

KROKIDAS & BLUESTEIN

ATTORNEYS

CLIENT ALERT

UPDATED ATTORNEY GENERAL OPEN MEETING LAW GUIDE

The Massachusetts Attorney General's Office (the "AG's office") released an updated Open Meeting Law Guide (the "Updated Guide") on March 18, 2015. The Updated Guide includes new guidance to public bodies, including charter schools, state authorities, and municipal entities, that are subject to the Open Meeting Law, M.G.L. Chapter 30A, Sections 18-25.

The following is an overview of the changes set forth in the Updated Guide.

What Constitutes Deliberation:

Under the Open Meeting Law, public bodies cannot hold meetings unless the meetings are open to the public. Meetings include any "deliberation" that involves a quorum. The Updated Guide states that the AG's Office considers expressing an opinion to a quorum of a public body by communication such as an email, even if no one responds, to constitute a deliberation which may cause a violation of the Open Meeting Law.

Information on Meeting Notices:

Public bodies are required to provide the public with notice of the meeting at least 48 hours in advance. The Updated Guide adds a new requirement that meeting notices include the date and time the notice is posted on the notice itself or in a document or on a website accompanying the notice. If a notice is revised, the revised notice must include the date and time of the original notice and the date and time the last revision was posted. The Updated Guide states that the purpose of the new requirement is to facilitate enforcement of the Open Meeting Law.

Remote Access to the Public:

The Updated Guide provides new guidance regarding the public's ability to listen to public meetings remotely. A public body may allow members of the general public to listen to a meeting remotely by including in the meeting notice the conference call number through which the public can hear the meeting. This is not the same as remote participation by members of the public body. The mere fact that members of the public body may participate in meetings remotely does not require the public body to provide the general public with the option of participating remotely (though some public bodies may choose to do so). Further, if the public body allows the public to listen remotely, it need not follow the Open Meeting Law's remote participation procedures, which apply only to members of the public body.

When Meeting Minutes Should Be Adopted:

The Open Meeting Law requires public bodies to create and approve minutes in a “timely manner.” Although the Open Meeting Law does not define “timely manner,” the Updated Guide includes the AG’s Office’s recommendation that a public body approve minutes at its next meeting whenever possible.

Responding to Requests for Executive Meeting Minutes:

Public bodies are required to respond to requests to inspect or provide copies of public records within 10 calendar days. Although a public body is generally required to disclose its records, it need not disclose minutes or documents used or created in executive session if disclosing these records “may defeat the lawful purposes of the executive session.” The public body is required to review its executive session minutes periodically to determine whether continued non-disclosure is justified.

The Updated Guide provides guidance to public bodies regarding how to respond to records requests involving executive session records. The course of action to be taken by the public body depends on when the public body has made a determination regarding the continued confidentiality of the executive session records:

1. If the public body previously decided that the records no longer needed to remain confidential, it should make them available to the requestor.
2. If before the request, the public body had decided that the executive session records must remain confidential because disclosure would defeat the lawful purposes of the executive session, the public body should respond to the request by explaining why the records are being withheld.
3. If the public body has not reviewed the records to determine whether continued nondisclosure is justified, then it must (a) conduct this review no later than at its next meeting or within 30 days, whichever is sooner, (b) respond to the request within 10 days stating that it is conducting a review of the records, and (c) release the records or notify the requestor, stating the reason why the records continue to be withheld, whichever is appropriate, no later than the public body’s next meeting or within 30 days, whichever occurs first.

Delegating Response to Complaint:

When a public body receives a complaint that it has violated the Open Meeting Law, the public body must review the allegations, take remedial action if appropriate, notify the complainant of the remedial action, and forward a copy of the complaint and a description of the remedial action taken to the AG’s Office within 14 business days of receiving the complaint.

The Updated Guide provides that the public body can delegate responsibility for responding to the complaint to another individual, such as the public body’s counsel, but it must first meet to do so.

AG’s Response to Complaint:

A complainant can file a complaint with the AG’s Office after 30 days of filing the complaint with the public body itself. The AG’s Office will review the complaint and any remedial action

taken by the public body. However, the Updated Guide states that the AG's Office will not review allegations that were not raised in the original complaint filed with the public body.

For the complete Updated Guide, please visit

<http://www.mass.gov/ago/docs/government/oml/oml-guide.pdf>. For any questions about this Guide or other Open Meeting Law issues, please contact Attorney Elka Sachs (esachs@kb-law.com), Attorney Judith Kim (jkim@kb-law.com), Attorney Anjali Waikar (awaikar@kb-law.com), or Attorney Sheryl Howard (showard@kb-law.com).