

December 1, 2021

Brian W. Riley
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BY ELECTRONIC MAIL ONLY (openmeeting@state.ma.us)

Carrie Benedon, Esq.
Director, Division of Open Government
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Re: Town of Sudbury – Select Board
Open Meeting Law Complaint from Patricia Brown, received November 9, 2021

Dear Attorney Benedon:

Please be advised that this office serves as Town Counsel to the Town of Sudbury. The Town's Select Board ("Board") is in receipt of an Open Meeting Law Complaint received November 9, 2021 from Ms. Patricia Brown ("Complaint"). A copy of the Complaint is enclosed. Ms. Brown includes two alleged violations in her Complaint. First, she claims that at the Board's October 26, 2021 meeting, an audience member (the meeting was held via Zoom) asked a question regarding a current Town construction project, the Fairbank Community Center, and the status of said project. This item was not on the Board's agenda, but Board members and other attendees spent approximately 10 minutes addressing the audience member's questions and concerns. Ms. Brown's second allegation concerns the Board's November 3, 2021 meeting. As stated in the Complaint, the Board's agenda had two items regarding the Camp Sewataro property, a 44-acre parcel that the Town recently acquired. The allegation appears to be that the agenda had two items for discussion regarding the Sewataro property – a resident survey and a Use Policy and related goals for the property – and that the Board did not clearly separate its deliberations on the two agenda items to those described topics. The Board reviewed the Complaint and this proposed response at its meeting of November 30, 2021 and voted 4-1 to approve the response.

The Board denies that it committed any violations of the Open Meeting Law as alleged in the Complaint. As to the first allegation, the Board acknowledges that the Fairbank Community Center was not a listed item on the agenda, and the Chair did not anticipate that it would be brought up for discussion. The Division has long held, however, that there is no violation when a board discusses a topic not on the agenda, provided that the Chair did not anticipate the topic coming up. *See* OML 2015-183; *see also* OML 2021-131 ("A public body may discuss a truly unanticipated topic at a meeting even if that topic was not included on the notice for the meeting."). In this case, the Community Center project was not on the agenda, but the Chair chose to allow some discussion in order to respond to a resident's questions about it. I further note that the Division typically

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encourages boards to place such unanticipated matters on a future agenda. In fact, at the end of the 10-minute discussion (the Complaint includes the video link to the meeting), the Chair asked the Town Manager to consider scheduling future public information sessions on the same project, so the Board has already acted consistent with the Division's advice.

The Complaint's second allegation concerns the Board's November 3, 2021 meeting and two agenda items concerning the Sewataro property. The Board submits that to the extent that the deliberations on these two consecutive agenda items "blended" and went back and forth between the two topics, this is clearly not a violation. The resident survey sought feedback on various issues regarding the property, including its future use, so deliberating these topics together was not inconsistent with the agenda. *See, e.g.*, OML 2014-35 ("The Law requires only that a meeting start on or after the time indicated on its posted notice. Once the meeting begins, the public body controls its own agenda. We find therefore that the Board's failure to adhere to the indicated times on the notice for the discussion of individual agenda items did not violate the Open Meeting Law."). In addition, the background materials posted to the Town website prior to the Board's November 3, 2021 meeting included extensive documentation related to the resident survey, use policy and other related property issues, so the public had detailed information about all of these related topics. The records are at pages 19 – 53 of the following link:

https://s3-us-west-2.amazonaws.com/cdn.sudbury.ma.us/wp-content/uploads/sites/260/2021/11/SelectBoard_2021_Nov_03_supporting_materials.pdf?version=173fea4f7b56ceefb77d279343986f59

In summary, none of the allegations in the Complaint demonstrate a violation of the Open Meeting Law, and the Board denies that there were any violations regarding its October 26 and November 3, 2021 meetings. No further remedial action is required.

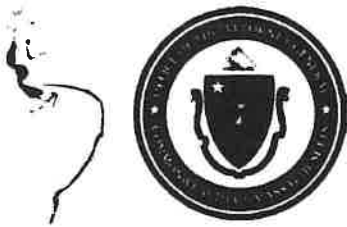
Very truly yours,



Brian W. Riley

BWR/

788999/SUDB/0001



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: Patricia Last Name: Brown

Address: 34 Whispering Pine Road

City: Sudbury State: MA Zip Code: 01776

Phone Number: 978 440 9632 Ext. _____

Email: patbrownian@me.com

Organization or Media Affiliation (if any): none

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): Sudbury Select Board

Specific person(s), if any, you allege committed the violation: Chair Jennifer Roberts

Date of alleged violation: October 26, 2021 and November 3, 2021

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.

Two pages headed
COMPLAINT - SUDBURY SELECT BOARD
appended to this form.

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.

One page headed
ACTION - SUDBURY SELECT BOARD
appended to this form.

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: Patricia A Brown

Date: November 9, 2021

For Use By Public Body
Date Received by Public Body:

For Use By AGO
Date Received by AGO:

COMPLAINT – SUDBURY SELECT BOARD

940 CMR 29.03 (1)(b) states:

*Meeting notices shall be printed or displayed in a legible, easily understandable format and shall contain the date, time and place of such meeting, and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. **The list of topics shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.***

The Sudbury Select Board has not posted notices with sufficient detail to provide members of the public with sufficient information to understand what business is being transacted by the public body so they may attend and observe deliberations in which they are interested.

Complaint #1 -- On October 26, 2021, the Sudbury Select Board held a meeting at 7 pm by Zoom, citing two executive session items conducted in private, and then resuming at 9:30 pm in Open Session. In open session the Board heard “Citizen’s comments on items not on agenda.” During this item a citizen asked about a current town construction project, the Fairbank Community Center, undergoing “value engineering” and asked at what point the Select Board and Town Manager would draw the line, and “at what point are we not getting what we’re voting for?” The Select Board Chair then asked whether the Town Manager or other Board members had any thoughts, and the discussion continued among four of five Board members for ten minutes (from 4 minutes to 14 minutes into the recording) posted here: <https://sudbury.vod.castus.tv/vod/?video=6bc42191-f83e-4ad7-99cc-22a0a5121341>

Agenda here: https://sudbury.ma.us/selectboard/sb_agenda_10-26-21/

The deliberation concerning the Fairbank project, which has come and will come before the Select Board for decision, is not something that a reasonable person would infer from an agenda item “Citizen’s comments on items not on the agenda.” **The Chair, having allowed the citizen to speak as listed on the agenda, then both encouraged and permitted deliberation by the Board in violation of the Open Meeting Law. The Select Board members participating in this discussion may also be in violation of the Open Meeting Law.**

COMPLAINT – SUDBURY SELECT BOARD

Complaint #2 – On November 3, 2021, the Sudbury Select Board held a meeting by Zoom listing two agenda items:

3) Discussion on Sewataro Property resident survey.

<https://sudbury.vod.castus.tv/vod/?video=3839c939-22d9-4585-90c4-7198d9a5385a> starting at about 39 minutes into the recording

4) Discussion on Sewataro Use Policy Document and discussion on other Sewataro goals. <https://sudbury.vod.castus.tv/vod/?video=3839c939-22d9-4585-90c4-7198d9a5385a> starting at about 1 hour 33 minutes into the recording.

During almost one hour of discussion devoted to agenda item 3, posted as a discussion of a survey of town residents concerning the Sewataro property, the topics which dominated included camp financials, whether the Board should extend the lease to the current camp operator, and what further information the Board requires to make the decision to extend the lease. The matter of the survey was set aside, and no detailed discussion of the proposed survey occurred at all.

A citizen could not determine from the posted topic for item 3 what would be discussed. The Chair's assertion that these topics were properly discussed as part of "discussion on other Sewataro goals" (agenda item 4), even if that item were properly precise, would not lead a citizen to infer they would be discussed as part of the Sewataro Property resident survey (agenda item 3).

The deliberations concerning the Sewataro lease agreement and related items concerning the property are not what a reasonable person would infer from the agenda item #3 "Discussion on Sewataro Property resident survey." **The Chair permitted and encouraged this discussion by the Board in violation of the Open Meeting Law.**

Agenda: https://sudbury.ma.us/selectboard/sb_agenda_11-03-21/

OML Regulations: <https://www.mass.gov/doc/940-cmr-29-open-meetings/download>

ACTION – SUDBURY SELECT BOARD

I would like several actions in response to the Board's violation of the Open Meeting Law (OML).

- 1) I request the Sudbury Select Board discuss in open meeting the items I have described in my complaint above. I understand this must occur in response to my complaint, but I specifically want to hear the Board's explanation why citizens were not informed of these particular discussions, to have the Chair acknowledge that they need to improve transparency when preparing the meeting posting, and to inform citizens who may have missed the original unnoticed discussions of the gist of those proceedings.
- 2) I request the Board undergo remedial training in the Open Meeting Law in one or more public training sessions to inform both the Board and citizens of the requirements of the OML.
- 3) I request the Attorney General's Office retain a record of this complaint and any related determinations for future reference.
- 4) I request the Board craft agenda items with sufficient specificity that a member of the public can participate during the discussion as the Chair accepts public input.
- 5) I request the Chair curtail discussion which exceeds the topic specified in the agenda at future meetings.