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July 25, 2019

OML 2019 – 87

Gloria Bouillon
Airport Manager
Beverly Regional Airport
50 L.P. Henderson Road
Beverly, MA 01915

RE: Open Meeting Law Complaint

Dear Ms. Bouillon:

This office received a complaint from Mark Zuberek on February 5, 2019, alleging that the Beverly Airport 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 January 2, 2019, and you responded on behalf of the Commission by letter dated January 17, 2019. Specifically, the complaint alleges that the Commission denied Mr. Zuberek access to Commission meetings.

Following our review, we find that the Commission violated the Open Meeting Law by denying Mr. Zuberek access to its meetings. In reaching this determination, we reviewed the original complaint, the Commission’s response, an affidavit filed by you in federal court, and a letter from counsel for the Complainant dated February 5, 2019 with attached exhibits including an email exchange between you and Mr. Zuberek dated December 6 and 7, 2018 and the Notice of No Trespass. We also communicated by phone with counsel for the Beverly Regional Airport on July 1, 2019. In addition, we reviewed meeting agendas posted to the Beverly Regional Airport’s website.

FACTS

We find the facts as follows. The Commission regularly held monthly meetings at the Beverly Regional Airport Administration Building at 50 L. P. Henderson Road, Beverly, Massachusetts. On October 10, 2018, the Complainant attended a Commission meeting at the Beverly Regional Airport Administration Building. On or about November 1, 2018, the Airport



Manager¹, on behalf of the Commission, issued a Notice of No Trespass to the Complainant prohibiting him from entering onto all property that constitutes the Beverly Regional Airport.² The Notice of No Trespass instructed the Complainant to contact the Airport Manager in writing should he wish to contest the Notice or to request permission to access the airport if he felt he had legitimate business requiring his physical presence at the airport.

On December 6, 2018, the Complainant sent a letter via electronic mail to the Airport Manager requesting that he be permitted to attend the Commission's upcoming December meeting and all subsequent meetings of the Commission. On December 7, 2018, the Airport Manager responded to the Complainant denying his request to attend Commission meetings. On January 2, 2019, the Complainant filed an Open Meeting Law complaint with the Commission alleging that the December 7 denial, as well as the Notice of No Trespass, violated the Open Meeting Law. On January 17, 2019, the Airport Manager, on behalf of the Commission, responded to the Open Meeting Law complaint by stating, in part, that "[c]reating a limited exception to the No Trespass Notice under conditions that would allow you to attend meetings personally is something that [the Airport Manager] and the Commission will consider, however, at this time the notice remains in effect due to security concerns." The Commission's response proposed alternatives to physical attendance at the meetings, including the possibility of broadcasting the meetings and allowing the Complainant to communicate with members of the Commission in writing, by phone, or in person somewhere other than the airport. The Commission also considered allowing the Complainant to attend its meetings with a police escort but concluded that this was prohibitively expensive. Beginning with its May 2019 meeting, the Commission moved its meetings to Beverly City Hall, where the Complainant has been permitted to attend.

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 open and accessible to the public. See G.L. c. 30A, § 20(a); OML 2014-3.³ 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 2013-189.⁴ Notwithstanding the requirements that meetings be open and accessible to the public, a public body may take reasonable steps to ensure the safety and good order of public

¹ For the sake of clarity, we refer to you in the third person going forward.

² There is substantial disagreement between the Beverly Regional Airport and the Complainant as to whether certain events took place, including whether the Complainant at any time attempted to access restricted areas of the airport, whether the Complainant continued to attempt to access areas of the airport after being explicitly prohibited, and whether the Complainant attempted to video record areas of the airport. The scope of our determination is limited to the Open Meeting Law only and we make no determination as to whether the Notice of No Trespass was properly issued or should remain in effect.

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

⁴ For this reason, broadcasting the Commission's meetings for the Complainant to view remotely, as the Commission proposed, would not have satisfied the Law's requirements.

meetings. See OML 2015-92; OML 2018-77. 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); OML 2018-77; OML 2019-14.

We note that the Commission’s meetings were open meetings accessible to the general public, but we review to determine whether the meetings were also accessible to the Complainant. We find that Commission meetings held between December 2018 and April 2019 were not accessible to the Complainant.⁵ On December 6, 2018, the Complainant specifically requested “to attend the Beverly Airport Commission monthly meeting in December 2018, and all subsequent Beverly Airport Commission meetings.” The Airport Manager denied his request on December 7, 2018, by email stating “[y]our attached request to attend Beverly Airport Commission meetings is also denied, in accordance with the attached, Notice of No Trespass.”

The Commission issued the Notice of No Trespass to the Complainant banning him from all airport property, including public areas of the airport where Commission meetings were held, as a result of the Complainant’s alleged behavior that the airport found suspicious, and out of concern for airport security and general public safety. We understand that the exclusion of the Complainant from public areas of the airport was due, at least in part, to the fact that secure areas of the airport can be viewed and potentially accessed from the public areas. Our jurisdiction is limited to enforcing the Open Meeting Law, so we do not review whether the Notice of No Trespass was properly issued in the first instance, nor are we empowered to vacate the Notice, as the Complainant requests.

Although we do not second guess the Commission’s judgment in issuing the Notice of No Trespass generally, and we appreciate the unique and heightened safety concerns applicable to an airport, the Commission should have ensured that enforcement of its order did not violate the Complainant’s rights under the Open Meeting Law. The Commission made no showing of a specific, articulable threat to public safety should the Complainant be allowed to attend the Commission’s public meetings, see OML 2018-77, nor did it make any effort to resolve its security concerns in a manner that would allow the Complainant to attend Commission meetings until several months later, when it moved its meetings to Beverly City Hall. We therefore find that from December 2018 through April 2019, the Commission denied the Complainant access to its meetings in violation of the Open Meeting Law.

CONCLUSION

For the reasons stated above, we find the Commission violated the Open Meeting Law. We order immediate and future compliance with the Open Meeting Law, and caution that similar violations in the future may be considered evidence of intent to violate the Law. 940 CMR 29.02.

⁵ Although the Commission held a meeting at the Airport Administration Building on November 13, 2018, after issuance of the Notice of No Trespass, there is no evidence that the Complainant sought to attend this meeting and was denied access. Compare OML 2019-14 (finding no violation of the Open Meeting Law where there was no evidence that an individual who had been barred from the Fall River City Hall actually requested or attempted to attend public meetings held at City Hall).

Since the filing of this complaint, the Commission has moved its meetings to Beverly City Hall, a location where the Complainant is no longer excluded from attendance; we therefore order no further remedial action.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints which may be pending with our office or the Commission. Please feel free to contact our office at (617) 963-2540 if you have any questions.

Sincerely,



Elizabeth Carnes Flynn
Assistant Attorney General
Division of Open Government

cc: Mark Zuberek
Naomi Shatz, Esq.
David S. Monastersky, Esq.

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.