



J. Raymond Miyares Thomas J. Harrington Christopher H. Heep Donna M. Brewer Jennie M. Merrill
Rebekah Lacey Bryan Bertram Ivria Glass Fried Alexandra B. Rubin Katherine E. Stock

July 8, 2019

Via email (betsy.roberti@gmail.com)
and First Class Mail

Betsy Roberti
235 Weston Rd.
Wellesley, MA 02482

Re: *Open Meeting Law Complaint*

Dear Ms. Roberti:

The Wellesley Advisory Committee received your *Open Meeting Law* complaint on June 18, 2019. On June 26, 2019, the Committee held an open meeting, and then went into executive session to discuss the complaint. The Committee also authorized me to draft the Committee's response. While you are a member of the Committee, you did not attend either the open meeting prior to the executive session, nor the executive session.

Your complaint alleges that Chairman Tom Skelly violated the law by sending two emails to the entire Advisory Committee, both on June 14. The first email explains Chairman Skelly's reasons for appointing Mary Gard as the Committee's liaison to the School Building Committee rather than you. The second email forwards emails sent to the Committee inbox regarding Massachusetts School Building Authority funding.

Chairman Skelly's emails to the Committee do not violate the *Open Meeting Law*. Emails can violate the law when they are communications with a quorum of a public body on any public business within the public body's jurisdiction. G.L. c. 30A, § 18. An email communication can violate the law even if no member responds. *See* OML 2018-6. Chairman Skelly's emails, however, do not discuss public business within the Committee's jurisdiction and, in the case of the second email, merely forwards documents without expressing an opinion.

The Division of Open Government holds that matters fall outside of the public body's jurisdiction when:

1. The topic does not involve the public body's exercise of governmental business, policy or administration;
2. The topic relates to personal matters; and

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3. The topic does not anticipate collective action of the public body, such as the taking of a vote.

OML 2018-1.

The first email sets forth Chairman Skelly's reasons for appointing Mary Gard as liaison to the School Building Committee. The appointment of Committee liaisons is not a Committee matter. By longstanding practice of the Committee and the Committee Handbook, appointment of liaisons is solely exercised by the Committee Chairman. I attach a copy of page 11 of the 2013-2014 Wellesley Advisory Committee's A Practical Handbook of Operating Procedures. It states in pertinent part:

[T]he *Advisory Chair* will assign members of Advisory to participate in or follow the progress and deliberations of Ad Hoc committees appointed by the Moderator or the Board of Selectmen and to report to the full Advisory Committee so that it will be prepared to make recommendations to Town Meeting. Recent examples include the 900 Worcester Street Committee, the Bylaws Study Committee, the Green Ribbon Committee, the Sprague Field Task Force and the *School Building Committee*. (emphasis supplied)

Since the Chairman alone appoints Committee liaisons, this is not a matter within the Committee's jurisdiction, and, an email providing the reasons for the Chairman's action does not constitute an improper deliberation.

Similarly, the second email does not constitute an improper deliberation of a matter within the Committee's jurisdiction. The Chairman forwarded to the Committee members emails regarding a matter before the MSBA. Clearly, the Advisory Committee cannot exercise any control over whether the MSBA grants funds to the Town for a proposed school building project. The Committee need not, and in fact cannot, take a vote on the grant or denial of MSBA funds. Moreover, the law permits a member to distribute documents provided that no opinion of the member is expressed. G.L. c. 30A, § 18. Chairman Skelly distributed emails that were in the Committee's email inbox and did not express any opinion regarding what the MSBA or the Committee should do in response. OML 2015-33. There is no violation.

Notwithstanding the conclusion that the emails do not constitute a violation of the *Open Meeting Law*, the Committee has voted to post the Chairman's emails to the Town website as public records. The Committee is working with the Town Clerk as to the best placement of the records so that they are easily available.

To the extent that your complaint questions the Chairman's motivations and intentions in sending the emails, those questions are beyond the scope of the *Open Meeting Law* and need not be

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addressed. I trust that this response provides an appropriate and acceptable resolution of your complaint.

Sincerely,



Thomas J. Harrington

Enc.

Cc: Attorney General Division of Open Government (with copy of the Complaint)
Advisory Committee

Wellesley Advisory Committee

**A PRACTICAL HANDBOOK OF
OPERATING PROCEDURES**

2013-2014

- Group Health Insurance
- Unemployment compensation
- Liability Insurance Trust Fund
- Workers compensation
- Maturing debt
- Interest
- Retirement systems

Special Matters

From time to time individual members of the Advisory Committee are assigned to look at or participate in special matters that arise in Town. Past examples include formation of an Ad Hoc committee of Advisory members to review demographic projections for the school-aged population and formation of an Ad Hoc Committee to study personnel issues that arise each year at Town Meeting.

Further, the Advisory Chair will assign members of Advisory to participate in or to follow the progress and deliberations of Ad Hoc committees appointed by the Moderator or the Board of Selectmen and to report to the full Advisory Committee so that it will be prepared to make recommendations to Town Meeting. Recent examples include the 900 Worcester Street Committee, the Bylaws Study Committee, the Green Ribbon Committee, the Sprague Field Task Force and the School Building Committee.

Advisory can also assume additional responsibilities.

Attendance

While it is often appropriate and helpful for the Advisory liaisons to attend all meetings of the Boards and Committees that they are assigned to cover, given the workload, it is often desirable to coordinate with the Boards and Committees to determine when attendance is most critical and to figure out some other ways to keep abreast of the content of any meetings that you cannot attend.

Duties and Responsibilities of Individual Members of the Advisory Committee

The most important and time-consuming job for each member of Advisory is to get to know the board members and staff of each Board and/or Department for which you are assigned responsibility. That means you must learn in detail (as much as possible) exactly how the Department is organized and what current budgetary and operational issues (both short-term and long-term) it faces. You need to know how the Department works – what its goals and objectives are, and how it attempts to achieve those goals and objectives. As described elsewhere in the Handbook, the goals and objectives of a Department are the basic building blocks for developing its budget.

Based upon your review of the Department's budgets and operations and your discussions with the Department's key staff and Board members, you need to become as familiar as possible with