



THE COMMONWEALTH OF MASSACHUSETTS
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August 14, 2015

OML 2015 – 117

Charles Boddy, Esq.
City Attorney
City of Lawrence
200 Common Street
Room 306
Lawrence, MA 01840

RE: Open Meeting Law Complaint

Dear Attorney Boddy:

This office received a complaint from Kathleen Runge, dated April 9, alleging that the Lawrence City Council (the "Council") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ Specifically, the complaint alleges that: 1) the Council entered into executive session during its January 13 meeting without first taking a roll call vote; 2) the Council President failed to publicly announce the topics of the January 13 executive session; 3) and the notice for the Council's January 13 executive session failed to list the topics for the executive session with sufficient specificity. The complaint was originally filed with the Council on January 15. The Council responded by letter dated January 21.

We appreciate the patience and cooperation of the parties while we reviewed this complaint. Following our review, we find that the Council violated the Open Meeting in the ways alleged. However, we note that the Council took prompt action to address one of the violations during the meeting at issue. In reaching this determination, we reviewed the complaint filed with the Council, the Council's response, and the Complaint filed with our office. Additionally, we reviewed the notice for the Council's January 13 meeting. We also reviewed, *in camera*, the minutes of the Council's January 13 executive session meeting. Finally, we spoke with Ms. Runge by telephone on April 28, and with City Attorney Charles Boddy by telephone on June 11.²

¹ All dates in this letter refer to the year 2015.

² For purposes of clarity, we will refer to you in the third person.

FACTS

The notice for the Council's January 13 meeting included the following topic:

2. Communication from Mayor, City Officials and City Attorney
395/14 Request the Attendance of Mayor Rivera before City Council-RE:
function, powers, authority, and duties within the scope of the Office of
Mayor [Executive Session possible] –Charter Objection – Council Pres.
Maldonado

During the January 13 meeting, Council President Modesto Maldonado announced that the Council would meet in executive session to discuss pending litigation and litigation strategy. The Council members voted to enter into executive session unanimously by a voice vote. Because the Council has not publicly released the executive session minutes, we do not recount their content in detail here. However, we note that, during the executive session, the Council received recommendations from the City Attorney regarding whether the Council should proceed in open or executive session. The Council then proceeded to discuss litigation strategy with respect to those matters recommended by the City Attorney for discussion in executive session. In response to the complaint, the Council disclosed to the complainant eight specific litigation matters that it discussed in executive session.

Following the executive session, the Council returned to open session. Upon returning to open session, the Council President realized that the Council had not taken a roll call vote prior to entering into executive session, but rather had taken a unanimous voice vote. The Council President then proceeded to call a roll call vote to retroactively approve entering into the executive session that the Council had just concluded.

DISCUSSION

1. The Council Failed to Take a Roll Call Vote Prior to Entering into Executive Session during its January 13 Meeting; However the Council Took Appropriate Remedial Action by Taking a Public Roll Call Vote Immediately Following the Executive Session.

A public body may enter into executive session for any of ten enumerated purposes after a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes. G.L. c. 30A, §§ 21(a), (b)(2). The Council failed to record a roll call vote prior to entering into executive session during its January 13 meeting. However, the Council took immediate corrective action upon returning to open session and recorded a roll call vote. We find that the Council acted appropriately to address its error. Therefore, we order no additional remedial action with respect to this violation.

2. The Council President Failed to Publicly Announce All the Subjects of the January 13 Executive Session Prior to the Council Entering that Executive Session.

Before entering into executive session, the chair must state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which

the executive session was called. G.L. c. 30A, § 21(b)(3). One purpose for executive session is 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.” G.L. c. 30A, § 21(a)(3) (“Purpose 3”). A public body’s discussions with its counsel do not automatically fall under this or any other purpose for holding an executive session. See Attorney General’s Open Meeting Law Guide, March 18, 2015, at page 10. This purpose offers the narrow opportunity to discuss strategy with respect to litigation that is pending or clearly and imminently threatened or otherwise demonstrably likely. See Perryman v. School Committee of Boston, 17 Mass. App. Ct. 346, 352 (1983); OML 2013-108; OML 2012-43; OML 2012-5.³

Generally, public bodies must identify the litigation matter or matters that they are discussing before entering into executive session under Purpose 3. See OML 2015-64; OML 2015-44. A public body may withhold the identity of the litigation matter if publicly disclosing it would compromise the purpose for which the executive session was called. See G.L. c. 30A, § 21(b)(3). 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. See OML 2015-87; OML 2015-14.

Here, the Council President stated at the time the Council voted to enter into executive session that the Council would meet in executive session to discuss pending litigation and litigation strategy. However, the Council President did not identify any of the specific litigation matters that the Council would be discussing. Further, the Council has not demonstrated why disclosing that it was discussing certain pending litigation matters would have compromised the executive session purpose or otherwise been detrimental to the Council’s litigating position. In fact, the Council disclosed the specific litigation matters to the complainant in response to the complaint. Therefore, we find that the Council violated the Open Meeting Law by failing to state all subjects that could have been revealed without compromising the purpose for which the January 13 executive session was called. G.L. c. 30A, § 21(b)(3).

3. The Notice for the Council’s January 13 Executive Session Failed to List the Anticipated Topics of Discussion with Sufficient Specificity.

The Open Meeting Law requires that the notice for each meeting include “a listing of topics that the chair reasonably anticipates will be discussed at the meeting.” G.L. c. 30A, § 20(b). The topics must have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting. 940 CMR 29.03(1)(b). The notice must also include those subjects the chair anticipates will be discussed in executive session. G.L. c. 30A, §§ 20(b); 21(b)(3).

Here, the notice failed to identify the executive session purpose or the specific litigation matters that the Council President anticipated discussing. The actual language in the notice made no reference to litigation and suggested instead that the Council would be discussing topics not appropriate for executive session, such as the “function, powers, authority, and duties within the scope of the Office of Mayor.” As with the verbal statement made by the Chair prior to

³ Open Meeting Law determinations may be found at the Attorney General’s website, www.mass.gov/ago/openmeeting.

entering into executive session, the Council was also unable to demonstrate why disclosing in its meeting notice that it would discuss certain pending litigation matters would have compromised the executive session purpose or otherwise been detrimental to the Council's litigating position. Therefore, we find that the Council violated the Open Meeting Law by failing to disclose in the meeting notice for the January 13 meeting all executive session subjects that could have been revealed without compromising the purpose for which the January 13 executive session was called. G.L. c. 30A, § 21(b)(3); 940 CMR 29.03(1)(b).

CONCLUSION

We find that the Council violated the Open Meeting Law by failing take a roll call vote prior to entering into its January 13 executive session, by failing to publicly state the subjects of its January 13 executive session, and by failing to include sufficient detail about the executive session topic in the notice for its January 13 meeting. We find that the Council took appropriate remedial action with respect to the roll call vote by taking the roll call vote immediately after the executive session. With respect to the other two violations, we order the Council's immediate and future compliance with the Open Meeting Law and caution the Council that a similar future violation may be considered evidence of an intentional violation of the law.

Because the Council's January 13 executive session was not held in compliance with G.L. c. 30A, § 21, the Council may not continue to withhold the minutes of its executive session under the Open Meeting Law. See G.L. c. 30A, § 22(f) (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 the Open Meeting Law*); OML 2014-42; OML 2014-30; OML 2014-17. The Council may continue to withhold these minutes in whole or in part under any applicable exemptions to the Public Records Law or the attorney/client privilege. See G.L. c. 30A, § 22(f).

We now consider this matter closed. Please be advised that this letter does not resolve any other complaints that may be pending with this office or with the Council. Please feel free to contact our office at 617-963-2540 if you have any questions regarding this letter.

Sincerely,



Jonathan Sclarsic
Assistant Attorney General
Division of Open Government

cc: Lawrence City Council
Kathleen Runge

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.