



## City of Lowell - Law Department

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*City Solicitor*

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*Assistant City Solicitors*

August 7, 2020

City Manager Eileen Donoghue *EMD*  
Mayor John J. Leahy  
And  
Members of the City Council

Re: Open Meeting Law Complaints

Dear Manager Donoghue, Mayor Leahy and Members of the City Council:

Attached are two complaints alleging a violation of the Commonwealth's Open Meeting Law. One complaint was received on July 27<sup>th</sup> and another on the 28<sup>th</sup>.

Pursuant to MGL c.30A, §§ 18-25, the City Council must meet to review the complaint within 14 business days. Also within 14 days the public body is required to respond to the complaint in writing. The response is to be directed to the complainant with a copy to the Attorney General. A public body may delegate this responsibility to its counsel or a staff member, but only after it has met to review the complaint.

The law department has reached out to the Attorney General's office to request a modest extension, should one be necessary.

Sincerely,

Christine P. O'Connor  
City Solicitor

Enclosures



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 - 20<sup>th</sup> Floor, Boston, MA 02108. Emails may be sent to: [openmeeting@state.ma.us](mailto: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](mailto: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: \_\_\_\_\_ Last Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Ext. \_\_\_\_\_

Email: \_\_\_\_\_

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): \_\_\_\_\_

Specific person(s), if any, you allege  
committed the violation: \_\_\_\_\_

Date of alleged violation: \_\_\_\_\_

## 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.

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.

## 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](mailto: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:** \_\_\_\_\_

**Date:** \_\_\_\_\_

*For Use By Public Body  
Date Received by Public Body:*

*For Use By AGO  
Date Received by AGO:*



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## OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General  
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Boston, MA 02108

Please note that all fields are required unless otherwise noted.

### Your Contact Information:

First Name: Dorothy E. Last Name: Halzack

Address: 318 Pawtucket St

City: Lowell State: MA Zip Code: 01854

Phone Number: 978-237-1814 Ext. \_\_\_\_\_

Email: dee.halz@ix.netcom.com

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): Lowell City Council

Specific person(s), if any, you allege committed the violation: Rodney Elliott

Date of alleged violation: 7/14/2020

## 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.

What happened in the July 14 City Council meeting was so wrong. It was quite clear to me that the Mayor had crafted two well worded motions to address concerns that had been brought by people of color in our city and that Councilors Elliot and Mercier and others had conspired behind the scenes, in violation of open meeting law, to undercut those motions.

The motion Mr. Elliott made had six co-sponsors. How could six councilors agree to co-sponsor a motion without a quorum (5) of those councilors having discussed the matter offline, as forbidden by the open meeting law?

The Open Meeting Law defines deliberation as " an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction. " But even in exempted cases, and a motion is NOT one, it is considered essential that "no member of the public body expresses an opinion on matters within the body ' s jurisdiction."

The Lowell Sun reported on July 9 that six councilors had agreed to cosponsor and support a motion, before it was publicly posted. After the motion was voted on, it had to be referred to the city ' s law department to verify that the language was proper, so we know it was written by the councilors themselves.

Mr. Elliott made several references to collaborating outside of the open meeting law during the council meeting of July 14th which character limits prevent my citing

<https://www.youtube.com/watch?v=sz9A-Q8Blm4&t=42s> <<https://www.youtube.com/watch?v=sz9A-Q8Blm4&t=42s>>

"I went to great lengths in talking to councilors in crafting this resolution" - Rodney Elliott at around 1:50:00 during the council meeting.

Rodney Elliott again, to John Drinkwater at around 2:17:00 of the Council Meeting Video

Mr. Elliott's own words are the key evidence that a quorum of the council deliberated on his motion outside of the required open meeting and that Mr. Elliott at least attempted to deliberate with all 9 city councilors illegally. There is also a leaked email to prove it. The public was effectively shut out of weighing in on Councilor Elliott's motion because a majority of the council collaborated on it behind closed doors and considered it a done deal, even though all people who registered to speak at the meeting spoke in support of the Mayor ' s motion.

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.

The vote for the motion for a statement against racism that passed at the July 14 meeting needs to be voided, both because it was produced in violation of the open meetings law, and because it is really insulting and hurtful to the people of color in this city, as were some of the statements made in support of it by some City Councilors, and even afterwards, in the July 20 Lowell Sun, by Councilor Mercier. It needs to be deliberated on better and replaced by a statement that is more respectful to the people of color who asked the city for a declaration and a commitment to address racism in the city.

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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: Dorothy E. Halzack

Date: 7/27/2020

For Use By Public Body  
Date Received by Public Body:

For Use By AGO  
Date Received by AGO: