To: The Northampton Public School Committee
The Division of Open Government
The Office of the Attorney General

14 December 2022

Request for appeal in the matter of the Northampton School Committee's Open Meeting Violations

On October 21, 2022 I filed an Open Meeting Law Complaint against the Northampton Public School Committee after they failed to provide minutes from meetings in a timely manner. I filed this complaint via email and addressed it to Mayor Gina-Louise Sciarra, (mayor@northamptonma.gov) who is chair of the school committee, as well as the city clerk (cclerk@northamtonma.gov). This complaint is attached separately.

After requesting an extension the School Committee responded to my complaint on November 16, 2022. I am unsatisfied with their response and am therefore appealing to the Attorney General to further review this matter. I do this for several reasons, the most pertinent of which I will outline below.

The minutes are not sufficiently accurate, and thus do not comply with Open Meeting Law

As I understand it, the standard for minutes is, generally, that they must be accurate and detailed enough such that someone who did not attend the meeting could read them and have a fair understanding of what occurred and was discussed. That a majority of the minutes provided to me, dated between January 2020 and April 2022, do not meet this standard is, in my opinion, obvious. This is because the minutes follow a convention where a particular portion of a meeting will have a time stamped link to a YouTube video of that meeting. In many cases, the "summary" of what was discussed during a certain part of a meeting is little more than "See video here" with a linked clip to the relevant part of the meeting. This convention seems to be more prevalent in 2021 and 2022 than 2020.

I appreciate that this is a novel feature that some may even say is an improvement on the traditional minutes format. Unfortunately, it depends entirely on the persistence of a video file hosted on a free platform. Furthermore that video does not share the same retention schedule as meeting minutes, and could be deleted at some point in the future, rendering the minutes incomprehensible.

The Attorney General's Office has "held in previous determinations that because meeting minutes must contain a summary of the discussions on each subject, an audio, video or transcript recording of the meeting does not constitute minutes, for purposes of the Open Meeting Law. See OML 2014-4. The minutes themselves must comply with the sufficiency requirements of the Open Meeting Law and should not be pointing the reader to other documents to fill in discussions.[1]"

The School Committee has a history of not providing minutes upon request.

It has recently come to my attention that on October 15, 2021, a then-member of the School Committee filed a records request for minutes from executive sessions between 2018 and 2021. To my knowledge this request was simply ignored. Frankly, I was surprised by the idea that I was the first person to have difficulty obtaining school committee minutes. This is apparently not the case. I expect there are other similar instances and have filed a public records request seeking this information.

1 Email from Assistant Attorney General Kerry Kilcoyne, 22 November 2022

On the matter of Executive Session minutes, I'd like to add that I made a casual inquiry to see if I could be provided with any executive session minutes and was told by Attorney Taylor

> I will double check with the District, but I am unaware of the School Committee having approved for release any executive session minutes from 2021 and/or 2022. Please note that in addition to the likely continuation of the lawful purposes for which those executive session meeting were held, the content of many if not most of those sessions is also likely protected under their attorney-client privilege. Please note that it is unlikely that there are many (if any) executive session minutes from the last two years that could be approved for release. This does not mean that there aren't any (I will need to check with my client), but I did want you to know of that in advance.

Taylor's explanation seems implausible to me. Public bodies are "required to periodically review their executive session minutes to determine whether continued non-disclosure is warranted. These determinations must be included in the minutes of the body's next meeting.[2]" I am unaware of any such review or disclosure has occurred since January 2020.

The School Committee has improperly tried to charge me for access to meeting minutes

The School Committee has suggested I pay "an initial estimate that . . . would likely be in excess of $10k, meaning that $10k was just a starting point[3]." I have several issues with this proposition.

For one, it's a large sum clearly only meant to discourage me from even trying to access these records. Additionally, I question the methodology upon which this "starting point" was calculated. It is apparently based on a reported 4 hours it took for the clerk to assemble the (incomplete) minutes provided to me already. As an experiment I used the Agenda Center on Northamptonma.gov to download an equivalent time period's worth of minutes for the Northampton City Council, which are freely and readily available there. I was able to manually download every available PDF for 2022, 2021, 2020 in less than 5 minutes. Granted, sending a file as an email attachment is slightly more work than downloading a file with a single click, but only slightly. So I am confused as to why it would take an experienced clerk 480% longer to accomplish this task. I'd like to additionally point out that "agencies may not assess a fee for the first 4 hours of time spent searching for, compiling, segregating, redacting and reproducing a requested record.[4]" It's an interesting coincidence that the maximum time was spent responding to my request, despite evidence that it should not take a reasonable person that long to do.

But more importantly, I do not believe that meeting minutes fall under the jurisdiction of the Public Records Law from which Attorney Taylor seems to be basing this "starting point" estimate on.

From *A Guide to the Massachusetts Public Records Law* (p. 43):

> ***When must minutes of an open meeting be made available to the public?***
> The Open Meeting Law, applicable to public bodies such as select boards for towns, is enforced by the Office of the Attorney General, Division of Open Government. Any questions regarding the content of minutes, requirements to keep minutes or any procedural aspects of the Open Meeting Law should be addressed to the Division of Open Government.

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2 *Open Meeting Law Guide and Educational Materials*, Office of Attorney General Maura Healey, January 2018 https://www.mass.gov/doc/open-meeting-law-guide-and-educational-materials-0/download

3 Email from Layla Taylor, 10 December, 2022

4 *A Guide to the Massachusetts Public Records Law* (Updated Feb 2022) https://www.sec.state.ma.us/pre/prepdf/guide.pdf

My understanding is that the Open Meeting Law does not permit charging for access to minutes from open or executive session minutes. If this is true, the School Committee has no right to charge any fee for these documents.

Even if I am mistaken, the School Committee seems to be treating my Open Meeting Law complaint as a type of public records request. Neither it, nor my original records request which prompted the complaint were responded to within 10 days. Because of this the Public Records Law would in this case also prohibit the assessment of fees.

I have doubts the School Committee will clear its "backlog" of minutes before Jan 20

The School Committee continues to delay approving minutes. An Agenda posted December 2 for the December 8 School Committee meeting lists the following meeting minutes slated for approval[5]:

May 12, 2022 School Committee meeting
May 27, 2022 School Committee meeting
June 9, 2022 School Committee meeting
July 14, 2022 School Committee meeting

An amended agenda posted December 8 at 4:20 PM, a mere 2 hours before the meeting cuts the June 9 and July 14 minutes.[6]

No explanation has been given as to why there are minutes missing from several meetings in 2021.

It remains unclear the status of minutes from the School Committee's numerous ad hoc and subcommittees as well. Committee vice chair Gwen Agna told me that all together the committee had held 80 meetings in 2022. Given the rate at which the "backlogged" minutes have been drafted and approved, I worry that the school committee will never be able to catch up.

If I do not appeal, it may prevent others from seeking remedy in the future

As I explained in my complaint, the absence of meeting minutes only became reasonably discoverable on October 10. I have since published a news article about this. Is this violation now "reasonably discoverable" to others? If so, I feel a responsibility to appeal for the above stated reasons, and because I worry my failure to do so may make it impossible for others to do so in the future.

In closing

I humbly request the Attorney General's Office review this matter further, and that more transparency be brought to the Northampton Public School Committe's proceedings.

Sincerley,

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5 https://www.northamptonma.gov/AgendaCenter/ViewFile/Agenda/_12082022-6843
6 https://www.northamptonma.gov/AgendaCenter/ViewFile/Agenda/_12082022-6856