



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

February 22, 2019

OML 2019 - 14

Joseph I. Macy, Esq.
Corporation Counsel
City of Fall River
One Government Center
Fall River, MA 02722

RE: Open Meeting Law Complaints

Dear Attorney Macy:

This office received six related complaints from Patrick Higgins, dated July 17 and July 24, alleging that the Fall River City Council (the "Council"), the Fall River Board of Assessors (the "Board of Assessors"), the Fall River Licensing Board (the "Licensing Board"), the Fall River City Council Committee on Public Works & Transportation (the "Committee"), and the Fall River City Council Subcommittee on Economic Development & Tourism (the "Subcommittee") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ Two complaints were separately filed with the Council and Board of Assessors on June 20, and you responded, on behalf of those public bodies, by separate letters dated July 2 and July 20, respectively. Four complaints were then separately filed with the Council, Licensing Board, Committee and Subcommittee on June 26, and you responded, on behalf of those public bodies, by separate letters dated July 20.² The complaints allege that meetings held by the Council, Board of Assessors, Licensing Board, Committee, and Subcommittee between June 14 and July 12 were not accessible to the public.

We appreciate the patience of the parties while we reviewed these matters. Following our review, we find that the Council, Board of Assessors, Licensing Board, Committee and Subcommittee did not violate the Open Meeting Law as alleged. In reaching this determination,

¹ All dates in this letter refer to the year 2018.

² We remind the public bodies that the Open Meeting Law requires that within 14 business days of receipt of a complaint, the public body must to review the complaint's allegations; take remedial action, if appropriate; send to the complainant a response and a description of any remedial action taken; and send to the Attorney General a copy of the complaint and a description of any remedial action taken. G.L. c. 30A, § 23(b); 940 CMR 29.05(5). We note that the Licensing Board sought and was granted an extension of time by our office.



we reviewed the original complaints, the public bodies' responses to the complaints, and the complaints filed with our office requesting further review. In addition, we spoke with the complainant by telephone on September 25; and with Richard Branco by telephone on October 1.

FACTS

We find the facts as follows. On April 26, Fall River City Administrator Cathy Ann Viveiros issued a No Trespass Order, pursuant to G.L. c. 266, to Richard Branco stating that he could not enter City Hall, located at One Government Center in Fall River.

On June 21, Fall River Corporation Counsel issued a memorandum to all Department Heads, Board Chairmen, Committee Chairmen, and City Councilors with respect to the No Trespass Order. The memorandum advised that the No Trespass Order "should not be interpreted or enforced to prevent [the] individual from attending scheduled and noticed public meetings or hearings." The individual "may attend such meetings so long as they conduct themselves appropriately." Mr. Branco was then informed of his right to attend any public meetings held at City Hall.

The Board of Assessors held a meeting on June 14. The Committee held a meeting on June 25. The Licensing Board and Subcommittee each held a meeting on June 26. The Council held meetings on June 26 and July 12. All meetings were held in City Hall at One Government Center. Mr. Branco did not attend any of the meetings nor did he file an open meeting law complaint alleging that the meetings were inaccessible.

DISCUSSION

The Open Meeting Law was enacted "to eliminate much of the secrecy surrounding deliberations and decisions on which public policy is based." Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). The law requires that meetings of a public body be properly noticed and open to members of the public, unless an executive session is convened. See G.L. c. 30A, §§ 20(a)-(b), 21. Access to a meeting must include the opportunity to be physically present, as well as to see and hear what is being discussed by the members of the public body. See OML 2017-135; OML 2015-38; OML 2014-3; OML 2013-189.³ A public body must be able to take reasonable steps to ensure the safety and good order of public meetings. See OML 2015-92. By "good order" we mean protection against violent, threatening or abusive behavior, and not merely behavior that may disrupt a meeting. Disruptive behavior should be addressed by removing the person from the meeting. See G.L. c. 30A, § 20(g).

The complaints allege that meetings of the Council, Board of Assessors, Licensing Board, Committee and Subcommittee held between June 14 and July 12 were not open to the public. We note that these meetings were open meetings accessible to the general public, but we review to determine whether the meetings were also accessible to Mr. Branco. At the time of the

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

June 25, June 26 and July 12 meetings, the public bodies and Mr. Branco were aware that the No Trespass Order did not prohibit him from attending public meetings, unlike the Board of Assessors' meeting that was held on June 14. However, our investigation did not show that Mr. Branco sought to attend the June 14 meeting or request permission to attend and was denied. We cannot, therefore, conclude that he was actually excluded from the Board of Assessors' June 14 meeting. Compare OML 2018-77 (finding that a public body violated the Open Meeting Law by excluding the complainant from its meetings after he expressed interest in attending but was told he was not allowed, and where there were no specific incidents of physical aggression, violence or threats of harm). Based on the facts before us, we are unable to find that Mr. Branco was improperly excluded from any meeting held between June 14 and July 12. We commend the public bodies for taking appropriate remedial action by issuing the memorandum and advising all interested parties that Mr. Branco was not prohibited from attending scheduled and noticed public meetings or hearings and advise that any no-trespass order issued in the future be drawn as narrowly as possible to avoid unnecessarily excluding individuals from posted meetings of public bodies. Where, as occurred here, a public body has already taken corrective action to ensure future compliance with the law, we strongly encourage complainants to consider whether filing a complaint with our office is necessary. See OML 2016-159; 2016-37.

We remind the public bodies that the Open Meeting Law gives clear authority to the chair of a public body to conduct its meetings as "[n]o person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent." G.L. c. 30A, § 20(g). The law further states that, "[n]o person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting." Id.

CONCLUSION

For the reasons stated above, we find that the Council, Board of Assessors, Licensing Board, Committee and Subcommittee did not violate the Open Meeting Law. We now consider the complaints addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the Council, Board of Assessors, Licensing Board, Committee and Subcommittee. 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: Patrick Higgins
Fall River City Council
Fall River Board of Assessors
Fall River Licensing Board
Fall River City Council Committee on Public Works & Transportation
Fall River City Council Subcommittee on Economic Development & Tourism

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.