THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

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

October 13, 2015

Marc L. Terry, Esq.
Mirick, O'Connell, DeMallie & Lougee, LLP
1800 West Park Drive, Suite 400
Westborough, MA 01581

**RE: Request for Reconsideration Concerning Determination OML 2015-94**

Dear Attorney Terry:

Our office received your August 13 e-mail in which you request reconsideration, in part, of our July 21 determination concerning the Lincoln-Sudbury Regional School Committee (the "Committee").[1] This determination, OML 2015-94, resolved two related complaints filed by Jennifer Stahr. Ms. Stahr filed her first complaint with the Committee on January 25, and the Committee responded by letter dated February 2. Ms. Stahr then filed this first complaint with our office on February 15. Ms. Stahr filed her second complaint with the Committee on February 15, and the Committee responded by letter dated March 10. The second complaint was filed with our office on March 30. In your e-mail, you requested that the Division of Open Government (the "Division") reconsider its finding that the Committee intentionally violated the Open Meeting Law by failing to review Ms. Stahr's complaints before responding.

There is no statutory right to reconsideration by the Office of the Attorney General of an Open Meeting Law determination or declination. While the Division generally will not reconsider past determinations and declinations, we may grant reconsideration where the request identifies a clerical or mechanical error in the determination or a significant legal or factual issue that the Division may have overlooked or misapprehended in resolving the complaint. Because you have provided our office with facts that were not disclosed during the original investigation, we grant your request for reconsideration.

[1] Unless otherwise indicated, all dates in this letter refer to the year 2015.

## The First Complaint

In OML 2015-94, we found that the Committee violated the Open Meeting Law by failing to review Ms. Stahr's January 25 complaint before responding.[2] The Committee responded to the January 25 complaint on February 2 without first reviewing it. We found that this violation was intentional, because our office previously reminded the Committee of its obligation to review a complaint before responding to it. See OML 2015-17. Our decision in OML 2015-17 was mailed to the Committee on January 29 and posted on the Attorney General's website on February 2.[3] After the present determination was issued, however, the Committee informed our office that it did not receive OML 2015-17 prior to responding to the January 25 complaint on February 2. A certified mail receipt obtained by our office confirms that the Committee received OML 2015-17 on February 3. Therefore, we find that, as of February 2, the Committee had not been advised by our office that failure to review a complaint before responding violated the Open Meeting Law. While we affirm our finding that the Committee violated the Open Meeting Law, in light of these facts we find that the failure to review the January 25 complaint was not an intentional violation. See 940 CMR 29.02.

## The Second Complaint

We also found in OML 2015-94 that the Committee failed to review Ms. Stahr's February 15 complaint before responding. This finding was based, in part, on Committee Chair Radha Gargeya's March 10 response to the February 15 complaint. The March 10 response states, in part, "The Attorney General's regulations require only that complaints be forwarded to all members of the School Committee. You accomplished this by sending your Complaint to the entire School Committee. I subsequently responded." Based on this statement, Assistant Attorney General Manganaro believed that the Chair's response immediately followed receipt by the School Committee and no discussion by the body had preceded it. This belief was supported by conversations with the Committee's legal counsel during the course of the investigation.[4] After the present determination was issued, however, the Committee informed our office that it discussed the February 15 complaint during a March 5 meeting. In reconsidering this matter, we reviewed the minutes and a video of the March 5 meeting. This review confirmed that, during the March 5 meeting, the Committee reviewed the February 15 complaint and referred the matter to Chair Gargeya for a response. These steps are in accord with the Open Meeting Law's requirements. Based on these facts, we find that the Committee complied with its obligations with respect to the February 15 complaint.

Based on the foregoing, we hereby modify our finding in OML 2015-94 to conclude that the Committee's failure to review the January 25 complaint was not intentional. Furthermore, we now find that the Committee did not violate the Open Meeting Law with respect to the February 15 complaint. Accordingly, we withdraw our earlier referral of this matter to a hearing

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[2] When an individual files an Open Meeting Law complaint with a public body, the chair "shall disseminate copies of the complaint to the members of the public body," and "the public body shall review the complaint's allegations." 940 CMR 29.05(3), (5). The chair is required to disseminate copies and the public body must meet to review the complaint and formulate a response, or meet to delegate that authority. See OML 2012-90.

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

[4] For the sake of clarity, we refer to you in the third person.

pursuant to 940 CMR 29.07(3) and we now consider this matter closed. Please feel free to contact this office at (617) 963 – 2540 with any further questions.

Sincerely,

Amy L. Nable
Assistant Attorney General
Director, Division of Open Government

cc: Jennifer Stahr
Lincoln-Sudbury Regional School Committee

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OFFICE OF THE ATTORNEY GENERAL
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MAURA HEALEY
ATTORNEY GENERAL

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July 21, 2015

OML 2015 – 94

Marc L. Terry, Esq.
Mirick, O'Connell, DeMallie & Lougee, LLP
1800 West Park Drive, Suite 400
Westborough, MA 01581

**RE: Open Meeting Law Complaint**

Dear Attorney Terry:

This office received two related complaints from Ms. Jennifer Stahr, alleging that the Lincoln-Sudbury Regional School District School Committee (the "Committee") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The first complaint was originally filed with the Committee on January 25, 2015, and the Committee responded by letter dated February 2, 2015. Ms. Stahr then filed the first complaint with our office on February 15, 2015. Ms. Stahr filed her second complaint with the Committee on February 15, 2015, and, after an extension of time was granted, the Committee responded by letter dated March 10, 2015. This second complaint was then filed with our office on March 30, 2015. In her complaints, Ms. Stahr alleges that the Committee: (i) failed to respond to a request for executive session meeting minutes within the time frame required by the law; (ii) does not conduct regular periodic reviews of its executive session minutes; (iii) failed to list an anticipated executive session discussion on a meeting notice; and (iv) failed to follow proper procedure in responding to Open Meeting Law complaints.[1]

Following our review, we find that the Committee listed the anticipated executive session topic with sufficient specificity on a meeting notice. However, we find that the Committee violated the law in certain other respects. Furthermore, we find that the Committee's failure to follow proper procedures in responding to Open Meeting Law complaints is an intentional violation of the law, and we refer the matter to a hearing pursuant to 940 CMR 29.07(3). In reaching a determination, we reviewed the original complaints; the Committee's responses; and the requests for further review filed with our office.

[1] In her second complaint, Ms. Stahr also writes, "I request that the AGO review agendas and minutes and notices to make sure they comply with [the Open Meeting Law]." Our office does not generally conduct broad audits of public bodies based on generalized allegations and decline to do so here. See OML 2013-180. .

## FACTS

We find the facts as follows. On January 3, 2015, Ms. Stahr sent an e-mail to the Committee requesting copies of all minutes of executive sessions held between November 2011 and the date of her request. On January 6, 2015, the School District's Director of Student Services, Ms. Aida Ramos, sent Ms. Stahr a letter stating, in pertinent part, "In the next couple weeks, the School Committee will be reviewing its executive session minutes to decide which will and can be released." On January 25, 2015, Ms. Stahr sent an e-mail to Ms. Ramos and the Committee stating that the Committee had met twice since receiving Ms. Stahr's request—on January 6 and January 20, 2015—without undertaking a review of the executive session minutes. It does not appear that the Committee responded to this email.

The Committee met on February 3, 2015. The notice for this meeting listed two anticipated executive sessions, one preceding the open session and one following, with both described the same way: "Executive Session for the purpose of discussing matters of collective bargaining because to do so in public session would be detrimental to the District." During the second of these two executive sessions, the Committee also discussed the release of executive session minutes from meetings that took place in 2014.

The Committee also met on February 6, 2015 and reviewed several other sets of minutes from meetings held in 2014. The Committee met again on February 10, 2015, and reviewed several sets of minutes from meetings held in 2012 and 2014, as well as one set of minutes from a 2013 meeting. The notices for the February 6 and February 10, 2014 meetings list anticipated executive sessions to discuss the release of executive session minutes. On February 14, 2015, Committee Chair Radha Gargeya sent via email to Ms. Stahr a chart listing certain executive session minutes that had been reviewed and noting that all minutes were being withheld. To date, no other executive session minutes have been reviewed and no executive session minutes have been provided to Ms. Stahr.

## DISCUSSION

### I. The Committee Listed an Anticipated Topic on a Meeting Notice with Sufficient Specificity.

The Open Meeting Law requires that public bodies post notice 48 hours in advance of a meeting and include a "listing of topics that the chair reasonably anticipates will be discussed at the meeting." G.L. c. 30A, § 20(b). A public body must list the purpose for an anticipated executive session with sufficient specificity to reasonably inform members of the public as to what the body plans to discuss. See OML 2012-76.[2] When giving notice of an anticipated executive session during which a public body plans to review the minutes of previously held executive sessions, the body may cite the original executive session purpose used to justify the meetings whose minutes are being reviewed. See OML 2013-199.[3]

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[2] Open Meeting Law determination may be found at the Attorney General's website: www.mass.gov/ago/openmeeting.

[3] Alternatively, a body may cite G.L. c. 30A, § 21(a)(7), to "comply with, or act under the authority of" the Open Meeting Law. See G.L. c. 30A, § 22(g); OML 2013-199.

Here, the Committee listed the second executive session that took place on February 3, 2015 as a discussion of collective bargaining strategy. All of the executive session minutes reviewed during this discussion concerned collective bargaining. As such, the use of Purpose 3 was appropriate. See G.L. c. 30A, § 21(a)(3); OML 2013-199. It is our understanding that the Committee now indicates on meeting notices, along with the original executive session purpose or purposes, that it is entering executive session to review the minutes of previously held executive sessions. We commend the inclusion of this additional information on meeting notices, as it provides useful details to the public.

II. The Committee Failed to Respond to a Request for Executive Session Minutes within the Time Frame Required by the Open Meeting Law.

Public bodies are required to periodically review executive session minutes to determine if continued nondisclosure is warranted. See G.L. c. 30A, § 22(a)(1); OML 2011-28. The Open Meeting Law states that a public body must respond to a request for executive session minutes within ten days. See G.L. c. 30A, § 22(g)(2). If the public body has determined, prior to the request, that certain executive session minutes should be released, it should respond to the requestor directly, notifying him or her of the availability of those minutes. See OML 2013-105. If the body has determined that executive session minutes should not be released because publication would defeat the lawful purpose for secrecy, it should respond by stating the reason why the minutes continue to be withheld. Id. And if, at the time of a request, the public body has not conducted a review of the minutes to determine whether continued nondisclosure is warranted, the body must perform such a review and release the minutes, if appropriate, no later than its next meeting or within 30 days, whichever occurs first. See OML 2014-130. In such circumstances, the body should still respond to the requestor within 10 days, notifying him or her that it is conducting this review. See OML 2013-99.

Upon receiving Ms. Stahr's January 3, 2015 request, the Committee should have reviewed the minutes requested within 30 days, or at its next meeting, whichever came first. G.L. c. 30A, § 22(g)(2). However, the Committee met twice before undertaking the required review of executive session minutes. We find that the Committee's failure to conduct this review within the required time frame violated the Open Meeting Law. Id. While we recognize that Ms. Stahr's request was for a large number of minutes, the Committee is nevertheless obligated to abide by the Open Meeting Law's requirements. See OML 2015-17; OML 2013-166.

III. The Committee Failed to Conduct Periodic Reviews of its Executive Session Minutes.

Ms. Stahr next alleges that the Committee failed to conduct periodic reviews of its executive session minutes to determine whether there is a continued purpose for nondisclosure. Here, the fact that the Committee waited until it received Ms. Stahr's request before initiating a review of executive session minutes that were, in some cases, two years old, is evidence that the Committee was not periodically reviewing executive session minutes. See G.L. c. 30A, § 22(g)(1); OML 2014-138; OML 2014-105. This failure to review executive session minutes violated the Open Meeting Law. The Committee states that it is now aware of its obligations in this regard, and has pledged to adhere to these requirements in the future.

IV. The Committee Failed to Meet in Order to Discuss Ms. Stahr's Open Meeting Law Complaints.

Finally, Ms. Stahr alleges that the Committee failed to meet to review her Open Meeting Law complaints. When an individual files an Open Meeting Law complaint with a public body, the chair "shall disseminate copies of the complaint to the members of the public body," and "the public body shall review the complaint's allegations." 940 CMR 29.05(3), (5). The chair is required to disseminate copies and the public body must meet to review the complaint and formulate a response, or meet to delegate that authority. See OML 2012-90. In the Committee's March 10, 2015 response to Ms. Stahr's second complaint, Committee Chair Radha Gargeya states, "The Attorney General's regulations require only that complaints be forwarded to all members of the School Committee. You accomplished this by sending your Complaint to the entire School Committee. I subsequently responded." This statement is incorrect. Reviewing the complaint and deciding how to respond are actions that would constitute deliberation by a public body. See G.L. c. 30A, § 18 (defining "Deliberation"). Accordingly, these actions can only take place during a meeting. Id.

We find that the Committee's failure to meet to review Ms. Stahr's complaints was an intentional violation of the Open Meeting Law. An intentional violation is an "act or omission by a public body or a member thereof, in knowing violation of [the Open Meeting Law." 940 CMR 29.02. An intentional violation may be found where the public body has previously been advised that certain conduct violations the Open Meeting Law. Here, the Committee was advised by our office of the proper procedure for responding to an Open Meeting Law complaint. In OML 2015-17, we noted that the Committee had failed to convene a meeting in order to review the complaint at issue before responding. See OML 2015-17. This determination was sent to the Committee just weeks before Chair Gargeya sent an e-mail stating that the Committee was not required to meet in order to discuss the complaints. The Committee had therefore clearly been advised of the law's requirements, and we find that the violation of those requirements was intentional.

CONCLUSION

For the reasons stated above, we find that the Committee violated the Open Meeting Law. With respect to the Committee's failure to properly respond to Ms. Stahr's Open Meeting Law complaints, we find that this violation was intentional. We therefore refer this matter to a hearing pursuant to 940 CMR 29.07(3). We recommend a fine of $1,000 and an order of immediate and future compliance with the Open Meeting 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 our office or the Committee. Please feel free to contact the Division at (617) 963 - 2540 if you have any questions.

Sincerely,

Kevin W. Manganaro

Assistant Attorney General
Division of Open Government

cc: Ms. Jennifer Stahr
Lincoln-Sudbury Regional School District School Committee

**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.**