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THE COMMONWEALTH OF MASSACHUSETTS  
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January 24, 2019

OML 2019 - 1

Lauren F. Goldberg, Esq.  
KP Law, P.C.  
101 Arch Street, 12<sup>th</sup> Floor  
Boston, MA 02110

**RE: Open Meeting Law Complaint**

Dear Attorney Goldberg:

This office received a complaint from Bryan Dumont, dated February 4, 2018, alleging that the Shirley 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 13, 2018, and you responded, on behalf of the Board, by letter dated February 2, 2018. The complaint alleges that the Board failed to properly respond to a request for executive session minutes, failed to periodically review its executive session meeting minutes to determine whether there was a continued purpose for nondisclosure, and discussed an individual in executive session under purpose 1 without providing that individual with written notification.

We appreciate the patience of the parties while we reviewed this matter. Following our review, we find that the Board violated the Open Meeting Law by failing to properly respond to a request for executive session minutes and failing to periodically review its executive session minutes. We decline to review the allegation regarding the Board's Purpose 1 executive session meeting for the reasons discussed below. In reaching this determination, we reviewed the original complaint, the Board's response to the complaint, and the complaint filed with our office requesting further review. We also reviewed the notices from, and open session minutes of, Board meetings held between December 4, 2017 and January 29, 2018. Finally, we spoke with the complainant by telephone on May 17, 2018.

**FACTS**

We find the facts as follows. During a May 8, 2017 meeting, the Board approved but did not release executive session minutes of meetings held on April 6, 2016, May 2, 2016, and June 6, 2016. During an August 28, 2017 meeting, the Board approved but did not release executive session minutes of meetings held on October 24, 2016 and July 27, 2017.



On November 16, 2017, the complainant sent an e-mail to Town Clerk William Oelfke, as Records Access Officer, and former Town Administrator Patrice Garvin requesting executive session minutes of 21 Board meetings held between April 6, 2016 and October 23, 2017.<sup>1</sup> The Town Clerk responded that same day stating that “many of these executive session minutes have not been completed and/or approved by the Board of Selectmen or redacted. I will get the information to you as soon as possible.”

On or about December 4, 2017, having not received any response from the Board, the complainant appealed to the Supervisor of Records (“Supervisor”) within the Office of the Secretary of the Commonwealth. On December 18, 2017, the Supervisor closed the appeal declining “to provide a determination as to the status of the executive session minutes” and referred the complainant to our office. On January 13, 2018, this complaint was filed with the Board. The Board responded on February 2, 2018 and provided certain of the requested minutes.

The Board held meetings on December 4, 2017; December 6, 2017; December 11, 2017; December 14, 2017; December 18, 2017; December 28, 2017; January 2, 2018; January 8, 2018; January 22, 2018; January 23, 2018; and January 24, 2018 but did not review any executive session minutes during those meetings.

On January 29, 2018, the Board met and discussed the complaint. The Board also convened in executive session and reviewed executive session minutes of meetings held on March 6, 2017; June 6, 2017; and July 27, 2017. The March 6, 2017 and July 27, 2017 minutes have been provided to the complainant.

### DISCUSSION

#### I. The Board Failed to Properly Respond to a Request for Executive Session Minutes and Failed to Periodically Review its Executive Session Minutes.

The complaint alleges that the Board failed to release executive session minutes where the purpose for nondisclosure had passed. The Board argues that the complaint is untimely because the request for executive session minutes, and the Town’s response to the request, was made on November 16, 2017 but the complaint was not filed until January 13, 2018 – 58 days later. Here, the complainant appealed the Board’s response to his request for minutes to the Supervisor, rather than file an Open Meeting Law complaint. However, he filed this complaint on January 13, 2018, within 30 days of receiving the Supervisor’s declination and recommendation that the complainant contact our office. Where the complaint was filed within 30 days of the Supervisor’s declination, we find that it was timely filed. See G.L. c. 30A, § 23(b); 940 CMR 29.05(3) (complaints alleging violations of the Open Meeting Law must be filed with the public body within 30 days of the alleged violation, or within 30 days of the date the alleged violation could reasonably have been discovered); OML 2017-102.<sup>2</sup>

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<sup>1</sup> Specifically, the complainant requested executive session minutes of meetings held on April 6, 2016; May 2, 2016; June 6, 2016; February 13, 2017; February 21, 2017; March 13, 2017; March 20, 2017; March 27, 2017; May 1, 2017; June 6, 2017; June 12, 2017; June 19, 2017; June 26, 2017; July 10, 2017; July 24, 2017; July 27, 2017; August 7, 2017; August 21, 2017; August 28, 2017; September 18, 2017; and October 23, 2017.

<sup>2</sup> Open Meeting Law determinations may be found at the Attorney General’s website,



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). 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(f). 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 to withhold them, in whole or in part, from disclosure. See id. Public bodies have an obligation to review the minutes of executive sessions at reasonable intervals to determine if continued non-disclosure of minutes is warranted, and to announce that determination at the next meeting following its review. G.L. c. 30A, § 22(g)(1); see OML 2013-56; OML 2015-94.

Here, the complainant requested 21 sets of executive session minutes on November 16, 2017. Town Clerk Oelfke responded that same day, stating that many of the minutes had not been completed or approved by the Board. The complainant received no further response to his request for minutes until February 2 when the Board responded to this complaint. Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body must respond to the request within 10 days following receipt and release any such minutes where publication would not defeat the lawful purposes of the executive session. If the body has not performed a review, it must do so and release any non-exempt minutes, or portions thereof, not later than the body’s next meeting or in 30 days, whichever first occurs. See G.L. c. 30A, § 22(g) (2); OML 2013-180. At the time of the request, the Board had reviewed only 4 of the 21 requested executive session minutes. After the request, the Board met approximately 11 times but did not review any of the remaining requested executive session minutes until its January 29 meeting, when it reviewed only three sets of minutes. While the complainant received an initial response to his request within 10 days, the Board did not perform a review of its executive session minutes at its next meeting to determine whether the minutes could be released, as required by law. See G.L. c. 30A, § 22(g)(2); OML 2016-135. As such, we find that the Board violated the Open Meeting Law by failing to properly respond to a request for executive session minutes and failing to review those minutes at its next meeting after receiving the request.

## II. We Decline to Review the Allegation Regarding the Board’s Purpose 1 Executive Session Meeting.

The complaint further alleges that the Board met several times in executive session under purpose 1 to discuss the former Police Chief without providing him written notification. The complaint does not identify any specific executive session meetings. In his request for further review, the complainant identifies one executive session meeting on February 27, 2017 where the Board failed to provide written notification and suggests that other meetings could have occurred between February 27, 2017 and June 2017. Our office will not conduct broad audits of public bodies based on generalized allegations. See OML 2012-106. Moreover, we find that this allegation was not clearly raised in the original complaint. As such, the Board did not have an opportunity to respond to it and thus we decline to review its merits. See G.L. c. 30A, § 23(b); 940 CMR 29.05(3); OML 2018-109. However, we remind the Board that the individual to be

discussed in a Purpose 1 executive session must be notified in writing by the public body at least 48 hours prior to the proposed executive session. G.L. c. 30A, § 21(a)(1). The individual must also be afforded the right to be present during deliberations that involve that individual, the right to speak on his or her own behalf, the right to have counsel present to advise but not participate, and the right to have an independent record of that meeting made at the individual's own expense. Id.

### CONCLUSION

We find that the Board violated the Open Meeting Law by failing to properly respond to a request for executive session minutes and failing to periodically review its executive session minutes. We order the Board's immediate and future compliance with the Open Meeting Law, and we caution that similar future violations may 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 the Board or with our office. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "KerryAnne Kilcoyne".

KerryAnne Kilcoyne  
Assistant Attorney General  
Division of Open Government

cc: Bryan Dumont  
Shirley 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.**