See OML 2023-56.³ Toward that end, public bodies are required to "create and maintain accurate minutes of all meetings, including executive sessions." G.L. c. 30A, § 22(a); 940 CMR 29.11(1). See also OML 2023-56. The minutes must set forth "the date, time and place [of the meeting], the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes." G.L. c. 30A, § 22(a).

² On July 19 and July 31, George Harris filed complaints with the Select Board on grounds similar to those upon which he relies in the instant complaint against the Committee. However, he withdrew the July 19 complaint and declined to submit the July 31 complaint for review.

³ Open Meeting Law determinations may be found at the Attorney General's website, <https://www.mass.gov/the-open-meeting-law>.

When reviewing minutes for compliance with the Open Meeting Law, we look for substantial compliance with the accuracy requirement. See OML 2023-56; OML 2016-105. By substantial compliance, we mean that the minutes should contain enough detail and accuracy so that a member of the public who did not attend the meeting could read the minutes and have a clear understanding of what occurred. See OML 2023-56; OML 2023-35; OML 2021-140. A transcript is not required, and the minutes do not need to include every remark or opinion presented. See OML 2023-35; OML 2019-81; OML 2012-29; OML 2011-55.

As the Committee acknowledges in its response to the complaint, the summaries of the candidate interviews in the original minutes were not sufficiently detailed.⁴ Indeed, the minutes on that topic are devoid of any substance, other than each candidate's name. As such, they do not comply with the Open Meeting Law. See, e.g., OML 2015-49 (minutes that simply listed times of interviews of town administrator candidates "entirely insufficient"; minutes must summarize substance of interviews); OML 2016-15 (minutes insufficient on subject of interview of fire chief candidate). Most concerning, and as noted by the complainant, just last year the Committee was found to have violated the Open Meeting Law on the same grounds. See OML 2022-17 (Committee's minutes of interviews of school superintendent candidates were insufficient; minutes noted that each candidate gave a statement and was asked questions but did not summarize substance of interviews). Because the original minutes of the June 5 and June 20 meetings fail to summarize the candidate interviews, we find that the Committee violated the Open Meeting Law.

Next we consider whether the violation was, as the complainant urges, intentional. See G.L. c. 30A, § 23(c). An intentional violation is an "act or omission by a public body or a member thereof, in knowing violation of [the Open Meeting Law]." 940 CMR 29.02. An intentional violation may be found where the public body acted with deliberate ignorance of the law's requirement or has previously been advised that certain conduct violates the Open Meeting Law. Id. Evidence of an intentional violation includes that a public body was previously advised by the Attorney General that the conduct violates the Open Meeting Law. See OML 2019-114 (violation intentional where Board was warned that it must include identity of parties about whom it is conducting strategy discussions); OML 2017-109 (repeated failure to respond to complaint within 14 days constitutes intentional violation); OML 2017-23 (repeated discussion of personnel matters in executive session constitutes intentional violation).

In a determination from this office dated February 2, 2022, we explained to the Committee that its failure to include a summary of interviews conducted during open meetings violated the Open Meeting Law. See OML 2022-17. The complaint giving rise to that decision concerned interviews of finalists for the position of School Superintendent. At the time of our decision in that matter less than two years ago, the Committee's violation was not deemed intentional because we found that it arose out of a sincere misunderstanding of the Committee's obligations. Id. However, we cautioned the Committee at that time: "So that there is no uncertainty, we remind the Committee that the Open Meeting Law requires that meeting minutes include more than a statement *that* a public body held a discussion about a specified topic; the

⁴ As noted above, upon receipt of the complaint in the instant matter, the Committee amended the minutes to include the required detail.

Law requires that the minutes summarize the substance of the public body’s discussion.” Id. In light of the Committee’s disregard of this explicit reminder, we find the violation intentional.

In its response to the instant complaint, the Committee acknowledges the prior violation arising out of a failure to summarize interviews in its meeting minutes. However, the Committee notes that only two current members of the Committee were members of the Committee at the time that we issued the determination in February 2022. That only some of the current members of the Committee were members at the time of a prior similar violation does not shield the Committee from a finding of intentionality. None of the current members needs to have been a member of the public body at the time of the prior similar violation for the public body to be charged with knowledge that the conduct violates the Open Meeting Law. This too was made clear to the Committee in OML 2022-17. In that determination, we noted violations in 2015, 2016 and 2017, and reminded the Committee that, upon qualifying for office, Committee members are required to certify receipt of certain Open Meeting Law educational materials, including “[a] copy of each Open Meeting Law determination issued to that public body by the Attorney General within the last five years in which the Attorney General found a violation of [the Open Meeting Law].” See 940 CMR 29.04; OML 2022-17. Therefore, all current members should have been made aware of the guidance and warnings offered in OML 2022-27 when they joined the Committee. See OML 2018-64 (provision that new members receive determinations of violations from the last five years “require[s] members to educate themselves about and be responsible for the body’s past violations.”)

The Committee further argues that “there is no evidence that the Committee acted in an effort to conceal information from the public in this case.” We agree and emphasize that we find this violation to be intentional based on the fact that the Committee had been previously advised that this conduct violated the law and not based on any finding that the Committee intended to deceive or conceal information from the public.⁵ See OML 2020-154.

CONCLUSION

For the reasons stated above, we find that the Committee violated the Open Meeting Law by approving minutes of its June 5 and June 20 meetings, which fail to sufficiently summarize interviews of candidates for the Committee. Furthermore, we find the violations intentional. We acknowledge the Committee’s prompt corrective action to amend the meeting minutes after the complaint was filed, and decline to recommend a civil penalty at this time. We specifically caution that a future finding of an intentional violation for failure to approve sufficient meeting minutes may result in a civil penalty of up to \$1,000 per violation. In addition, we order the Committee’s immediate and future compliance with the Open Meeting Law.

⁵ “Evidence of an intentional violation of M.G.L. c. 30A, §§ 18 through 25 shall include, but not be limited to, that the public body or public body member: (a) acted with specific intent to violate the law; (b) acted with deliberate ignorance of the law’s requirements; **or** (c) was previously informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to 940 CMR 29.07 or 940 CMR 29.08, that the conduct violates M.G.L. c. 30A, §§ 18 through 25.” 940 CMR 29.02 (emphasis added).

We now consider the complaints addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with the Committee or with our office. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Matthew Lindberg
Assistant Attorney General
Division of Open Government

cc: Wayland School Committee (via email: school_committee@waylandps.org)
George Harris (via email: geoharris2@yahoo.com)
Wayland Town Clerk (via email: treid@wayland.ma.us)

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.