

1. 10:00 A.M. Affordable Housing Trust Fund Committee

Documents:

[2024.08.13 AHTFC AGENDA.PDF](#)

2. 10:00 A.M. Affordable Housing Trust Fund Committee

Documents:

[AHTFC AGENDA PACKET 8.13.24.PDF](#)

Town of Southborough, MA**Meeting of the Affordable Housing Trust Fund Committee****August 13, 2024 10:00 AM****Virtual Meeting**

Those wishing to watch or participate remotely can do so by accessing the meeting link at:

<https://ma-southborough.civicplus.com/674/Virtual-Meetings>

- I. Call Meeting to Order**
- II. Approve Open Session Meeting Minutes: June 4, 2024; June 14, July 3, 2024, July 19, 2024**
- III. Application for the transfer of CPA Community Housing Funds to AHTF**
- IV. Discussion of activity related to the merger of SHOPC and AHTFC**
- V. Reorganization of AHTFC**
- VI. Executive Session**
The Committee will be entering into Executive Session and not returning to Open Session per Open Meeting Law Exemption 3 to discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares. The committee will discuss strategy regarding a response to the Open Meeting Law complaint, under the Open Meeting law against the AHTFC, as permitted under G.L. c. 30A, s. 21(a)(1) submitted by Ms. Jasinski dated 7/26/24.
- VII. Adjournment**

Al Hamilton, Chair



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: Doriann Last Name: Jasinski

Address: 33 Presidential Drive

City: Southborough State: MA Zip Code: 01772

Phone Number: 508-725-2144 Ext.

Email: Jasindmvolunteer@yahoo.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): Affordable Housing Trust Fund Committee

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

Date of alleged violation: 7/19/2024

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 exhibit A

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.

- 1) Acknowledge a mistake was made in a public meeting
- 2) Be required to attend an Open Meeting Law training.
- 3) Affordable Housing Trust Fund Committee must adhere to open meeting law.

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.

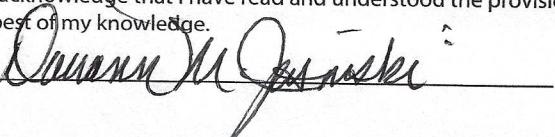
The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

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: 07/22/2024

For Use By Public Body
Date Received by Public Body:

For Use By AGO
Date Received by AGO:

Exhibit A

On July 19, 2024 the Affordable Housing Trust Fund Committee met and entered into executive session under exemption 3 (from attached agenda):

The Committee will be entering into Executive Session and not returning to Open Session per Open Meeting Law Exemption 3 to discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares. The committee will discuss strategy regarding a response to the Open Meeting Law Complaints of Ms. Jasinski, dated 7/15/24.

Per the OML Guide from 12/7/23, exemption 3 reads:

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

The OML Guide gives further guidance on the litigation exemption stating:

Discussions relating to potential litigation are not covered by this exemption unless that litigation is clearly and imminently threatened or otherwise demonstrably likely. That a person is represented by counsel and supports a position adverse to the public body's does not by itself mean that litigation is imminently threatened or likely.

As this meeting did not include either collective bargaining nor litigation (no litigation was ongoing, imminently threatened or otherwise demonstrably likely) but rather a discussion of open meeting law complaints, it clearly did not meet the requirements of executive session and should have taken place in open session with proper notification to the public to attend and hear the discussion.

Additionally, I am the complainant and a member of the Affordable Housing Trust Fund Committee. I was present in the meeting, so any strategy that may have been discussed would not have a detrimental effect on a response to the complaint.

At the start of the meeting, I did tell the Committee that it did not meet the requirements of executive session, but was told by the Chair Mr. Al Hamilton, that "Town Council has opined that this does fall under the litigation exception".

The Affordable Housing Trust Fund Committee is composed of 7 members, **all 5 members of the Select Board** and 2 citizens at large. The Select Board has had violations in the past and a stern warning was issued. (see attached AGO Determination letter OML 2-19-133).

Specifically, that the problems persisted despite changes to the Board Membership. See below from page 6:

However, the Board has a history of Open Meeting Law violations spanning a variety of different requirements of the law, and persisting despite changes to the Board's membership. See OML 2015-40 (Board discussed the professional competence of the Town Administrator in executive session); OML 2015-167 (Board deliberated outside of a meeting); OML 2018-78 (Board member deliberated via email); OML 2018-147 (Board approved meeting minutes late). In addition, the breadth and depth of the years of failures related to meeting minutes found in this determination are egregious. For these reasons, we order all members of the Board to attend, inperson, the Open Meeting Law training that our office will present on November 20, 2019, at 5:30PM at the Southborough Senior Center.

Most concerning, is that a past Select Board had a violation of an Executive Session referenced above. See OML 2015-40 (Board discussed the professional competence of the Town Administrator in executive session); I am concerned that violations of the Open Meeting Law are continuing and transferring to the Affordable Housing Trust Fund Committee .

Town of Southborough, MA
Meeting of the Affordable Housing Trust Fund Committee
July 19, 2024 2:00 PM
Virtual Meeting

Those wishing to watch or participate remotely can do so by accessing the meeting link at:
<https://ma-southborough.civicplus.com/674/Virtual-Meetings>

REVISED AGENDA

- I. Call Meeting to Order**
- II. Appointment of 2 AHTFC Members to the Ad Hoc SHOPC/AHTFC Consolidation Committee**
- III. Approve Open Session Meeting Minutes: June 14, 2024; July 3, 2024**
- IV. Approve Executive Session Meeting Minutes: July 3, 2024**
- V. Executive Session**
 - a. The Committee will be entering into Executive Session and not returning to Open Session per M.G.L. Chapter 30A, Section 21, for the following items: (1) To review and approve June 14, 2024 Executive Session Meeting minutes (Exemption 7); (2) To consider the purchase, exchange, lease, or value of real property as the Chair has determined that an open meeting may have detrimental effect on the Towns position (Exemption 6); (3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares (Exemption 3). The committee will discuss strategy regarding a response to the Open Meeting Law Complaints of Ms. Jasinski, dated 7/15/2024.
- VI. Adjournment**

Al Hamilton, Chair

the individual. An executive session called for this purpose triggers certain rights for the individual who is the subject of the discussion. The individual has the right to be present, though he or she may choose not to attend. The individual who is the subject of the discussion may also choose to have the discussion in an open meeting, and that choice takes precedence over the right of the public body to go into executive session.

While the imposition of disciplinary sanctions by a public body on an individual fits within this purpose, this purpose does not apply if, for example, the public body is deciding whether to lay off a large number of employees because of budgetary constraints.

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;

Generally, a public body must identify the specific non-union personnel or collective bargaining unit with which it is negotiating before entering into executive session under Purpose 2. A public body may withhold the identity of the non-union personnel or bargaining unit if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

While a public body may agree on terms with individual non-union personnel in executive session, the final vote to execute such agreements must be taken by the public body in open session. In contrast, a public body may approve final terms and execute a collective bargaining agreement in executive session, but should promptly disclose the agreement in open session following its execution.

Collective Bargaining Sessions: These include not only the bargaining sessions, but also include grievance hearings that are required by a collective bargaining agreement.

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

Generally, a public body must identify the collective bargaining unit with which it is negotiating or the litigation matter it is discussing before entering into executive session under Purpose 3. A public body may withhold the identity of the collective bargaining unit or name of the litigation matter if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details

would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

Collective Bargaining Strategy: Discussions with respect to collective bargaining strategy include discussion of proposals for wage and benefit packages or working conditions for union employees. The public body, if challenged, has the burden of proving that an open meeting might have a detrimental effect on its bargaining position. The showing that must be made is that an open discussion may have a detrimental effect on the collective bargaining process; the body is not required to demonstrate a definite harm that would have arisen. At the time the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's bargaining or litigating position.

Litigation Strategy: Discussions concerning strategy with respect to ongoing litigation obviously fit within this purpose but only if an open meeting may have a detrimental effect on the litigating position of the public body. Discussions relating to potential litigation are not covered by this exemption unless that litigation is clearly and imminently threatened or otherwise demonstrably likely. That a person is represented by counsel and supports a position adverse to the public body's does not by itself mean that litigation is imminently threatened or likely. Nor does the fact that a newspaper reports a party has threatened to sue necessarily mean imminent litigation.

Note: For the reasons discussed above, a public body's discussions with its counsel do not automatically fall under this or any other purpose for holding an executive session.

4. **To discuss the deployment of security personnel or devices, or strategies with respect thereto;**
5. **To investigate charges of criminal misconduct or to consider the filing of criminal complaints;**

This purpose permits an executive session to investigate charges of criminal misconduct and to consider the filing of criminal complaints. Thus, it primarily involves discussions that would precede the formal criminal process in court. Purpose 1 is related, in that it permits an executive session to discuss certain complaints or charges, which may include criminal complaints or charges, but only those that have already been brought. However, Purpose 1 confers certain rights of participation on the individual involved, as well as the right for the individual to insist that the discussion occur in open session. Purpose 5 does not require that the same rights be given to the person who is the subject of a criminal complaint. To the limited extent that there is overlap between Purposes 1 and 5, a public body has discretion to choose which purpose to invoke when going into executive session.



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

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

March 25, 2015

OML 2015 – 40

Tim D. Norris, Esq.
Collins, Loughran & Peloquin, P.C.
320 Norwood Park South
Norwood, MA 02062

RE: Open Meeting Law Complaint

Dear Attorney Norris:

This office received a complaint from Ms. Desiree Aselbekian, dated February 12, 2015, alleging that the Southborough Board of Selectmen (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Board on January 9, 2015, and the Board responded to the original complaint by letter dated January 29, 2015. In her complaint, Ms. Aselbekian alleges that the Board discussed the professional competence of the Town Administrator in executive session.

Following our review, we find that the Board violated the Open Meeting Law in the manner alleged. In reaching a determination, we reviewed the original complaint; the Board’s response; and the request for further review filed with our office.

FACTS

We find the facts as follows. The Board is a five-member public body that meets at regular intervals to discuss and act on matters of governance affecting the Town of Southborough. On December 16, 2014, the Board met in executive session to conduct a performance evaluation of Town Administrator Mark Purple. When the Board returned to open session during that same meeting, it stated that the results of the evaluation were favorable, and that Mr. Purple would receive a pay increase pursuant to his current contract.

Following the receipt of Ms. Aselbekian’s complaint, the Board held a meeting on January 20, 2015. During this meeting, the Board voted to formally adopt Mr. Purple’s performance evaluation, and voted separately to award him the pay increase provided for in his existing contract. No discussion of Mr. Purple’s professional competence took place during the Board’s January 20, 2015 meeting.

DISCUSSION

The Open Meeting Law permits public bodies to enter executive session to conduct deliberations outside of the public view for any of ten enumerated purposes. See G.L. c. 30A, § 21(a). A public body may only discuss matters in executive session that fit within one or more of these ten purposes. See OML 2013-91. One appropriate purpose for an executive session is to discuss “the reputation, character, physical condition or mental health, *rather than professional competence*, of an individual.” G.L. c. 30A, § 21(a)(1) (“Purpose 1”) (emphasis added). Another purpose allows a public body, “[t]o conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel.” G.L. c. 30A, § 21(a)(2) (“Purpose 2”). While it is clear that professional competence must first be discussed in an open session, how that evaluation will factor into a contract or salary negotiation strategy may be a suitable discussion for an executive session. See District Attorney for the North District v. School Committee of Wayland, 455 Mass. 561, 568 (2009).

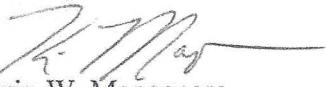
Here, the Board’s December 16, 2014 discussion of Mr. Purple’s professional competence in executive session violated the Open Meeting Law. See OML 2012-66. The Board was not discussing how a previously conducted performance evaluation factored into contract negotiations with Mr. Purple, rather they were performing the actual evaluation. This type of performance review by a public body must be conducted in open session. See Wayland, 455 Mass. at 568. While we applaud the Board’s efforts to take corrective action in response to the present complaint, because the Board merely voted to adopt Mr. Purple’s performance evaluation during its January 20, 2015 open session meeting, rather than engaging in a substantive discussion about his professional competence, we find this action was not sufficient to fully address the violation that occurred. See Pearson v. Board of Selectmen of Longmeadow, 49 Mass. App. Ct. 119, 125 (2000), citing Tolar v. School Board of Liberty County, 398 So.2d 427, 429 (Fla. 1981) (In order to cure a violation, the public body must take an independent, deliberative action, and not merely engage in a ceremonial acceptance or perfunctory ratification of a secret decision); OML 2014-72.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law. We order immediate and future compliance with the Open Meeting Law, and we caution that future similar violations may be considered evidence of intent to violate the law. Additionally, we order the Board, if it has not already done so, to release the minutes of its December 16, 2014 executive session within ten (10) days of receipt of this determination. Because this was not a lawful executive session held in compliance with G.L. c. 30A, § 21, the minutes may not be withheld in part or whole under the Public Records Law. See G.L. c. 30A, § 22(f) (stating that the minutes of an executive session may be withheld from disclosure to the public as long as publication may defeat the lawful purposes of an executive session, *provided that the executive session was held in compliance with section 27*); OML 2014-17.

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 the Division at (617) 963 - 2540 if you have any questions.

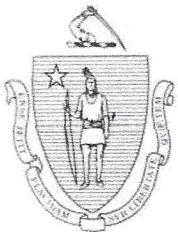
Sincerely,



Kevin W. Manganaro
Assistant Attorney General
Division of Open Government

cc: Ms. Desiree Aselbekian
Southborough Board of Selectmen

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.



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

MAURA HEALEY
ATTORNEY GENERAL

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

October 25, 2019

OML 2019 – 133

Aldo Cipriano, Esq.
Southborough Town Counsel
277 Main Street, Victoria Building
Second Level, Atrium Suite
Marlborough, MA 01752

RE: Open Meeting Law Complaints

Dear Attorney Cipriano:

This office received four complaints from Attorney Ginny Kremer, on December 21, 2018, January 11, 2019, and two on March 1, 2019, alleging that the Southborough Board of Selectmen (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaints were originally filed with the Board on November 21, 2018, December 14, 2018, January 14, 2019, and January 25, 2019. The Board responded by letters dated December 10, 2018, January 2, 2019, February 13, 2019, and February 21, 2019.¹ In her complaints, Attorney Kremer alleges that the Board has repeatedly failed to approve both open and executive session meeting minutes in a timely manner.² The complaints also allege that the Board has failed to review executive session minutes at reasonable intervals since 2013.³

¹ The complaints also allege violations of G.L. c. 269A, §21A, a statute which is not within the jurisdiction of our Division to enforce the Open Meeting Law. The complaints also allege that the Board did not include a “public comment” item for its December 14, 2018, and January 2, 2019, meetings. Even if true, these allegations would not constitute a violation of the Open Meeting Law. See OML 2019-2; OML 2012-78. As such, we decline to review these allegations.

² The Open Meeting Law imposes a continuing obligation on public bodies to maintain minutes of all meetings and to review executive session minutes at reasonable intervals. See G.L. c. 30A, §§ 22 (a) and (g)(1); OML 2018-115; OML 2013-45. Therefore, we consider these complaints to be timely filed as the alleged violations continued each day that these obligations were not met.

³ The Open Meeting Law requires that complaints shall be filed within 30 days of the alleged violation, or if the alleged violation could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered. 940 CMR 29.05(3). The complaints allege that an April 3, 2017, meeting notice did not include an anticipated item. However, this allegation is untimely as it could have been discovered at the time the open session took place. The complaints also allege that the April 3, 2017 meeting minutes lack sufficient detail because they failed to record a Warrant Article 25 discussion. However, this allegation is also untimely because the alleged lack of detail could have been discovered when the minutes were approved on April 18, 2017. We decline to review these untimely allegations.



We appreciate the patience and cooperation of the parties during this investigation. Following our review, we find that the Board violated the Open Meeting Law for between four and five years by failing to approve meeting minutes in a timely manner and by failing to review its executive session minutes at reasonable intervals.

In reaching this determination, we reviewed the four complaints, the Board's responses, and Attorney Kremer's requests for further review, as well as other correspondence between the parties.⁴ We also reviewed your September 11, 2019, letter responding to questions concerning review of executive session minutes and corresponded by email with you on August 19 and 27, and September 9, 10 and 11, 2019. We spoke with Attorney Kremer in person on May 21, 2019, and by telephone on September 5, 2019; reviewed her letter dated September 5, 2019; and corresponded by email with her on September 6, 11 and 12, 2019. Finally, we reviewed a large body of the Board's meeting minutes.

FACTS

The complaints allege that dozens of sets of meeting minutes were approved late by the Board over a five-year period. This issue is fully discussed in Section I. However, for the sake of clarity, the results of our analyses of the alleged violations are summarized in the following chronological chart.

Meeting Date	Minutes Approval Date	Executive or Open Session	Timely or Untimely
4/8/13	1/2/19	Executive	Untimely
2/25/14	1/2/19	Executive	Untimely
1/25/17	12/18/18	Executive	Untimely
3/2/17	11/19/18	Open	Untimely
3/8/17	12/4/18 ⁵	Open	Unclear - "Previously approved, Resubmitted with edits"
4/10/17	11/7/18	Open	Untimely
4/18/17	11/19/18	Open	Untimely
4/25/17	11/7/18	Open	Untimely
6/22/17	10/2/18	Open	Untimely
6/22/17	1/2/19	Executive	Untimely ⁶
8/1/17	12/18/18	Executive	Untimely
10/17/17	11/19/18	Open	Untimely
12/5/17	1/2/19	Executive	Untimely
12/16/17	1/2/19	Executive	Untimely

⁴ We decline to review any allegations made for the first time in the requests for further review. Our Division does not conduct broad audits of public bodies and will address only allegations made in an Open Meeting Law complaint in order to give public bodies a chance to address those allegations. See OML Declination 4-22-15 (Natick Economic Development Committee); OML Declination 8-25-15 (Middlefield Board of Selectmen).

⁵ Minutes from other meetings were approved late at this December 4, 2018, meeting. However, since they were not noted in the complaints, we decline to review these other potential violations.

⁶ These minutes were "released" on 1/2/19; they do not appear to have been previously approved.

1/2/18	1/2/19	Executive	Untimely
1/18/18	1/2/19	Executive	Untimely
9/5/18	1/2/19	Executive	Untimely
9/12/18	1/2/19	Executive	Untimely
10/2/18	11/7/18	Open	Timely
10/15/18	12/18/18	Open	Untimely
10/19/18	11/7/18	Open	Timely
11/7/18	12/18/18	Open	Untimely
12/4/18	12/18/18	Open	Timely
12/11/18	12/18/18	Open	Timely
12/11/18	12/18/18	Executive	Timely
12/18/18	1/2/19	Open	Timely
12/18/18	1/2/19	Executive	Timely
12/27/18	1/2/19	Open	Timely

The complaints also allege that the Board failed to periodically review executive session minutes for release. This issue is discussed below in Section II. The Board responded that it reviewed some, but by no means all, of its outstanding executive session minutes at six different meetings from 2015 through 2018. As a result of Attorney Kremer's Open Meeting Law complaints and public records requests in late 2018, the Board's staff conducted an internal review to identify all outstanding executive session minutes. On January 2, 2019, the Board voted to release 68 sets of executive session minutes from meetings that took place from 2013 to 2018.

The following chart summarizes which executive session minutes were reviewed and released on which dates.

Date Reviewed and Released	Meeting Minutes
4/7/15	11/18/14, 12/16/14
7/14/15	1/20/15, 1/22/15, 4/7/15, 4/13/2015, 4/28/15, 5/19/15
11/15/16	8/2/16
4/2/18	12/6/16
6/21/18	7/7/17, 7/19/17
12/27/18	12/11/18
1/2/19	2/12/13, 2/26/13, 3/12/13, 4/8/13, 4/23/13, 5/7/13, 9/3/13, 6/4/13, 10/1/13, 1/16/14, 2/4/14, 2/25/14, 3/11/14, 3/25/14, 6/3/14, 7/15/14, 7/24/14, 8/12/14, 8/21/14, 9/2/14, 9/23/14, 10/7/14, 11/17/14, 11/18/14, 12/2/14, 12/16/14, 1/20/15, 1/22/15, 2/3/15, 4/7/15, 4/13/15, 4/28/15, 5/19/15, 8/11/15, 10/20/15, 11/3/15, 11/17/15, 12/1/15, 12/15/15, 2/2/16, 2/29/16, 4/5/16, 5/17/16, 6/28/16, 8/2/16, 8/23/16, 10/4/16, 12/6/16, 1/3/17, 1/25/17, 2/7/17, 2/21/17, 3/21/17, 4/3/17, 6/6/17, 6/22/17, 7/7/17, 7/19/17, 8/1/17, 12/5/17, 12/19/17, 1/2/18, 1/18/18, 4/9/18, 9/5/18, 9/12/18, 11/7/18, 12/18/18

DISCUSSION

I. The Board violated the Open Meeting Law by failing to approve both open and executive session minutes in a timely manner.

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). The Open Meeting Law itself does not define “timely manner.” However, the Attorney General’s Open Meeting Law regulations provide that “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.” 940 C.M.R. 29.11 (2). Whenever possible, we recommend that minutes of a meeting be approved at the next meeting. See OML 2019-39; OML 2014-15; OML 2012-91.

Here, the Board failed to approve minutes in a timely manner on numerous occasions. Minutes from executive sessions held on April 8, 2013, and February 25, 2014, were approved years late, on January 2, 2019. In addition, at least 11 sets of meeting minutes from 2017 were approved late, and another six were late in 2018.⁷ We note that the Board improved its timely approval of meeting minutes after receiving a November 16, 2018, determination from this office which found that the Board had violated the Open Meeting Law by failing to timely approve minutes. See OML 2018-147. Indeed, many of the late minutes were finally approved in December 2018 or January 2019 after the Board conducted an internal review of its outstanding minutes. A cursory review of the Board’s 2019 minutes suggests that this improved timeliness has continued.

For these reasons, we find that the Board violated the Open Meeting Law by routinely failing to approve minutes of both open and executive sessions in a timely manner. Our investigation also found many additional sets of meeting minutes that were not timely approved, beyond those alleged in the complaints, which demonstrates a very concerning and longstanding pattern of non-compliance with the Open Meeting Law. However, because the violations that we find here took place before the issuance of determination OML 2018-147, and the Board has taken steps to come into compliance with the law’s timeliness requirement since that time, we decline to find the violations to be intentional.

II. The Board violated the Open Meeting Law by failing to review its executive session minutes at reasonable intervals.

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,

⁷ The Attorney General’s revised Open Meeting Law regulations took effect October 6, 2017, and for the first time expressly defined the term “timely manner” to mean within the next 3 meetings or 30 days, whichever is later. Even under the prior standard, we would have found that the 2013, 2014, and 2017 meeting minutes at issue here were not timely approved, where they were approved well over a year after each meeting.

including the record of all votes." G.L. c. 30A, § 22(a). Executive session minutes may be withheld from disclosure to the public "as long as publication may defeat the lawful purposes of the executive session, but no longer." G.L. c. 30A, § 22(1). When the purpose for a valid executive session has been served, the minutes and any documents or exhibits used at the session must be disclosed, unless the attorney-client privilege or an exemption to the Public Records Law applies. *Id.* The burden of justifying continued nondisclosure of executive session minutes lies with the public body. Foudy v. Amherst-Pelham Regional School Committee, 402 Mass. 179, 184 (1988).

A public body or its chair or designee must, at reasonable intervals, review the minutes of executive sessions to determine if continued nondisclosure of those minutes is warranted. G.L. c. 30A, § 22(g)(1). Although "reasonable interval" is not defined by the law, our office has found a quarterly review or a review every six months to be appropriate. See OML 2019-45; OML 2017-104; OML 2015-166; OML 2013-180. At the meeting following each periodic review, the public body must announce which executive session minutes will be released and which will continue to be withheld at the next meeting following its review, and such announcement shall be included in the minutes. G.L. c. 30A, § 22(g)(1); OML 2019-3; OML 2015-94; OML 2013-56. A public body's obligation to review executive session minutes for possible release is ongoing. If a public body reviews executive session minutes and determines that the purpose for the executive session remains such that the minutes should continue to be withheld from the public, it must continue to review those same executive session minutes at reasonable intervals until it determines that the reason for secrecy has expired.

Here, when asked when the Board reviewed executive session minutes from 2013 through 2018 to determine if continued nondisclosure was warranted, the Board could only identify reviews taking place at its meetings on April 7, 2015, July 14, 2015, November 14, 2015, April 2, 2018, June 21, 2018 and December 27, 2018. This leads us to conclude that the Board did not conduct any such reviews in 2013, 2014 or 2017. Although quarterly or six-month review is acceptable for purpose of the Open Meeting Law, waiting a year or more between reviews is not. We also find that the Board only reviewed a select number of its outstanding minutes at each of these meetings, not all of them, as it should have done. The Board was required to review all outstanding executive session minutes at reasonable intervals to determine whether the purpose for the executive session continued, and if it determined that the minutes must continue to be withheld, then it should have reviewed those minutes again at reasonable intervals.

For these reasons, we find that the Board violated the Open Meeting Law by failing to review its executive session minutes at reasonable intervals to determine whether continued nondisclosure was warranted or whether the minutes could be released to the public. Although we are concerned with the Board's longstanding failure to satisfy its obligations under the Open Meeting Law, we acknowledge that the Board undertook a comprehensive review of all outstanding minutes as a result of the Open Meeting Law complaints, and we decline to find the violations to be intentional.

III. The Board has engaged in a longstanding and widespread pattern of Open Meeting Law violations and therefore all members will be required to attend in-person Open Meeting Law training.

The Legislature designed the Open Meeting Law “to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based.” See Dist. Attorney for N. Dist. v. Sch. Comm. of Wayland, 455 Mass. 561, 563 (2009); Ghiglione v. School Comm. of Southbridge, 376 Mass. 70, 72 (1978). The procedural requirements surrounding executive session, including the timely approval and periodic review of executive session minutes, are extremely important to the transparency aims of the Open Meeting Law, because the public has no other way to know what happened at these closed-door sessions. See OML 2012-43; OML 2012-91. We are gravely concerned that the Board neglected its obligations to timely approve and then review and release executive session minutes adequately for almost five years, especially considering the controversial topics which came before the Board during that time.⁸

We acknowledge that the Board has taken significant steps to approve minutes in a timely manner and review all outstanding executive session minutes since the issuance of OML 2018-147 at the end of last year. Town Counsel, in conjunction with the Town Clerk’s office, has also conducted a workshop for approximately thirty elected and/or appointed town officials, including four of the five Selectmen, on September 5, 2019.

However, the Board has a history of Open Meeting Law violations spanning a variety of different requirements of the law, and persisting despite changes to the Board’s membership. See OML 2015-40 (Board discussed the professional competence of the Town Administrator in executive session); OML 2015-167 (Board deliberated outside of a meeting); OML 2018-78 (Board member deliberated via email); OML 2018-147 (Board approved meeting minutes late). In addition, the breadth and depth of the years of failures related to meeting minutes found in this determination are egregious. For these reasons, we order all members of the Board to attend, in-person, the Open Meeting Law training that our office will present on November 20, 2019, at 5:30PM at the Southborough Senior Center.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law by failing to approve meeting minutes in a timely manner and by failing to review its executive session minutes at reasonable intervals. We find that these violations were longstanding and widespread. **We order all members of the Board to attend an in-person Open Meeting Law training that our office will conduct in Southborough on November 20, 2019, at 5:30PM at the Southborough Senior Center.** Furthermore, we order the Board’s immediate and future

⁸ We note that comments by Town Counsel which characterize certain Open Meeting Law complaints as “frivolous” and minimize the importance of curing certain Open Meeting Law violations as “ministerial” are likely to encourage the Board to disregard the seriousness of its obligations under the Law. We have, on occasion, described certain Open Meeting Law violations as “*de minimis*,” such as when legal counsel rather than a public body chair made the required statement at a meeting of the purpose for an executive session, see OML 2019-81, or when a chair failed to announce to those in attendance at a meeting that the meeting was being recorded, when the person recording had himself announced to the room that he was recording, see OML 2013-128. By contrast, the issues raised here are significant and the violations we find go to the heart of the Open Meeting Law.

compliance with the Open Meeting Law, and we strongly caution that similar future violations may be considered evidence of an intent to violate the law.

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 our office or the Board. Please feel free to contact the Division at (617) 963-2540 if you have any questions.

Sincerely,



Sarah Chase
Assistant Attorney General
Division of Open Government

cc: Attorney Ginny Kremer
Southborough Board of Selectmen

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.