

Nancy E. Glowa
City Solicitor

Megan B. Bayer
Deputy City Solicitor

Elliott J. Veloso
First Assistant City Solicitor



Assistant City Solicitors

Paul S. Kawai
Diane O. Pires
Patrick C. Cento
Kate M. Kleimola
Sydney M. Wright
Evan C. Bjorklund
Franziskus Lepionka

Public Records Access Officer

Seah Levy

CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

November 21, 2022

VIA EMAIL

The Division of Open Government
Office of the Attorney General
One Ashburton Place – 20th Floor
Boston, MA 02108
openmeeting@state.ma.us

Re: Open Meeting Law Complaint of John Hawkinson, dated November 7, 2022

To Whom It May Concern:

I represent the City of Cambridge (the “City”) and the Cambridge City Council (the “Council”), and I am writing pursuant to 940 CMR 29.05(5) in response to the Open Meeting Law Complaint of John Hawkinson, dated November 7, 2022, a copy of which is enclosed (the “Complaint”), to advise that there was no violation of the Open Meeting Law (“OML”) by the City or Council, as alleged in the Complaint.

The Complaint alleges that the Council violated the OML by deliberating at a training conducted for City staff and the Council on October 6, 2022. The Council denies these allegations as the training was exempt from the “meeting” definition of the OML, no Council members deliberated at the training, and the subjects of the training did not constitute business within the jurisdiction of the Council.

LAW

Open Meeting Law requirements apply to the deliberations of public bodies at meetings concerning topics within their jurisdiction. G.L. c. 30A, §18. The OML defines “deliberation” as “an oral or written communication through any medium ... between or among a quorum of a public body on any public business within its jurisdiction” and “meeting” as “a deliberation by a public body with respect to any matter within the body’s jurisdiction; provided, however, ‘meeting’ shall not include ... (b) attendance by a quorum of a public body ... including a training program ... so long as the members do not deliberate.”

FACTS

On October 6, 2022, City staff and the Council attended a training conducted by a consultant at the Harvard Faculty Club. The purpose of the training was to improve the working relationship between City staff and the Council. Topics at the training included “Why: Your ideas about where we’re at;” “Brainstorming shared values;” and “How do we use these values across the teams.” A reminder email with the agenda for the training was sent to City staff and the Council who were scheduled to attend the training on October 4, 2022.¹ At the training itself, the Council did not discuss any matters that had been before the Council, would be brought before the Council in the future, or were otherwise within the Council’s jurisdiction.

ANALYSIS

The OML exempts trainings from the definition of “meeting.” Training programs are not meetings; therefore, when participating in a training the Council is not bound to any obligations required for meetings, such as making the meeting open to the public, posting an agenda forty-eight (48) hours in advance, etc. Here, City staff and the Council were scheduled to attend and attended a training conducted by a consultant on improving the working relationship between City staff and the Council. As discussed in further detail below, no Council members deliberated during the training. Thus, the Division of Open Government must conclude that the October 6, 2022, training was indeed a “training.” See OML 2015-114 (the Division of Open Government held that a training that included a question-and-answer period, with a quorum of the Board present, did not constitute a violation of the OML.)

The Legislature has long recognized that not everything done by public officials and employees that are subject to the requirements of the Open Meeting Law can or should occur in a public meeting. Public officials confer routinely on administrative and logistical matters and can occasionally meet for purposes unrelated to their public function. McCrea v. Flaherty, 71 Mass. App. Ct. 637, 640 (2008); see also Open Meeting Law Guide, January 2018 (“Certain discussions regarding procedural or administrative matters may also relate to public business within a body’s jurisdiction, such as where the discussion involves the organization and leadership of the public body, committee assignments, or rules or bylaws for the body.”)

In McCrea, the court found that the Boston City Council violated the OML by voting at a “councilors only” meeting on business within the council’s jurisdiction. These “councilors only” meetings were not noticed to the public and involved discussion of public issues falling within the council’s supervision, such as urban renewal plans. Id. at 638-639. Unlike in McCrea, the Council here attended a training session with City staff that was unrelated to their public function. Here, City staff and the Council took part in a training to improve the working relationships with one another and with City staff and training pertaining to team building among the participants. In contrast to the Boston City Council’s deliberations in McCrea, improving the working relationship between the Council and City staff did not relate to the Council’s organizational structure, leadership, committee assignments, control, jurisdiction, rules for the

¹ This email with the training’s agenda was disclosed to Mr. Hawkinson on October 26, 2022, in response to his public records request.

body, or its statutory functions. Therefore, the training session was exempt from the requirements of the OML.

CONCLUSION

Given the preceding arguments, the Division of Open Government should dismiss this matter with prejudice. Please do not hesitate to contact me with any further questions.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Kate M. Kleimola". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Kate M. Kleimola
Assistant City Solicitor

Encl.

cc: Mr. John Hawkinson

John A. Hawkinson, freelance news reporter
Box 397103
Cambridge, MA 02139-7103
617-797-0250, jhawk@alum.MIT.EDU

November 7, 2022

Sumbul Siddiqui, Mayor
Yi-An Huang, City Manager
City of Cambridge
795 Massachusetts Avenue
Cambridge, MA 02139

By electronic mail: citymanager@cambridgema.gov, mayor@cambridgema.gov

Re: Open Meeting Law complaint regarding Oct. 6, 2022 Council retreat

Dear Madam Mayor and Mr. Manager:

I write to file the attached Open Meeting Law Complaint with the City Council regarding the Oct. 6, 2022 City Council retreat. Although this is formally speaking a complaint lodged with the Council, I understand that the Manager and his staff took an active role in the organization, planning, and structuring of the retreat, as well as in adopting an aggressive legal position that this kind of un-noticed, private and effectively secret, off-site meeting could be held under the training exemption to the Open Meeting Law.

As I suggested in oral conversation with the Manager last month, filing a complaint is generally the only practical way to get the City's Law Department to explain its legal position on these issues, and it does not necessarily indicate an intention to pursue further review of the complaint with the Massachusetts Attorney General.

I want to further emphasize that a private "getting to know you" retreat between a new City Manager and City Council may well be good management, and may be good for City governance. But that does not mean that it falls within the "training" exemption of the Open Meeting law, which was intended not for any arbitrary training of a public body, but rather for members of a public body to be attend a formal external training at which there may be many many attendees beyond the public body itself.

It is difficult to understand why this meeting could not have been public.

In particular, the fact that the City appears to have been careful to create no records of this retreat (on Oct. 26 the City advised it was treating my inquiry requesting records of the retreat as a public records request under the law, and it produced only a single email message sent before the retreat) suggests an inference that the City did not wish scrutiny of the retreat, and was willing to compromise the effectiveness of the retreat to attempt to remain under a penumbra of secrecy.

The result is that I have no reason to believe that the City stayed within the bounds of the training exemption of the Open Meeting Law, if that were even possible, and the City has produced no documentary evidence that it indeed did so.

The idea that the "values" discussed by the City Council are not public information is shocking and implausible. I don't know whether to be more concerned that they were ostensibly not recorded, or that they were recorded and kept private and not disclosed under the records law. It's hard to see any other interpretation.

I hope your response to the Open Meeting Law complaint helps to clear up these issues.

Thank you.

Very truly yours,

/s/ John A. Hawkinson

John A. Hawkinson

encl: OML complaint, with exhibit

cc: Cambridge City Council;
City Clerk Diane LeBlanc;
City Solicitor Nancy Glowa



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: John Last Name: Hawkinson

Address: Box 397103

City: Cambridge State: MA Zip Code: 02139

Phone Number: 617.797.0250 Ext. _____

Email: jhawk@alum.mit.edu

Organization or Media Affiliation (if any): (freelance news reporter)

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): City of Cambridge City Council

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

Date of alleged violation: Oct. 6, 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 Cambridge City Council held a private retreat with Cambridge's new City Manager and his senior staff on Thursday, Oct. 6, 2022. It did not publicly notice the meeting, and did not publish minutes or other notes from the meeting.

The City Manager has characterized the meeting as a "training," but unlike most trainings it does not appear to have had any clear curriculum nor output. In response to inquiry requesting "any records" of the meeting, the City treated it as a public records request and produced one email prior to the meeting listing an agenda including "Review diagnostic findings," "Brainstorming shared values," "How do we use these values across teams," and "next steps: activities, timelines, and owners."

But despite suggesting it was working to produce these materials, and responding several days beyond its statutory deadline, the City produced no records of the meeting at all. No diagnostic findings, no shared values, no activities or timelines. The City does not claim to withhold any documents as exempt or as privileged.

This gives rise to the inference that the City designed this private meeting as one where it would keep no records so it would have to disclose no records, which further allows the inference that impermissible deliberation took place.

When a public body discusses "shared values," "next steps," and "timelines," those things are business before the body and are entitled to the transparency the Open Meeting Law provides.

Please see attached communication from the City of Oct. 26, 2022.

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.

Immediate and future compliance with the Open Meeting Law.

The City Council should reconstruct minutes of the Oct. 6, 2022 meeting.

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: s/John A. Hawkinson/

Date: November 7, 2022

For Use By Public Body

Date Received by Public Body:

For Use By AGO

Date Received by AGO:

Nancy E. Glowa
City Solicitor

Megan B. Bayer
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Public Records Access Officer

Seah Levy

CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

October 26, 2022

BY EMAIL: jhawk@alum.mit.edu

John Hawkinson

Re: Public Records Response for Reference # P221388-101722

Dear John Hawkinson:

I write in response to your request of **10/07/2022**, attached hereto, seeking Council Retreat records such as "handouts or slides, materials generated, like flip-charts created during exercises, or any minutes."

The City is treating your inquiry as a public records request pursuant to G.L. c. 66, § 10. Earlier today, I sent you an incorrect response to your request. I send this letter to correct and replace my prior response. Please find an attached record responsive to your request.

Because providing you with the attached record took less than two hours of staff time to search for and reproduce, and the record is being produced electronically, pursuant to 950 CMR § 32.07(2)(m), there will be no charge for responding to this public records request.

Sincerely,

Seah Levy
Public Records Access Officer

Enclosures

[P221388] Hawkinson Public Records Request Corrected Response - Council Retreat

1 message

Public Records <PublicRecords@cambridgema.gov>
To: John Hawkinson <jhawk@alum.mit.edu>

Wed, Oct 26, 2022 at 5:49 PM

Dear John Hawkinson,

My apologies - please find a corrected response to your public records request attached.

Best,

Seah Levy

Public Records Access Officer

City of Cambridge, Law Department

City Hall, [795 Massachusetts Avenue](#)

[Cambridge, MA 02139](#)

(617) 349-4121 | Fax: (617) 349-4134

publicrecords@cambridgema.gov

----- Forwarded message -----

From: Reed Collins <rcollins@vantagepartners.com>

To: Quinton Zondervan <qyz915@gmail.com>, Denise Simmons <councilorsimmons1@gmail.com>, "Mallon, Alanna" <amallon@cambridgema.gov>, "McGovern, Marc" <mmcGovern@cambridgema.gov>, "Carlone, Dennis" <dcarlone@cambridgema.gov>, "Azeem, Burhan" <bazeem@cambridgema.gov>, "Nolan, Patricia" <pnolan@cambridgema.gov>, "Toner, Paul" <ptoner@cambridgema.gov>, "Huang, Yi-An" <yhuang@cambridgema.gov>, "O'Riordan, Owen" <ooriordan@cambridgema.gov>, "Zondervan, Quinton" <qzondervan@cambridgema.gov>, "Simmons, Denise" <dsimmons@cambridgema.gov>, "Siddiqui, Sumbul" <ssiddiqui@cambridgema.gov>, "Semonoff, Ellen" <esemonoff@cambridgema.gov>, "Farooq, Iram" <ifarooq@cambridgema.gov>, "Kale, David" <dkale@cambridgema.gov>, "Glowa, Nancy" <nglowa@cambridgema.gov>, "LeBlanc, Diane" <dleblanc@cambridgema.gov>, "Elow, Christine" <CElow@cambridgepolice.org>, Derrick Neal <dneal@challiance.org>, "Gianetti, Lee" <lgianetti@cambridgema.gov>

Cc: Gabriella Salvatore <gsalvatore@vantagepartners.com>, "Cooper, Stacey" <stcooper@cambridgema.gov>, "Stephen, Naomie" <nstephen@cambridgema.gov>


Bcc:
Date: Tue, 4 Oct 2022 18:36:03 +0000
Subject: Upcoming training on Thursday October 6th

Hello,

We look forward to our upcoming training session on Thursday, October 6th from 9:00 am – 5:00 pm at the Harvard Faculty Club. This training is focused on providing the City Council and City Senior Staff time and space to reflect on the working relationship you would like to have with each other.

Logistics: The training will be held at the Harvard Faculty Club 20 Quincy Street. Light breakfast will be served from 8:30 am – 9:00 am, and we will start promptly at 9:00 am. Lunch will be from 12:00 pm – 1:00 pm, and there will be breaks throughout the day. We will end the day at 5:00 pm.

An agenda for the session is below:

	15 minutes	Welcome and context setting
	30 minutes	Opening Activity
	75 minutes	Review diagnostic findings
	15 minutes	Break
	45 minutes	Why: Your ideas about where we're at
	60 minutes	Social Lunch
	60 minutes	Brainstorming shared values
	15 minutes	Break
	60 minutes	How do we use these values across the teams?
	15 minutes	Break
	45 minutes	Clarify next steps: activities, timelines and owners
	45 minutes	Wrap-up

If you have any questions or concerns, please let us know.

Best,

Gabriella and Reed

3 attachments

-  [P221388] Hawkinson Public Records Request Corrected Response - Council Retreat.pdf
167K
-  [P221388] Hawkinson PRR Council Retreat.pdf
111K
-  Upcoming training on Thursday October 6th.eml
233K

From: John Hawkinson <jhawk@alum.mit.edu>
Sent: Thursday, October 13, 2022 5:24 PM
To: Nelson, Matthew <mnelson@cambridgema.gov>
Subject: Re: Council retreat?

Hi, Matt: I recognize it may take some time to turn around this inquiry, but I wanted to check in to confirm with you since I had not heard anything and it will be a week as of tomorrow, and it's hard to get things done on Fridays. Thank you.

--
jhawk@alum.mit.edu Freelance Journalist
John Hawkinson +1 617 797 0250
twitter: @johnhawkinson

John Hawkinson <jhawk@alum.mit.edu> wrote on Fri, 7 Oct 2022 at 11:31:04 EDT in
<Y0BGOONgXtFq/Af7@louder-room.local>:

> Hi, Matt. Glad to hear the retreat went well.
> Are there any records from the retreat you can produce, like handouts or slides, or materials generated, like flip-charts created during exercises, or any minutes?

>
> If I should ask someone else, please let me know. Thanks!

>
> Happy long weekend!

>
> --
> jhawk@alum.mit.edu Freelance Journalist
> John Hawkinson +1 617 797 0250
> twitter: @johnhawkinson

>
> Nelson, Matthew <mnelson@cambridgema.gov> wrote on Mon, 3 Oct 2022 at
> 14:09:07 EDT in
> <PH0PR09MB7737C9C8E4C478F95EBDC608AE5B9@PH0PR09MB7737.namprd09.prod.outlook.com>:

>
> > As far as I know, nothing has changed since you spoke with the City Manager last week on this.

> >
> > Best,
> >
> > -Matt

> >
> > -----Original Message-----
> > From: John Hawkinson <jhawk@alum.mit.edu>
> > Sent: Monday, October 3, 2022 1:36 PM
> > To: Nelson, Matthew <mnelson@cambridgema.gov>
> > Subject: Re: Council retreat?
> >

> > Thanks, Matt. Is this still scheduled to be closed to the public? The things on the agenda look rather less like "training" than I was expecting.

> >

> > --

> > jhawk@alum.mit.edu

Freelance Journalist

> > John Hawkinson

+1 617 797 0250

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twitter: @johnhawkinson

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> > Nelson, Matthew <mnelson@cambridgema.gov> wrote on Mon, 3 Oct 2022 at 13:31:05 EDT in
<PH0PR09MB77370E0821752D7EDA5A603DAE5B9@PH0PR09MB7737.namprd09.prod.outlook.com>:

> >

> > > Hi John-

> > >

> > > I hope this answers your questions..

> > >

> > > 8:30-5 PM on Thu 10/6

> > > Harvard Faculty Club

> > >

> > > Those invited:

> > > Mayor, Vice Mayor, City Councilors City Manager Clerk Owen

> > > O'Riordan Iram Farooq David Kale Ellen Semonoff Christine Elow

> > > Nancy Glowa Derrick Neal Lee Gianetti Matt Nelson

> > >

> > > Agenda:

> > > * Ice breakers

> > > * Discussing city/council current state relationship

> > > * Facilitated conversation toward best practices

> > > * Discuss values and norms

> > >

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> > > From: John Hawkinson <jhawk@alum.mit.edu>

> > > Sent: Monday, October 3, 2022 1:19 PM

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> > > Subject: Re: Council retreat?

> > >

> > > Hi, Matt: With whom should I follow-up? Thank you! It has been

> > > some time! --jhawk

> > >

> > > --

> > > jhawk@alum.mit.edu

Freelance Journalist

> > > John Hawkinson

+1 617 797 0250

> > >

twitter:

> > > @johnhawkinson

> > >

> > >

> > > John Hawkinson <jhawk@alum.mit.edu> wrote on Wed, 28 Sep 2022 at 16:15:21 EDT in
<CALWqob=QJd-jBoKvSDmpUZcHcP5_Za-Jj4-cWuDjx2ANpATSJA@mail.gmail.com>:

>>>

>>>> Hi, Matt: As promised, the followup email. Really I'd like to
>>>> understand what is public about the Council retreat and figure
>>>> out how to timely get the materials. As I understand it, you are
>>>> now, at least temporarily, the point person.

>>>>

>>>> I'd like to understand:

>>>> Who's invited, when is it, where is it, what's on the agenda, etc.

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>>>> Yi-An made it fairly clear that the City intends to conduct this
>>>> under the training exemption to the Open Meeting Law, and I'm
>>>> skeptical as to whether that's both legal and appropriate, but of course that's a different topic.

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>>>> skeptical as to whether that's both legal and appropriate, but of course that's a different topic.

>>>>

>>>> Thank you!

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>>>> jhawk@alum.mit.edu

Freelance Journalist

>>>> John Hawkinson

+1 617 797 0250

>>>>

twitter:

>>>> @johnhawkinson