

MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

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

May 15, 2017

OML 2017 – 77

Scituate Board of Selectmen
c/o Patricia A. Vinchesi
Town Administrator
600 Chief Justice Cushing Highway
Scituate, MA 02066

RE: Open Meeting Law Complaint

Dear Ms. Vinchesi:

This office received a complaint from Jeffrey Clemens on March 9, 2017 alleging that the Scituate Board of Selectmen (the "Board") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ The complaint was originally filed with the Board on February 3, 2017 and Police Chief W. Michael Stewart responded on behalf of the Board by letter dated February 15, 2017. The complaint alleges that the Board entered into executive session for an improper purpose on April 5, April 26, and May 10.²

Following our review, we find that the Board did not violate the Open Meeting Law. 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 of and open session minutes from the Board's April 5, April 26, and May 10 meetings, as well as the executive session minutes from the Board's April 26 and May 10 meetings. Finally, we spoke with Town Administrator Patricia Vinchesi by telephone on March 30, 2017.

¹ Unless otherwise specified, all dates in this letter refer to the year 2016.

² The complaint also appears to allege that the Board failed to provide copies of executive session meeting minutes in response to a request. Complaints alleging violations of the Open Meeting Law must be filed with the public body within 30 days of the alleged violation. G.L. c. 30A, § 23(b). Here, the request for executive session minutes was made in September 2016 but a complaint was not filed with the Board until February 2017. Because the complaint was filed with the Board five months after the request, we find this portion of the complaint to be untimely and decline to review it.



FACTS

We find the facts as follows. In May 2011, Jeffrey Clemens was convicted and imprisoned for sending emails threatening to harm Town Administrator Patricia Vinchesi and an attorney representing the Town of Scituate.

On March 31, the Board posted notice for a meeting to be held on Tuesday, April 5 at 7:00 P.M. The notice included the following executive session topic: "To discuss the deployment of security personnel or devices or strategies with respect thereto. a. Drug Enforcement. b. Clemens." The April 5 meeting was held as planned. The Board did not discuss Mr. Clemens during open session and the Board did not enter executive session that evening.

On April 12, Mr. Clemens entered Town Hall to obtain documents. On April 13, Police Chief Stewart handed Mr. Clemens a Notice of No Trespass prohibiting him from entering Town Hall.

On April 21, the Board posted notice for a meeting to be held on Tuesday, April 26 at 7:00 P.M. The notice included the following executive session topics: "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 – Fire" and "To discuss the deployment of security personnel or devices or strategies with respect thereto. – Clemens." The April 26 meeting was held as planned. Prior to convening in executive session, the Board approved a motion to enter into executive session for the exact purposes stated on the notice. The Board then approved a unanimous vote by roll call to convene in executive session. Because the Board has not publicly released the minutes of this executive session, we do not recount their content in detail here. However, we note that the Board discussed benefit packages and working conditions for the fire union and the security of Town Hall.

On May 6, the Board posted notice for a meeting to be held on Tuesday, May 10 at 7:00 P.M. The notice included the following executive session topics: "To consider the purchase, exchange, lease or value of real property. – Greenbush" and "To discuss the deployment of security personnel or devices or strategies with respect thereto." Prior to convening in executive session, the Board approved a motion to enter into executive session for the exact purposes stated on the notice. The Board then approved a unanimous vote by roll call to convene in executive session. Because the Board has not publicly released the minutes of this executive session, we do not recount their content in detail here. However, we note that the Board discussed drug enforcement and the sale of land at the Greenbush parking lot.

DISCUSSION

The complaint challenges the propriety of the Board's executive session discussions on April 5, April 26 and May 10. The Open Meeting Law was enacted "to eliminate much of the secrecy surrounding deliberation and decisions on which public policy is based." Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72

(1978). The Open Meeting Law requires that all meetings of a public body be conducted in an open session, with some exceptions. G.L. c. 30A, §§ 20(a), 21(a). Public bodies may enter a closed, executive session for any of ten enumerated purposes, provided that it has first convened in an open session, that the purpose for the executive session has been stated in open session, that a majority of members of the body have voted to go into executive session, and that the vote of each member is recorded by roll call and entered into the minutes. G.L. c. 30A, §§ 21(a), (b).

The Board did not convene in executive session on April 5, and we find no evidence that “an informal and unofficial” meeting occurred as the complaint alleges. When a public body does not actually deliberate on a noticed topic, the public body cannot violate the Open Meeting Law with respect to that topic. See OML 2015-63; OML 2014-81.³

The Board did convene in executive session on April 26 and May 10. One permissible reason to convene in executive session is “to discuss the deployment of security personnel or devices, or strategies with respect thereto.” G.L. c. 30A, § 21(a)(4). Purpose 4 enables a public body to discuss privately those matters involving public safety or the security of public property when it believes that publicly disclosing security measures would compromise their effectiveness. We find that the Board’s discussions in executive session on April 26 and May 10 were proper under this purpose. Mr. Clemens, who had sent a threatening email to the Town Administrator as well as a town attorney, was seen in Town Hall on April 12. The Scituate Town Hall, where the Town Administrator works, has limited security. The discussions during the Board’s April 26 executive session meeting were limited to the security of Town Hall and the safety of town hall employees as well as members of the public in light of the threats made by Mr. Clemens. The discussions during the Board’s May 10 executive session related solely to strategy with respect to the Scituate Police Department’s response to drug activity in the town.

Except when meeting in executive session pursuant to G.L. c. 30A, § 21(a)(1), the Open Meeting Law does not require public bodies to provide additional notice of meetings to specific individuals or groups of individuals for topics discussed during a meeting. See OML 2013-41; OML 2011-41. Here, the Board was not required to provide Mr. Clemens with notice or the opportunity to be present during executive session discussions about security in which he may have been discussed.

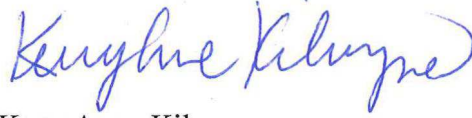
CONCLUSION

We find that the Board did not violate the Open Meeting Law by meeting in executive session on April 26 to discuss the security and safety of Town Hall and its employees, and by meeting in executive session on May 10 to discuss drug enforcement. 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

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

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

Sincerely,



KerryAnne Kilcoyne
Assistant Attorney General
Division of Open Government

cc: Jeffrey Clemens

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.