



THE COMMONWEALTH OF MASSACHUSETTS
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March 24, 2023

OML 2023 – 45

Public Works Planning Board
c/o Chair William Boland
17 Common Street
Southborough, MA 01772

By email only: bboland@southboroughma.com

RE: Open Meeting Law Complaint

Dear Mr. Boland:

This office received a complaint from Patricia Burns Fiore on January 18, 2023, alleging that the Southborough Public Works Planning Board (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Board on or about December 23, 2022, and you responded, on behalf of the Board, by email dated February 10, 2023.¹ The complaint alleges that the Board failed to timely respond to a request for meeting minutes.

We resolve this matter by **informal action**, in accordance with 940 CMR 29.07(2)(a), after reviewing the original complaint, the Board’s response to the complaint, the complaint filed with our office requesting further review, the minutes and video recording of the Select Board meeting held on November 15, 2022,² and the notice of the Board meeting held on February 6, 2023. We find that the Board violated the Open Meeting Law in the way alleged.

On November 15, 2022, the complainant sent an email to the Board requesting copies of all minutes of Board meetings. At the time of the request, the Board had met only five times, on

¹ We remind the Board that the Open Meeting Law requires that within 14 business days of receipt of a complaint, the public body must meet to review the complaint’s allegations; take remedial action, if appropriate; send to the complainant a response and a description of any remedial action taken; and send to the Attorney General a copy of the complaint and a description of any remedial action taken. G.L. c. 30A, § 23(b); 940 CMR 29.05(5).

² A video recording of the Select Board meeting held on November 15, 2022, is available at https://www.youtube.com/watch?v=QBKAymc_YRo.

April 29, 2019, January 27, 2020, June 11, 2020, January 27, 2021, and July 18, 2022. The Board did not respond to the request for minutes within the timeframe required by the Open Meeting Law. The complainant thereafter filed the Open Meeting Law complaint at issue here regarding the Board's failure to respond to her request for meeting minutes. The Board held a meeting on February 6, 2023, approved minutes of the meetings held on January 27, 2021, and July 18, 2022, and reviewed the Open Meeting Law complaint.

The Open Meeting Law requires that a public body "create and maintain accurate minutes of all meetings, including executive sessions." G.L. c. 30A, § 22(a). The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days." G.L. c. 30A, § 22(c). If such minutes do not yet exist at the time of a request, the public body is still required to respond to the request within 10 days with an explanation of whether the minutes do or do not exist in either approved or draft form. See OML 2018-98; OML 2017-50; OML 2016-71; OML 2015-173.³ Because the Board failed to provide a response within 10 days of the request for minutes, we find that it violated the Open Meeting Law by not timely responding to a request for minutes. We order no further remedial action as the Board has since posted all requested minutes to its website and advised the complainant that minutes have been posted.

With respect to the complainant's concern that the Board did not post minutes to the municipal website, the Open Law Meeting does not require that public bodies post their minutes to a website or elsewhere, such as with the Town Clerk, but only that minutes be created, maintained, and approved in a timely manner, and made available within 10 days of a request.⁴ G.L. c. 30A, §§22(a), (c); OML 2020-78; OML 2017-98. We remind the Board that the Open Meeting Law requires that a public body "create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, 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). The meeting minutes must be reviewed and approved in a timely manner. G.L. c. 30A, § 22(c). "Timely manner" means "within the next three public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay." See 940 CMR 29.11; OML 2018-48. Whenever possible, we recommend that minutes of a meeting be approved at the next meeting.⁵ See OML 2014-15; OML 2012-91.

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

⁴ We note that effective January 1, 2017, the Supervisor of Records within the Office of the Secretary the Commonwealth requires that a municipal public records access officer, to the extent feasible, post commonly available public record documents on a website maintained by the municipality. See 950 CMR 32.04(5)(g).

⁵ Although not raised in the complaint, we note that the Board approved minutes in a timely manner where the minutes were approved either at the next meeting, even though the meetings occurred between six and nine months later, or within the next three meetings. See OML 2013-173 (where a public body meets only annually, the Committee may approve minutes at its next regularly scheduled meeting, even where that meeting is not for another year). During the January 27, 2020, meeting, the Board approved the minutes of the meeting held on April 29, 2019. During the June 11, 2020, meeting, the Board approved the minutes of the meeting held on January 27, 2020. During the January 27, 2021, meeting the Board approved the minutes of the meeting held on June 11, 2020. Finally, during the February 6, 2023, meeting, the Board approved the minutes of the meetings held on January 27, 2021, and July 18, 2022.

For the reasons stated above, we find that the Board violated the Open Meeting Law by failing to timely respond to a request for meeting minutes. We order immediate and future compliance with the law's requirements, and we caution that similar future violations could be considered evidence of intent to violate the law.

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

Sincerely,



KerryAnne Kilcoyne
Assistant Attorney General
Division of Open Government

cc: Patricia Burns Fiore – By email only: pbfiore22@gmail.com
Southborough Town Clerk – By email only: jhegarty@southboroughma.com

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.