

August 4, 2026

Via email to: info@opencommonwealth.org

Bruce Friedman
OpenCommonwealth.org
8 Marvin Street
Malden, MA 02148

Re: Open Meeting Law Complaint – Bruce Friedman v. Malden School Committee
Date of Violation: December 7, 2020
Date of Complaint: June 25, 2026

Dear Mr. Friedman,

Please be advised that this office represents the Malden School Committee. This correspondence is written to you in response to the Open Meeting Law Complaint you filed against the School Committee (Committee) on June 25, 2026 (Complaint). Pursuant to G.L. c. 30A, §23(b) a copy of the Complaint is included with this response. I am responding on behalf of the Committee based upon a vote of the Committee in a duly noticed special meeting held on August 3, 2026.

The Committee notes that although the Complaint was sent to the Chair of the Committee on June 25, 2026, the Complaint was not filed with the Municipal Clerk as required pursuant to 940 C.M.R. 29.05(3) causing a delay in processing. In addition, there has been no scheduled regular meeting of the School Committee since June 25, 20226 requiring a special meeting to be noticed and held to discuss the Complaint. I apologize for the delay in responding to your Complaint.

Facts and Allegations:

The Complaint alleges that the Committee chair, Mayor Gary Christenson, who is a licensed attorney, “discussed the reputation, character, physical conditions and mental health,” of specific unnamed individuals while in executive sessions under the litigation exemption involving “Malden v. Supervisor of Public Records, et al” including executive sessions where the required specificity is missing such as the executive session of December 7, 2020. The Complaint alleges that the specific individuals discussed were not notified in writing prior to the executive sessions in accordance with G.L. c. 30A, sec. 21(a)(1) and were denied their rights under the statute to be present, to counsel and representation at the session, to speak on their own behalf, and to cause an independent record to be created. The Complaint further alleges that the violations were intentional. The Complaint notes that you became aware of the violations within

the 21 days prior to your Complaint and that you did not bring the Complaint within 30 days of the alleged violations because the alleged violations occurred in executive session and the minutes from the executive sessions remain fully redacted as to the specific individuals discussed. The Complaint seeks to nullify any action taken at a meeting where the alleged violations occurred, civil penalties and publication of the executive session minutes without redaction.

Discussion and Analysis:

1. The Complaint is Not Timely:

As an initial matter, the Committee contends that the Complaint is not timely. To be considered timely, an Open Meeting Law complaint must be filed with the public body within 30 days of the alleged violation, or, if the alleged violation could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered. G.L. c. 30A, § 23(b); 940 CMR 29.05(4). The timeliness of a complaint is reviewed in relation to when the action that is alleged to have violated the Open Meeting Law was reasonably discoverable, not when an individual complainant became aware of the action or of the requirements of the Open Meeting Law. OML2024-204¹, see OML 2022-188; OML Declination 2-8-22 (Milton Select Board); OML Declination 12-18-20 (Pembroke Board of Health). An allegation regarding the sufficiency of executive session meeting minutes must be raised within 30 days of the date that such minutes are made available to the public. See OML Declination 6-2-2022 (Marblehead Board of Selectmen); OML Declination 9-5-2024 (Milford School Committee).

In this case, the agenda for the December 7, 2020 Committee meeting, including the regular and executive sessions, was posted prior to the meeting as required by statute. The executive session minutes for the meeting on December 7, 2020 were approved during the regular session Committee meeting on January 11, 2021 and posted shortly thereafter. Therefore, the executive session minutes have been publicly available and accessible since January 2021, a period of over five years before the date of your complaint. Any issues regarding the sufficiency of the School Committee agenda or executive session minutes for December 7, 2020 have been discoverable since they were posted and made publicly available on the Committee's website at: <https://www.maldenps.org/district-information/school-committee/school-committee-meetings>. You did not previously raise any issue with regard to insufficient detail contained in the meeting notice or executive session minutes for December 7, 2020 although you had the opportunity to do so. In addition, as evidenced in the duly posted agenda for subsequent Committee meetings, the Committee has not discussed any pending litigation in executive session within the last six (6) months. As such, the Complaint filed with the Committee on June 25, 2026 regarding executive sessions discussing pending litigation is not timely.

Nevertheless, without waiving its objection that the present Complaint is untimely, the Committee responds below to the substance of your complaint and maintains that the Open

¹ Open Meeting Law determinations are publicly available and may be accessed at <https://massago.hylandcloud.com/231publicaccess2/oml.html>

Meeting Law did not require notice to specific individuals prior to discussing pending litigation in executive session.

2. The Committee Properly Conducted the December 7, 2020 Executive Session Under Purpose 3:

The Open Meeting Law was enacted “to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based.” Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). The Open Meeting Law requires that meetings of a public body be open to the public, unless an executive session is convened. G.L. c. 30A, §§ 20(a)-(b), 21. Public bodies may enter a closed, executive session for any of ten purposes enumerated in the Open Meeting Law. G.L. c. 30A, § 21(a). One such purpose is to “discuss the reputation, character, physical condition or mental health . . . of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual.” G.L. c. 30A, § 21(a)(1) (“Purpose 1”). When a public body plans to convene in executive session pursuant to Purpose 1, the individual who is the subject of the discussion must “be notified in writing by the public body at least 48 hours prior to the proposed executive session,” and may cause the discussion to be held in open session rather than executive session. Id. The individual also has certain rights, including the right to be present during the executive session; to have counsel or another representative present; to speak on their own behalf; and to cause an independent record of the executive session to be created. Id. Another permissible reason to convene in executive session is “[t]o discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigating position of the public body and the chair so declares.” G.L. c. 30A, § 21(a)(3) (“Purpose 3”). OML 2026-63 This purpose offers the opportunity to discuss strategy with respect to litigation that is pending or clearly and imminently threatened or otherwise demonstrably likely; the mere possibility of litigation is not sufficient to invoke Purpose 3. OML 2026-63; see Doherty v. Sch. Comm. of Boston, 386 Mass. 643, 648 (1982); Perryman v. Sch. Comm. of Boston, 17 Mass. App. Ct. 346, 352 (1983); OML 2012-5 Discussions of litigation strategy, including discussions of settlement, are permitted in executive session under Purpose 3. OML 2024-111 When a discussion may properly be held under multiple executive session purposes, a public body may choose which executive session purpose or purposes to cite. OML 2026-63; see OML 2019-164; OML 2012-53.

Here, the agenda and the executive session minutes for the Committee meeting on December 7, 2020 identifies one of the subjects of the executive session as “pending litigation.” As noted above, when a discussion may properly be held under multiple executive session purposes, a public body may choose which executive session purpose or purposes to cite. If a discussion may properly be held under Purpose 1 or Purpose 3, a public body may choose to hold the discussion under Purpose 3 in which case the subject of the discussion does not have the rights afforded under Purpose 1. OML 2026-63; See OML 2020-76; OML 2019-164; OML 2012-53. In this case, the discussions held in executive session on December 7, 2020 were appropriately held under Purpose 3. In addition, any subsequent discussions that the Committee held in executive session regarding “pending litigation” and identified as such in the meeting agenda and executive session minutes were properly held under Purpose 3.

Under the circumstances presented here, the Committee properly held the executive sessions as specifically permitted under Purpose 3 to discuss pending litigation. The Committee,

therefore, was not required to give notice under Purpose 1 to individuals who were mentioned or referenced during the discussions.

3. Remedial Action:

Under the Open Meeting Law, executive session topics must be described, both in the meeting notice and in the announcement during open session, in as much detail as possible without compromising the purpose for which the executive session was called. See G.L. c. 30A, § 21(b)(3); see also District Attorney for the N. Dist. v. Sch. Comm. of Wayland, 455 Mass. 561, 567 (2009) (“A precise statement of the reason for convening in executive session is necessary under the open meeting law because that is the only notification given to the public that the [public body] would conduct business in private, and the only way the public would know if the reason for doing so was proper or improper.”). OML 2024-111. When convening in executive session under Purpose 3 to discuss litigation strategy, both the meeting notice and the announcement before entering into executive generally must identify the litigation matter to be discussed, if doing so will not compromise the executive session purpose. See OML 2020-47; OML 2014-50. Whether the inclusion of such information would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged. OML 2024-111; OML 2016-146. Identifying the parties to the litigation is sufficient. OML 2024-111; see OML 2017-43 (finding a meeting notice sufficient where it identified the parties but not the case docket number).

To the extent the Complaint alleges that the notice and executive session minutes for December 7, 2020 lacked specificity with regard to the pending litigation, the Committee identifies the “pending litigation” discussed as an arbitration case between the Committee and the Malden Education Association. The case was not “Malden v. Supervisor of Public Records, et als” as identified in your Complaint. The Committee recognizes that greater specificity in the meeting notice would have prevented this error. During the December 7, 2020 executive session, the Committee discussed with counsel whether to propose settlement of an arbitration decision in favor of the Malden Education Association or to appeal the case to the Superior Court. The Committee claims attorney-client privilege for the continued non-disclosure of the executive session minutes for December 7, 2020 discussing the pending litigation.²

The Committee further notes that since July 2021, the Committee has identified pending litigation to be discussed in executive session with greater specificity in accordance with the Open Meeting Law citing Purpose 3 and including the litigation matter to be discussed. For example, see School Committee agenda July 29, 2021 (“M.G.L. c. 30A, § 21(a)(3) “to discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares” (“Purpose 3”) – Malden v. Supervisor of Public Records, et. al.”); August 9, 2021 (“M.G.L. c. 30A, § 21(a)(3) “to discuss strategy with respect to collective bargaining or litigation

² To the extent redactions are made on the basis of the attorney-client privilege or an exemption to the Public Records Law, review of such redactions falls outside the purview of the Division and should be addressed to the Supervisor of Records in the Secretary of the Commonwealth’s office. See OML 2022-195; OML 2021-143.

if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares" ("Purpose 3") – Amaral v. Malden, et. al.")

4. Additional Allegations of July 29, 2026:

The Committee is aware that you made further allegations and assertions in an email to the Division of Open Government on July 29, 2026 that were not raised in your Complaint dated June 25, 2026. The Division should decline to consider these additional allegations which could have been made at the time of the original Complaint. OML 2012-92; OML 2024-119.

However, should the Division of Open Government choose to address the additional allegations, the Committee denies the additional allegations and accusations contained in your email of July 29, 2026.

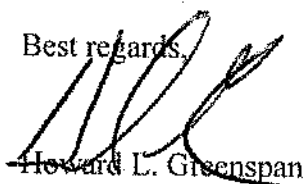
Conclusion:

Based on the above, the Division of Open Government should decline to review the Complaint dated June 25, 2026 because it is untimely. Any issues regarding the executive session regarding "pending litigation" held on December 7, 2020 or thereafter, noticed on the agenda and noted in publicly available minutes, were discoverable for well over 30 days before the Complaint was filed.

Furthermore, the School Committee did not violate the Open Meeting Law as alleged in the Complaint by failing to give individuals notice under Purpose 1 where it permissibly discussed pending litigation under Purpose 3.

Finally, the School Committee acknowledges its duty under the Open Meeting Law to identify and describe pending litigation to be discussed under Purpose 3 with specificity in meeting notices and has done so since July 2021.

Best regards,



Howard L. Greenspan

Enclosure: Complaint

cc: Office of the Attorney General, Division of Open Government by email:
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: Bruce Last Name: Friedman

Address: 8 Marvin Street

City: Malden State: MA Zip Code: 02148

Phone Number: 6179523183 Ext.

Email: info@opencommonwealth.org

Organization or Media Affiliation (if any): OpenCommonwealth.org

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): Malden Public Schools School Committee

Specific person(s), if any, you allege committed the violation: The Chair, Gary Christenson

Date of alleged violation: 12/7/20 - Ongoing

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.

At some time within the last 21 days, complainant became aware of alleged direct violations of M.G.L. c30A, §§ 21(a) - 21(a) (iv) committed by the Malden Public Schools ("MPS") School Committee chair, and Mayor of Malden, Mr. Gary Christenson.

Per 940 CMR 29.04, the complainant did not bring this complaint within 30 days of the alleged violations because the alleged violations occur in executive sessions and further because the records from these executive sessions remain fully redacted as to the specific individuals discussed.

Executive sessions where the agenda includes litigation exemptions involving "Malden v. Supervisor of Public Records, et. al" including the Executive Session(s) where the required specificity is missing such as the executive session of December 7, 2020 are where the alleged violations occurred;

ALLEGATIONS:

Specifically, Mr. Christenson, who is a licensed attorney, discussed the reputation, character, physical conditions and mental health, of some or all of these individuals at multiple executive

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.

1. Immediate and future compliance with the open meeting law;
2. Nullify in whole any action taken at a meeting where a violation occurred;
3. Deeming each violation intentional;
4. Pay a civil penalty upon the public body of \$1,000 for each violation;
5. Make all minutes, records and all other materials public without redaction;

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/ Bruce Friedman

Date: June 25, 2026