Open Meeting Law:
Balancing Government Transparency with Government Efficiency
Who the AGO Serves & How

Who:
The Commonwealth

- Residents of the Commonwealth and their public interests
- State departments, officers, and commissions
- Groups of consumers

How:
Four Major Ways this Work is Executed

- Investigation
- Enforcement
- Prevention
- Policy
Public Protection & Advocacy Bureau

Description

Protecting students against predatory for-profit schools;
Ensuring that workers are paid the wages they are owed;
Combating discrimination by landlords and employers;
Keeping struggling homeowners in their homes through loan modifications; and
Fighting for consumers against scams and other deceptive business practices.

Divisions of the Public Protection & Advocacy Bureau

- Civil Investigations
- Consumer Protection
- Fair Labor
- Insurance and Financial Services
- Civil Rights
- CARD/HomeCorps
Attorney General Maura Healey and her staff engage with every city and town of the Commonwealth. The Attorney General’s Office also runs a statewide Consumer Advocacy and Response Division and supports over thirty regional local consumer and face to face mediation programs, which you may choose to contact.
Purpose of Open Meeting Law (OML)

Government Accountability

Ensures transparency by public bodies by requiring:
• Notice
• Open Deliberations
• Public Access

Government Efficiency

Allows government to efficiently manage operations by:
• Providing for certain deliberations in executive session
• Maintaining confidentiality of certain records of executive session
Division of Open Government

- Educate public officials and public bodies
- Promulgate regulations
- Provide guidance on OML requirements
- Investigate OML complaints
- Make findings and bring enforcement actions
Certification

Members must sign certification within two weeks of receipt:

- Read and understand requirements of the law and consequences for violating it

- Educational Materials:
  - OML Guide Book
  - Last 5 Years of OML Determinations
Open Meeting Law Basics

- Notice of meetings must be posted
- Meetings must be open to the public
- Minutes must be kept
- Complaint process
Public Body

Definition

A multi-member board, commission, committee or subcommittee ... however created, elected, appointed or otherwise constituted, established to serve a public purpose ... subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

Connelly exception

Where a public official creates a group to advise that public official on a decision that he or she has sole responsibility for, the group is not subject to the Open Meeting Law. See Connelly v. School Committee of Hanover, 409 Mass. 232 (1991)
Exclusions

State Legislature
- Massachusetts House of Representatives

Judicial Branch
- Massachusetts Supreme Judicial Court

Not-for-Profit Organizations
- The Greater Worcester Land Trust

Focus Groups

No Public Purpose

Constitutional Officers
- Massachusetts Governor Charlie Baker

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Examples: Public Bodies

State:
- University of Massachusetts Board of Trustees

Local:
- Town of Brookline, MA Board of Selectmen

Regional:
- Martha’s Vineyard Airport Commission

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Examples: **NOT** Public Bodies

**State:**

**Regional:**

Algonquin Regional High School Boosters Club

**Local:**

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Quorum and Deliberation

“An oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.”
Deliberation

Not deliberation:

• Agenda
• Scheduling

• Reports or documents

• Subquorum, but not subcommittee

• Recess a Town Meeting for emergency
Meeting

Definition: Deliberation by public body with respect to any matter within the body’s jurisdiction

Excludes:
- On-site Inspections
- State Quasi-Judicial Boards
- Town Meetings (Tewksbury Town Meeting)
- Events
- Attendance at Meetings of other Public Bodies
Meeting Notices

**Mendon-Upton Regional School District**

**SCHOOL COMMITTEE MEETING AGENDA**
Superintendent's Conference Room - Mis soc Hill Middle School
November 2, 2015

<table>
<thead>
<tr>
<th>Time</th>
<th>Item</th>
</tr>
</thead>
<tbody>
<tr>
<td>7:00 pm</td>
<td>Call to Order</td>
</tr>
<tr>
<td>7:00 pm</td>
<td>Pledge of Allegiance</td>
</tr>
<tr>
<td>7:02 pm</td>
<td>Approval of Agenda/Minutes</td>
</tr>
<tr>
<td>7:02 pm</td>
<td>• Approval of Agenda</td>
</tr>
<tr>
<td>7:02 pm</td>
<td>• Approval of Open Session Minutes - October 19, 2015</td>
</tr>
<tr>
<td>7:05 pm</td>
<td>Community Comments</td>
</tr>
<tr>
<td>7:10 pm</td>
<td>Student Comments</td>
</tr>
<tr>
<td>7:15 pm</td>
<td>Superintendent Comments</td>
</tr>
<tr>
<td>7:15 pm</td>
<td>• Nipmuc 21st Century Learning Conference</td>
</tr>
<tr>
<td>7:15 pm</td>
<td>• Multihazard Emergency Planning Training of 10-21-22</td>
</tr>
<tr>
<td>7:15 pm</td>
<td>• FY16 Home Instruction Report</td>
</tr>
<tr>
<td>7:20 pm</td>
<td>Subcommittee Updates</td>
</tr>
<tr>
<td>7:20 pm</td>
<td>• Budget Subcommittee</td>
</tr>
<tr>
<td>7:20 pm</td>
<td>• Policy Subcommittee: First Reading of Revised Policy JKAA - Physical</td>
</tr>
<tr>
<td>7:20 pm</td>
<td>• Request of Students &amp; Policy ERC - Emergency Plans</td>
</tr>
<tr>
<td>7:40 pm</td>
<td>OLD Business</td>
</tr>
<tr>
<td>7:40 pm</td>
<td>• School Committee Goals for 2015-16</td>
</tr>
<tr>
<td>7:45 pm</td>
<td>New Business</td>
</tr>
<tr>
<td>7:45 pm</td>
<td>• Spring 2015 MCAS Results</td>
</tr>
<tr>
<td>7:45 pm</td>
<td>• Approval of Mis soc Hill Middle School Improvement Plan - Principal Ann Meyer</td>
</tr>
<tr>
<td>8:10 pm</td>
<td>Correspondence</td>
</tr>
<tr>
<td>8:10 pm</td>
<td>Other matters not anticipated by the Committee within 48 hours of the posted meeting</td>
</tr>
<tr>
<td>8:15 pm</td>
<td>Future Agenda Items</td>
</tr>
<tr>
<td>8:15 pm</td>
<td>• MetroWest Adolescent Health Survey Results - November 16</td>
</tr>
<tr>
<td>8:15 pm</td>
<td>• Nipmuc AP &amp; SAT Results - November 16</td>
</tr>
<tr>
<td>8:15 pm</td>
<td>Roll call to executive session pursuant to (f), M.G.L. 430A, Section 25(a), exemption 43, to discuss strategy with regard to collective bargaining with the Mendon-Upton Regional Teachers Association because doing so in open meeting would have a detrimental effect on the bargaining position of the Committee. (The Committee will not be returning to open session.)</td>
</tr>
</tbody>
</table>

The listing of matters are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. Also, the timeframe for each topic is a general guideline and may not be strictly adhered to.

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Meeting Notices

Emergency Meeting

Unexpected

Requires immediate action
Meeting Notices: Local Public Bodies

File with Municipal Clerk

Or

Bulletin Board

Municipal Website

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Meeting Notices: County, District and Regional Public Bodies

Hampshire Council Of Government Board Of Councilors

Amherst-Pelham Regional School Committee

Plymouth Board of County Commissioners

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Meeting Notices: State Public Bodies

Post to the public body’s website or the website of its parent agency

Notify the Attorney General of the location of the website

Send a copy of the meeting notice to the Regulations Division of the Secretary of the Commonwealth’s Office
reg@sec.state.ma.us

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Notice Posting: Common Concerns

What if a new topic arises after notice is posted?

What if the clerk can’t post notice in time?

Cancelling a meeting?
Meeting Notices: Websites

Finding notices

• Notices should be easy to find on the website; listed either in a central page or at each public body’s page
• Avoid posting in multiple locations unless linked to same document/page

Webpage outages

• 6 business hours to fix website, otherwise must cancel noticed meetings within 48 hours of outage
Accessibility

Reasonable efforts to accommodate crowds

Accessible to the disabled

Americans with Disabilities Act, federal Rehabilitation Act of 1973, state constitutional provisions

The Attorney General’s Civil Rights Division can assist - Contact the Civil Rights Division at (617) 963-2939
Remote Participation Authorization

<table>
<thead>
<tr>
<th>Local Public Bodies</th>
<th>County Public Bodies</th>
<th>State/Regional Public Bodies</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Mayor or board of selectmen approval</td>
<td>• County commissioners must authorize</td>
<td>• Simple majority vote</td>
</tr>
</tbody>
</table>
Remote Participation

Permissible reason for Remote Participation: physical attendance at the meeting must be unreasonably difficult.

Minimum Requirements:

- Clearly Audible
- Quorum Present
- Remote participants may vote
Remote Participation

Procedures for Remote Participation

- Notify chair
- Announcement
- Roll call votes
- Documents
- Executive session declaration

Technical difficulties

Technology

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Public Participation

- Public may attend open session
- Addressing the public body
- Recording/Informing
- Removal

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Executive Session

Procedural requirements for entering executive session

1. Reconvene?
2. Take roll call vote
3. State purpose
4. Convene open session
5. All votes by roll call

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Executive Session Purpose: 1

“To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual.”
Executive Session Purpose: 2

“

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

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Executive Session Purpose: 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.”
Executive Session Purpose: 4 & 5

4. Security personnel or devices

5. Criminal misconduct
Executive Session Purpose: 6

“To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body.”

Wellfleet, MA
Executive Session Purpose: 7

“To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements.”
To consider or interview applicants for employment or appointment by preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening.
Executive Session Purposes 9 & 10

9. Confer with mediator on litigation or decision

10. Trade secrets in the course of activities conducted by a public body as an energy supplier
Meeting Minutes

- Minutes must state the date, time, place of the meeting, and list of members present or absent

- Minutes must include:
  - A summary of discussion of each topic
  - Decisions made and actions taken, including a record of all votes - Secret ballots prohibited
  - List of documents and other exhibits used by the body at the meeting, including by remote participants
Meeting Minutes

Approving Minutes

• Latest of 3 meetings or 30 days
  BUT whenever possible, approve at the next meeting

• Documents and exhibits used by public body must be retained by the public body but do not need to be physically stored with the meeting minutes

Upon Request

• Open session minutes provided within 10 days of request
  – Whether in draft or approved form

• For all other records – Consult Supervisor of Records in the Secretary of State’s Office
Minutes must be reviewed periodically by the chair or public body to determine if the purpose for executive session remains. The determination must be announced during the next meeting and be included in the minutes.

| Public body must respond within 10 days to request for executive session minutes | Provide minutes if no longer exempt from disclosure; or | Review at next meeting or within 30 days, whichever comes first. |
Document Used at a Meeting

Documents used by a public body during an open meeting are public records!

But, the following materials are exempt from public disclosure:

- Performance evaluations **NOT** created by members of the public body
- Application materials, other than resumes

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Complaint Process

Step 1: The Complainant

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: ___________________ Last Name: ___________________
Address: ___________________________
City: __________________ State: _______ Zip Code: _______
Phone Number: ___________________ Ext.: _______
Email: __________________________

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): ________________________

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

Date of alleged violation: _________________

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.

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.

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, will be considered a public record and available to any member of the public upon request. In response to such a request, the AOG generally will not disclose 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 consult a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 965-2340 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: ____________

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Complaint Process
Step 2: The Public Body

Chair disseminates the complaint for response within 14 business days

May delegate responsibility for responding after public body review

Public body may request an extension of time to respond for good cause
Complaint Process
Step 3: The Attorney General’s Office

If the complainant is not satisfied with the resolution of the complaint by the public body, he/she may file the complaint with the Division 30 days after the complaint is filed with the public body.

Complaints must be filed with the AGO within 90 days of the date of the original alleged violation or reasonably discovery of violation.

- The AGO will not review allegations that were not raised in the initial complaint filed with the public body.
- Complaints filed with the Attorney General’s Office, and documents submitted with the complaint, are considered a public record.

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Complaint Process
The Division of Open Government

1. Review complaint
2. Conduct investigation
3. Finding
4. Appeal
A public body found in violation of the OML must certify to the Attorney General its compliance with a remedial order.

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Judicial Complaint Process

Attorney General or 3 or more registered voters may initiate a civil action to enforce the Open Meeting Law
Review

- Notice must be posted for meetings
- Meetings must be open to the public, unless public body enters executive session
- Minutes must be kept for open and executive sessions
- Public body member certification
- Complaint process
Resources

Attorney General’s Open Meeting Law Website

http://www.mass.gov/ago/openmeeting

- Open Meeting Law: G.L. c. 30A, §§ 18-25
- Regulations: 940 CMR 29.00
- Guide
- FAQs
- Checklists
- Determination Letters
Contact Information

Office of Attorney General
Division of Open Government
One Ashburton Place
Boston, Massachusetts 02108
openmeeting@state.ma.us
(617) 963-2540
Contact Us

www.mass.gov/ago

617-727-2200

File a Complaint about an Unfair or Deceptive Trade Practice

617-727-8400

www.eform.ago.state.ma.us

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Resources
Have a Complaint or Question?

General Assistance

Consumer Hotline: (617) 727-8400
E-Complaint form: www.eform.ago.state.ma.us

Specific Hotlines

HomeCorps (617) 573-5333
Elder Hotline (888) 243-5337
Fair Labor Division (617) 727-3465
Civil Rights Division (617) 727-2200
Medicaid Fraud Tipline (617) 963-2360
Insurance Fraud Tipline (617) 537-5330
Insurance & Health Care Consumer Helpline (888) 830-6277

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Thank You from the Attorney General

Attorney General
Maura Healey is the chief lawyer and law enforcement officer of the Commonwealth of Massachusetts.

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