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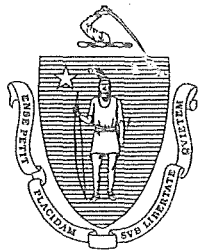
DONNA P. LOPEZ
CITY CLERK

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DEPUTY CITY CLERK

DATE: MARCH 29, 2016
TO: THE HONORABLE, THE CITY COUNCIL
FROM: DONNA P. LOPEZ, CITY CLERK 
SUBJECT: DETERMINATION ON OPEN MEETING LAW COMPLAINT OF KIM COURTNEY
DATED OCTOBER 28, 2015, AMENDED ON JANUARY 5, 2016

Attached you will find the determination of the Attorney General's office that the minutes of the August 10, 2015 City Council meeting did not violate the Open Meeting Law. The Attorney General's office found the minutes to be in substantial compliance with the Open Meeting Law's requirements, but stated that the minutes could have noted that the point of order and motion were made during the complainants' statements, rather than after, and that the Council did not permit Mr. Dietrich to finish his statements on the record. Although the Attorney General's office suggested that "the Council may wish to further revise the minutes in an effort to achieve *complete* accuracy" (emphasis added), I do not recommend making any further revisions at this time.

Thank you for your cooperation in this matter.



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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March 22, 2016

OML 2016 – 40

Anne Sterman
Assistant City Solicitor
City of Cambridge
795 Massachusetts Avenue
Cambridge, MA 02139

RE: Open Meeting Law Complaint

Dear Attorney Sterman:

This office received a complaint from Attorney Kim Courtney and Xavier Dietrich on January 8, 2016, alleging that the Cambridge City Council (the Council) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Council on October 28, 2015, and City Clerk Donna Lopez responded on behalf of the Council by letter dated November 25, 2015. In their complaint, Attorney Courtney and Mr. Dietrich allege that the Council's August 10, 2015 meeting minutes are inaccurate.

Following our review, we find that the Council did not violate the Open Meeting Law. In reaching this determination, we reviewed the original complaint, the Council's response, and the complainants' request for further review filed with our office. We also reviewed the notice, the original and revised minutes, and a video-recording from the Council meeting held on August 10, 2015.

FACTS

We find the facts as follows. The Council held a meeting on August 10, 2015. The meeting began with a public comment period during which 36 individuals had the opportunity to speak. The complainants, who were among those 36 individuals, each read aloud a written statement to the Council. The minutes include a summary of each individual's statement.

Attorney Courtney's statement concerned the taxicab industry, the functioning of Cambridge City Government, and the Cambridge Liquor License Commission. At one point in her statement, Attorney Courtney also asked the Council to replace certain City officials, at which time Councillor Tim Toomey interrupted and called for a point of order, stating that "no personal attacks are allowed in the chamber." The minutes describe this point of order as following Attorney Courtney's statements. Mr. Dietrich then followed with his statements



which were similar to those made by Attorney Courtney. Before Mr. Dietrich had finished his statement, Councillor E. Denise Simmons moved for a recess. According to the Council, because no Councillor objected to the motion, it carried. The microphone was shut off while Mr. Dietrich continued to read his statement.

The minutes state that Mr. Dietrich spoke “in support of the taxicab industry...[and] argued that the current ordinance is clear and the City is failing to enforce the laws.” The original minutes then state, “At this time Councillor Simmons moved for recess and on a voice vote the motion- carried.” Upon the filing of this complaint, which contested the fact that the Council took no such vote, the Council revised this portion of the minutes as follows: “At this time Councillor Simmons moved for recess and hearing no objections the motion carried.”

DISCUSSION

The Open Meeting Law was enacted “to eliminate much of the secrecy surrounding deliberation and decisions on which public policy is based.” Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). The Open Meeting Law requires public bodies to “create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.” G.L. c. 30A, § 22(a). The law also requires that the “[m]inutes of all open sessions shall be created and approved in a timely manner.

The complaint alleges that the minutes of the August 10, 2015 meeting are inaccurate. Specifically, the complaint alleges that the minutes failed to include certain statements made by the complainants during the public comment period. Additionally, the complaint alleges that the minutes do not accurately reflect Councillor Toomey’s point of order made during Attorney Courtney’s statements and Councillor Simmons’ motion to recess made during Mr. Dietrich’s statements. When reviewing minutes for compliance with the Open Meeting Law, we look for substantial compliance with the accuracy requirement. See OML 2013-64. By substantial compliance, we mean that the minutes should contain enough detail and accuracy so that a member of the public who did not attend the meeting could read the minutes and have a clear understanding of what occurred. See OML 2012-106.

We find that the Board substantially complied with the requirement to provide an accurate and sufficiently detailed summary of each discussion topic, including the complainants’ statements. Although the minutes do not cover their every remark, they do offer a concise summary of their statements. While minutes must include a summary of the discussion on each topic, a transcript is not required, and the minutes do not need to include every remark or opinion presented. See OML 2012-29; OML 2011-55; see also OML 2016-35 (“[s]imply attaching the statement does not meet the [public body’s] obligation to summarize the discussion in its minutes.”). Furthermore, in response to this complaint, the Council revised the minutes to more accurately describe the motion to recess made during Mr.

Dietrich's statement.¹ We commend the Council for its remedial efforts. Accordingly, we find that the Council did not violate the Open Meeting Law.

While we find that the August 10, 2015 minutes substantially comply with the Law's requirements of accuracy, we note that the minutes could have more accurately reflected the fact that the point of order and motion were made during the complainants' statements, rather than immediately following them. The minutes could have also indicated the fact that the Council did not permit Mr. Dietrich to finish his statements on the record.² The Council may wish to further revise the minutes in an effort to achieve complete accuracy of the events that occurred during the meeting.

CONCLUSION

For the reasons stated above, we find that the Council did not violate 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 Council. Please feel free to contact the Division at (617) 963 - 2540 if you have any questions.

Sincerely,



Hanne Rush
Assistant Attorney General
Division of Open Government

cc: Kim Courtney, Esq.
Xavier Dietrich
Cambridge City Council

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.

¹ The Council approved these revised minutes on December 7, 2015.

² We note that although the microphone was turned off during the recess, Mr. Dietrich finished reading his statement aloud at the podium.