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July 20, 2022

DELIVERED BY ELECTRONIC MAIL

Director
Division of Open Government
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

RE: Open Meeting Law Complaint
Municipality: Town of Marblehead – Board of Health
Complainant: Mark Pelletier
Alleged Violation Date: 7/12/22
Date of Complaint: 7/15/22

Dear Director:

I am Special Town Counsel to the Town of Marblehead. The Board of Health (Board) has received an Open Meeting Law Complaint from Mark Pelletier, which was received by the Town as noted above, and attached as Exhibit A. A response is due 14 business days from receipt of the Complaint, or August 4, 2022.

Due to vacation schedules, the next scheduled meeting of the Board is on August 16, 2022 and the Board will be unable to review or delegate a response until that time. Pursuant to 940 CMR 29.05 (5)(a-b), I am requesting an extension until August 18, 2022, which would allow the Board time to review and approve or delegate a response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth Lydon'.

Elizabeth Lydon
Special Town Counsel

Encls.

cc: Mark Pelletier
Town of Marblehead Board of Health

Newburyport Office
30 Green Street
Newburyport, MA 01950
Phone 978.463.7700
Fax 978.463.7747



Exhibit A

The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108

OPEN MEETING LAW COMPLAINT FORM

Instructions for completing the Open Meeting Law Complaint Form

The Attorney General's Division of Open Government interprets and enforces the Open Meeting Law, Chapter 30A of the Massachusetts General Laws, Sections 18-25. Below is the procedure for filing and responding to an Open Meeting Law complaint.

Instructions for filing a complaint:

- o Fill out the attached two-page form completely. Sign and date the second page. File the complaint with the public body within 30 days of the alleged violation. If the violation was not reasonably discoverable at the time it occurred, you must file the complaint within 30 days of the date the violation was reasonably discoverable. A violation that occurs during an open session of a meeting is reasonably discoverable on the date of the meeting.
- o To file the complaint:
 - o For a local or municipal public body, you must submit a copy of the complaint to the chair of the public body AND to the municipal clerk.
 - o For all other public bodies, you must submit a copy of the complaint to the chair of the public body.
 - o Complaints may be filed by mail, by email, or by hand. Please retain a copy for your records.
- o If the public body does not respond within 14 business days and does not request an extension to respond, contact the Division for further assistance.

Instructions for a public body that receives a complaint:

- o The chair must disseminate the complaint to the members of the public body.
- o The public body must meet to review the complaint within 14 business days (usually 20-22 calendar days).
- o After review, but within 14 business days, the public body must respond to the complaint in writing and must send the complainant a response and a description of any action the public body has taken to address the allegations in the complaint. At the same time, the body must send the Attorney General a copy of the complaint and a copy of the response. The public body may delegate this responsibility to an individual member of the public body, its counsel, or a staff member, but only after the public body has met to review the complaint.
- o If a public body requires more time to review the complaint and respond, it may request an extension of time for good cause by contacting the Division of Open Government.

Once the public body has responded to the complaint:

- o If you are not satisfied with the public body's response to your complaint, you may file a copy of the complaint with the Division by mail, by email, or by hand, but only once you have waited for 30 days after filing the complaint with the public body. Mail may be sent to: The Division of Open Government, Office of the Attorney General, One Ashburton Place - 20th Floor, Boston, MA 02108. Emails may be sent to: openmeeting@state.ma.us.
- o When you file your complaint with the Division, please include the complaint form and all documentation relevant to the alleged violation. You may wish to attach a cover letter explaining why the public body's response does not adequately address your complaint.
- o The Division will not review complaints filed with us more than 90 days after the violation, unless we granted an extension to the public body or you can demonstrate good cause for the delay.

If you have questions concerning the Open Meeting Law complaint process, we encourage you to contact the Division of Open Government by phone at (617) 963-2540 or by email at openmeeting@state.ma.us.



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: Mark Last Name: Pelletier

Address: [REDACTED]

City: Marblehead State: MA Zip Code: 01945

Phone Number: [REDACTED] Ext. _____

Email: [REDACTED]

Organization or Media Affiliation (if any): _____

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual Organization Media

Public Body that is the subject of this complaint:

City/Town County Regional/District State

Name of Public Body (including city/town, county or region, if applicable): Marblehead Board of Health

Specific person(s), if any, you allege committed the violation: Andrew Petty, Todd Belf-Becker, Helaine Hazlett, Joann Miller

Date of alleged violation: July 12th, 2022

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

The Marblehead(MHD) Board of Health(BOH) has elected to continue to offer meetings in a hybrid format having both in person and Zoom connectivity. On July 12, 2022, they were scheduled to have a meeting at 7:30pm when Health Director Andrew Petty experienced " technical difficulties" with Zoom and could not admit people to the meeting who were waiting. Conveniently, the BOH has a disclaimer that says " Members of the public are welcome to attend this in-person at Mary Alley Muni. Bldg., 7 Widger Rd. Marblehead, MA 01945 or by the remote zoom connection provided. Please note that the in-person meeting will not be suspended or terminated if " technological problems" interrupt the remote connection. Also, conveniently, this just happened to be another controversial meeting to discuss the future of transfer station which the public has been engaged in for years to understand where all the money went. As such, no one could participate remotely, and no one could get down to the Mary Alley in time. 2nd hand reports indicated single digit members of the public in attendance while social media indicated many once again could not get into the posted call. Given that people can't just drop everything if they had planned to participate remotely, the meeting should have been rescheduled.

Coincidentally, the very first meeting after they just were issued two OML violations they were experiencing technology problems admitting people to Zoom and could not admit a single member of the public. An FOIA request was made for the MHD Zoom tenant logs to show that at least the meeting had been started to which town counsel replied that " Public Records Law only applies to information that is in the custody of the municipality at the time the request is received" which indicates that there is no audit log available and as such no meeting was even attempted to be started. The disclaimer that the BOH will continue the meeting if " interrupted" should not apply to this case since the remote meeting was never started in the first place. Furthermore, given that MHD is engaged in a Software as a Service and/or Master Service Agreement with Zoom to provide video conferencing solutions to the Town of Marblehead, these audit logs should be in care and custody of Marblehead and subject to review of the Public Records Law if in fact they existed. Just because it's in the " cloud" doesn't exempt the town from saying they exist. Records from this Zoom tenant were previously reviewed by the Attorney General's office on another OML violation filing so they are within scope of review.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

Given that this BOH has a now established reputation for violating the OML with regard to admitting the public, this can only be found to be a willful and intentional violation of the Massachusetts Open Meeting Law and as such appropriate fines and other actions deemed appropriate should be taken.

Review, sign, and submit your complaint

I. Disclosure of Your Complaint.

Public Record. Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

Publication to Website. As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

II. Consulting With a Private Attorney.

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: Mark Pelletier

Date: July 15th, 2022

For Use By Public Body

Date Received by Public Body:

For Use By AGO

Date Received by AGO: