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March 13, 2024

OML 2024 – 47

VIA EMAIL ONLY

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RE: Open Meeting Law Complaint

Dear Attorney Austin:

This office received a complaint from Meghan Glowacki on July 31, 2023, alleging that the Nantucket Planning and Economic Development Commission (the “Commission”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Commission on or about June 19, and you responded on behalf of the Commission by letter dated July 18.¹ The complaint arises out of executive sessions conducted during the Commission’s meetings of February 23 and March 20. The complaint alleges that notices of these two Commission meetings were insufficiently specific because they did not include the name of nonunion personnel who was the subject of executive session discussions convened under Purpose 2. The complaint also alleges that discussions regarding the retirement of Director of Planning Andrew Vorce, and discussions leading to the Commission’s decision to hire a successor from within the Commission without publicly posting the vacancy created by that retirement, do not fall within the scope of Purpose 2.

We appreciate the parties’ patience as we reviewed this matter. Following our review, we find that the Commission violated the Open Meeting Law in the ways alleged. In reaching this determination, we reviewed the Open Meeting Law complaint, the Commission’s response, and the request for further review. We also reviewed the notices and minutes of meetings held on February 23, March 20 and May 22. Finally, we viewed a video recording of the Commission’s May 22 meeting.²

¹ All dates are in 2023, unless otherwise stated.

² The recording of the May 22 meeting can be accessed at <https://www.youtube.com/watch?v=NtO7IIBnl8A>.

FACTS

We find the facts as follows. The Commission convened in executive session on February 23 and March 20. The notice of each meeting included the following notation: “Executive Session: Reason 2: To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel.”

The minutes of the February 23 and March 20 executive sessions have not yet been released to the public and were reviewed *in camera*; therefore, we only summarize their content here. These minutes were secured by the complainant in October, in response to a public records request. During the February 23 executive session, Director Vorce announced his retirement; there followed a discussion regarding hiring Deputy Director Leslie Snell as his successor. During the March 20 executive session, the Commission discussed Ms. Snell’s qualifications and approved a contract with her. Ms. Snell was in attendance at both executive sessions and presented the proposed contract at the March 20 meeting.

Notice of the Commission’s May 22 meeting included the topic “Director of Planning Updates and Contract Ratification.” At the May 22 meeting, which was held in open session, Director Vorce publicly announced his retirement. Ms. Snell announced that her promotion to Director had been discussed in executive session and that a contract was voted on in executive session. The contract was then ratified in open session at the May 22 meeting. At the conclusion of the meeting, one Commission member commended the succession planning that transpired “organically,” “without a consultant telling us how to do it.”

DISCUSSION

I. The Complaint was timely.

A complaint alleging a violation of the Open Meeting Law must be filed with the public body within 30 days of the date of the alleged violation. G.L. c. 30A, § 23(b). If the alleged violation could not have been known at the time it occurred, then the complaint must be filed with the public body within 30 days of the date on which the alleged violation could reasonably have been discovered. 940 CMR 29.05(3). When reviewing a meeting notice for sufficiency, unless it is clearly insufficient on its face, we do not review a meeting notice standing alone. See OML 2023-167; OML 2015-106; OML 2014-155.³ Rather, we review what was actually discussed at the meeting to determine if the notice was sufficiently detailed to make the public aware of the discussion topics. See OML 2021-22; OML 2020-137; OML 2019-64. When an alleged violation occurs in open session, the alleged violation can reasonably be discovered at the time it occurs. See OML 2020-53; OML 2014-85; OML 2012-52. When the complainant could understand the context of executive session discussions only once the minutes of those executive sessions were released, we will review a complaint that was filed within 30 days of the release of executive session minutes. See OML 2017-53; OML 2012-10.

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

The complainant alleges that the notices of two executive sessions were not sufficiently specific. In response, the Commission acknowledges that the alleged violations could not have been known at the time they occurred, as they occurred during executive session. Without suggesting when or how the complainant would reasonably have discovered the violations, the Commission nonetheless maintains that the alleged violations could reasonably have been discovered more than 30 days prior to the filing of the complaint. It was at the Commission's open session on May 22 that Director Vorce announced his retirement and Deputy Director Snell announced that the Commission had voted in executive session to approve a contract, promoting her to the position of Director. Therefore, the complainant could not reasonably have discovered the violations until May 22 at the earliest.⁴ As the complaint was filed on June 19, it was timely.

II. Notices of the February 23 and March 20 meetings were not sufficiently specific.

The Open Meeting Law requires that, except in an emergency, "a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays." G.L. c. 30A, § 20(b). The notice must be printed in a legible, easily understandable format and must contain the date, time and place of the meeting, as well as a listing of topics that the chair reasonably anticipates will be discussed. *Id.* The list of topics shall have "sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting." 940 CMR 29.03(1)(b).

Public bodies may enter a closed, executive session for any of the ten purposes enumerated in the Open Meeting Law. G.L. c. 30A, § 21(a). One permissible purpose for convening in executive session is to "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"). Executive session topics must be described, both in the meeting notice and in an announcement during open session, in as much detail as possible without compromising the purpose for which the executive session was called. *See* G.L. c. 30A, § 21(b)(3); *see also* District Attorney for the N. Dist. v. Sch. Comm. of Wayland, 455 Mass. 561, 567 (2009) ("[a] precise statement of the reason for convening in executive session is necessary ... because that is the only notification given the public that a [public body] would conduct business in private, and the only way the public would know if the reason for doing so was proper or improper").

When convening in executive session pursuant to Purpose 2, a public body must identify the specific nonunion personnel that is the subject of discussion, unless disclosure would compromise the public body's negotiating position. *See* OML 2022-29; OML 2021-187; OML 2020-50; OML 2015-193. Notices of the February 23 and March 20 meetings did not reference Ms. Snell as the nonunion personnel with whom the Commission was negotiating. Furthermore, disclosure that it was Ms. Snell who was the subject of discussion would not have compromised its negotiating position, as Ms. Snell was in attendance.⁵ *See* OML 2013-195 (revealing name of individual whose contract was being discussed would not have been detrimental to Board's

⁴ Arguably, the complainant could not have gained a full understanding of the context of the alleged violations until she secured the executive session minutes in October.

⁵ The Commission does not argue that reference to Ms. Snell by name would have compromised its negotiating position.

negotiating position because the union and non-union employees whose contracts were being negotiated were aware of executive sessions). To the extent there were negotiations with Ms. Snell regarding her promotion or strategy sessions in preparation for those negotiations, Ms. Snell was well aware of them because she attended both the February 23 and March 20 executive sessions. Indeed, she is reported to have presented the contract that was the subject of a Commission vote on March 20. For these reasons, the notices should have referenced Ms. Snell in relation to the Purpose 2 executive session. Because they did not, the Commission was in violation of the Open Meeting Law.

III. The Commission discussed matters that were not appropriate for discussion in executive session, in violation of the Open Meeting Law.

At the February 23 and March 20 executive sessions, Director Vorce announced his retirement and the commission discussed (in Deputy Director Snell's presence) the benefits of hiring the Deputy Director to fill the post. Neither of these topics falls within the scope of Purpose 2. When meeting in executive session, a public body may only address subjects that fit within one of the ten enumerated purposes and that relate to the narrow executive session purpose the public body cited when entering executive session. See District Attorney for the Northwestern Dist. v. Board of Selectmen of Sunderland, 11 Mass. App. Ct. 663, 666 (1981). A public body may strategize and negotiate with nonunion personnel in executive session under Purpose 2. See OML 2023-78; OML 2011-56. However, the scope of Purpose 2 is limited to the discussions, negotiations, and deliberations that occur prior to the execution of a contract. See OML 2023-78. The Open Meeting Law does not permit a public body to execute a contract behind closed doors where the public cannot witness the agreement. The vote to execute an agreed-upon contract must take place in open session. See OML 2023-78; OML 2019-51; OML 2015-184; OML 2011-44.

Here, discussions of matters outside the narrow scope of Purpose 2, including the Director's announcement of his retirement and a discussion in the Deputy Director's presence of her qualifications to take his place, ran afoul of the Open Meeting Law. See, e.g., OML 2021-21 (Committee's discussions relative to hiring an interim Superintendent and how to respond to comments and questions about the Superintendent's departure did not fit within the parameters of executive session Purpose 2, or any other executive session purpose.) The Commission's simultaneous public announcement on May 22 of the director's retirement and appointment of his successor gave the impression of a *fait accompli* crafted behind closed doors and is not permitted by the Open Meeting Law. See OML 2011-26 (Board's selection of candidates to represent the public on two separate commissions, made out of the public eye, "strikes at the heart of the Open Meeting Law.") This violation was compounded by the Commission's other violation, insufficient notice, as the public received no notice that the Deputy Director was even participating in negotiations with the Commission.

CONCLUSION

For the reasons stated above, we find that the Commission violated the Open Meeting Law when it failed to include the name of the nonunion personnel who was the subject of

executive session discussions convened under Purpose 2, and discussed topics which were not appropriate for executive session.

We order the Commission to post adequate notice and, in open session, discuss the hiring of a Director of Planning and vote to approve the resulting contract **within 45 days** of issuance of this determination. If the Commission fails to vote to approve the contract **within 45 days**, the approval that was voted at its May 22 meeting shall be nullified, pursuant to G.L. c. 30A, §23(c)(3). We are cognizant that Ms. Snell has served as Director for more than eight months and we do not underestimate the impact of our order. However, a public body which acts in disregard of the Open Meeting Law, especially in executing one of its core functions, appointment of its director, does so at its own peril.

Additionally, we order the Commission to release to the public minutes of the executive sessions held on February 23 and March 20 as they relate to the topics addressed herein and any documents used during that portion of the executive session, such as the contract. See G.L. c. 30A, § 22(f); OML 2022-29; OML 2021-70. We order immediate and future compliance with the requirements of 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 Commission or with our office. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Matthew Lindberg
Assistant Attorney General
Division of Open Government

cc: Meghan Glowacki (via email: mpeventing@me.com)
Chair, Nantucket Planning and Economic Development Commission (via email:
LSnell@nantucket-ma.gov)

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.