

TRAINING SEMINAR: OPEN MEETING LAW PUBLIC RECORDS LAW CONFLICT OF INTEREST LAW

**MEAD, TALERMAN & COSTA,
LLC
MARCH 2022**



A large, dark red wooden sign with gold lettering. The top arc contains the words "TOWN OF" above "BURLINGTON". Below "BURLINGTON" is a smaller line that reads "Sponsored by". A green rectangular panel at the bottom features the text "THE BURLINGTON BUSINESS ROUND TABLE". The sign is mounted on a silver metal post and is surrounded by a landscaped area with green grass, yellow flowers, and dark mulch.

TOWN OF
BURLINGTON
Sponsored by
THE BURLINGTON BUSINESS ROUND TABLE

OPEN MEETING LAW

**G.L. c. 30A, §§ 18 – 25
940 CMR 29.00**

OPEN MEETING LAW

ADMINISTRATION

- THE OFFICE OF THE ATTORNEY GENERAL (“AG”), DIVISION OF OPEN GOVERNMENT (“DOG”) IS RESPONSIBLE FOR THE ADMINISTRATION AND ENFORCEMENT OF THE OPEN MEETING LAW
- THE DOG HAS ISSUED OPEN MEETING REGULATIONS AT 940 CMR 29.00

OPEN MEETING LAW

IMPORTANT DEFINITIONS

- “PUBLIC BODY” INCLUDES ALL MULTI MEMBER BOARDS, COMMITTEES, ETC. ESTABLISHED TO SERVE A PUBLIC PURPOSE IN THE TOWN, THIS INCLUDES SUBCOMMITTEES CREATED TO ADVISE OR REPORT TO THE FULL PUBLIC BODY
- “DELIBERATIONS” INCLUDE ANY WRITTEN AND ORAL COMMUNICATION, INCLUDING COMMUNICATION VIA E-MAIL AND/OR OTHER ELECTRONIC MEDIUM, BETWEEN OR AMONG MEMBERS OF A PUBLIC BODY ON ANY PUBLIC BUSINESS WITHIN ITS JURISDICTION; THIS DOES NOT INCLUDE THE DISTRIBUTION OF MEETING MATERIALS, SCHEDULING INFORMATION OR REPORTS/DOCUMENTS TO BE DISCUSSED AT A MEETING.

OPEN MEETING LAW

IMPORTANT DEFINITIONS

- “INTENTIONAL VIOLATION” MEANS AN ACT OR OMISSION BY A PUBLIC BODY OR A MEMBER THEREOF, IN KNOWING VIOLATION OF M.G.L. c. 30A, SEC. 18-25. EVIDENCE OF AN INTENTIONAL VIOLATION OF M.G.L. c. 30A, SEC. 18-25 SHALL INCLUDE, BUT NOT BE LIMITED TO, THAT THE PUBLIC BODY OR PUBLIC BODY MEMBER (A) ACTED WITH SPECIFIC INTENT TO VIOLATE THE LAW; (B) ACTED WITH DELIBERATE IGNORANCE OF THE LAW’S REQUIREMENTS; OR (C) WAS PREVIOUSLY INFORMED BY RECEIPT OF A DECISION FROM A COURT OF COMPETENT JURISDICTION OR ADVISED BY THE ATTORNEY GENERAL, PURSUANT TO 940 CMR 29.07 OR 940 CMR 29.08, THAT THE CONDUCT VIOLATES M.G.L. c. 30A, SEC. 18-25. WHERE A PUBLIC BODY OR PUBLIC BODY MEMBER HAS MADE A GOOD FAITH ATTEMPT AT COMPLIANCE WITH THE LAW, BUT WAS REASONABLY MISTAKEN ABOUT ITS REQUIREMENTS OR, AFTER FULL DISCLOSURE, ACTED IN GOOD FAITH COMPLIANCE WITH THE ADVICE OF THE PUBLIC BODY’S LEGAL COUNSEL, SUCH CONDUCT WILL NOT BE CONSIDERED AN INTENTIONAL VIOLATION OF M.G.L. c. 30A, SEC. 18-25.

OPEN MEETING LAW

IMPORTANT DEFINITIONS

- “MEETING” INCLUDES ALL DELIBERATIONS OF A PUBLIC BODY BUT IT DOES NOT INCLUDE THE FOLLOWING PROVIDED NO DELIBERATION OCCURS:
 - (A) AN ON-SITE INSPECTION OF A PROJECT OR PROGRAM;
 - (B) ATTENDANCE BY A QUORUM OF A PUBLIC BODY AT A PUBLIC OR PRIVATE GATHERING, INCLUDING A CONFERENCE OR TRAINING PROGRAM OR A MEDIA, SOCIAL OR OTHER EVENT;
 - (C) ATTENDANCE BY A QUORUM OF A PUBLIC BODY AT A MEETING OF ANOTHER PUBLIC BODY THAT HAS COMPLIED WITH THE NOTICE REQUIREMENTS OF THE OPEN MEETING LAW, SO LONG AS THE VISITING MEMBERS COMMUNICATE ONLY BY OPEN PARTICIPATION IN THE MEETING ON THOSE MATTERS UNDER DISCUSSION;
 - NOTE, HOWEVER, THAT IN A RECENT DOG DECISION (OML 2021-199) THE DOG DETERMINED THAT THIS EXCEPTION DID NOT APPLY EVEN WHERE MEMBERS OF A PUBLIC BODY DID NOT COMMUNICATE BETWEEN OR AMONG THEMSELVES. WHAT MATTERED TO THE DOG WAS THAT THE MEMBERS SPOKE ABOUT ACTION(S) THEY MIGHT TAKE INSTEAD OF REPORTING ON PRIOR ACTION(S) OR DISCUSSION(S).
 - AS TO THE NEW STANDARD FOR PUBLIC BODY QUORUMS ATTENDING THE MEETING OF ANOTHER PUBLIC BODY, THE DOG WILL PERFORM A “FACT-SPECIFIC” ANALYSIS OF THE CONTENT OF THE MEMBERS’ COMMUNICATIONS, NOT WHETHER SAID MEMBERS WERE COMMUNICATING BETWEEN OR AMONG THEMSELVES.

- (D) A MEETING OF A QUASI-JUDICIAL BOARD OR COMMISSION HELD FOR THE SOLE PURPOSE OF MAKING A DECISION REQUIRED IN AN ADJUDICATORY PROCEEDING BROUGHT BEFORE IT; OR
- (E) A SESSION OF A TOWN MEETING CONVENED UNDER SECTION 10 OF CHAPTER 39 WHICH WOULD INCLUDE THE ATTENDANCE BY A QUORUM OF A PUBLIC BODY AT ANY SUCH SESSION.

OPEN MEETING LAW

MEETING NOTICE

- MEETING NOTICE MUST BE POSTED AT LEAST 48 HOURS PRIOR TO THE MEETING EXCLUDING SATURDAYS, SUNDAYS AND LEGAL HOLIDAYS;
- NOTICE MUST INCLUDE THE PURPOSE OF THE MEETING, THE AGENDA AND ANY OTHER MATTERS THE CHAIR REASONABLY BELIEVES WILL BE DISCUSSED;
- NOTICE MUST BE POSTED IN OR ON THE BUILDING THAT HOUSES THE CLERK'S OFFICE AND MUST BE VISIBLE TO THE PUBLIC "AT ALL TIMES" (24 HOURS A DAY, 7 DAYS A WEEK);

OPEN MEETING LAW

MEETING NOTICE CONT'D

- A DECISION BY THE AG EMPHASIZES THE IMPORTANCE THAT ALL MEETING NOTICES INCLUDE SUFFICIENT INFORMATION REGARDING THE TOPICS TO BE DISCUSSED AT THE MEETING SUCH THAT IT REASONABLY INFORMS THE PUBLIC OF WHAT WILL BE DISCUSSED — INCLUDING TOPICS TO BE DISCUSSED IN EXECUTIVE SESSION.
- A MEETING NOTICE STATING THE NAME OF THE APPLICANT AND NOTING IT WAS A REQUEST FOR AN EXTENSION OF AN ORDER OF CONDITIONS WAS FOUND TO BE INSUFFICIENT.
- THE AG NOTED THAT ALL OTHER ITEMS ON THE AGENDA WERE LISTED AS “PUBLIC HEARING”, WHILE THE NOTICE FOR THE EXTENSION WAS NOT IDENTIFIED AS A PUBLIC HEARING.
- THE AG DETERMINED THAT THE FAILURE TO NOTE THAT THE HEARING ON THE EXTENSION WAS A PUBLIC HEARING CONSTITUTED A VIOLATION OF THE OML.

OPEN MEETING LAW

MEETING NOTICE CONT'D

- ANOTHER RECENT DECISION BY THE AG PROVIDES ADDITIONAL CLARITY REGARDING THE SUFFICIENCY OF NOTICE.
- THE AG'S OFFICE NOTED THAT NOTICE FOR AN EXECUTIVE SESSION MUST STATE "ALL SUBJECTS THAT MAY BE REVEALED WITHOUT COMPROMISING THE PURPOSE FOR WHICH THE EXECUTIVE SESSION WAS CALLED."
 - LITIGATION NOT YET COMMENCED BUT CONTEMPLATED BY BOS NEED NOT INCLUDE SPECIFICS
 - LITIGATION ACTUALLY FILED MUST INCLUDE NAME OF CASE
- IN THIS CASE, THE AG'S OFFICE FOUND NO VIOLATION, BECAUSE CONTINGENCIES TO A PURCHASE AND SALE AGREEMENT THAT WAS THE SUBJECT OF THE EXECUTIVE SESSION HAD NOT YET BEEN COMPLETED, THUS THE NOTICE COULD PROPERLY EXCLUDE THOSE DETAILS TO AVOID COMPROMISING THE PURPOSE OF THE EXECUTIVE SESSION.
 - IF CONTEMPLATING THE PURCHASE OF REAL ESTATE — NEED NOT IDENTIFY IT.

OPEN MEETING LAW

ALTERNATIVE NOTICE POSTING

- THE DOG HAS APPROVED THE FOLLOWING ALTERNATIVE POSTING METHODS AT 940 CMR 29.03(2) IN THE EVENT THE POSTING IN OR ON THE MUNICIPAL BUILDING CANNOT BE SEEN AT ALL TIMES:
 - POSTING IN TOWN HALL;
 - POST ON CABLE TELEVISION AND POST IN AN ALTERNATE MUNICIPAL BUILDING OPEN AT ALL TIMES;
 - POST IN NEWSPAPER OF GENERAL CIRCULATION AND POST IN AN ALTERNATIVE MUNICIPAL BUILDING;
 - PLACE COMPUTER MONITOR OR BULLETIN BOARD DISPLAYING NOTICE IN THE MUNICIPAL BUILDING SUCH THAT IT CAN BE VIEWED FROM OUTSIDE THE BUILDING;
 - PROVIDE AN AUDIO RECORDING OF MEETING NOTICES AVAILABLE TO THE PUBLIC BY TELEPHONE AT ALL TIMES.

OPEN MEETING LAW

ALTERNATIVE NOTICE POSTING CONT'D

- IN THE EVENT THE TOWN ADOPTS ONE OF THE ALTERNATIVE POSTING METHODS, THE TOWN CLERK MUST NOTIFY THE AG IN WRITING AS TO THE METHOD, INCLUDING ANY APPLICABLE WEBSITE ADDRESS.
- IF AT ANY TIME THE TOWN ADOPTS A DIFFERENT POSTING METHOD THAN THE ONE ON FILE WITH THE AG, THE TOWN CLERK MUST UPDATE THE AG WITH A NEW WRITTEN NOTICE.

OPEN MEETING LAW

ALTERNATIVE NOTICE POSTING

- IN AN EMERGENCY SITUATION, THE 48 HOUR POSTING REQUIREMENT MAY BE WAIVED BUT AN EFFORT MUST BE MADE TO COMPLY WHENEVER POSSIBLE
- AN EMERGENCY IS ANY SUDDEN, GENERALLY UNEXPECTED OCCURRENCE OR SET OF CIRCUMSTANCES DEMANDING IMMEDIATE ACTION

OPEN MEETING LAW

CONDUCTING MEETING

- THE OPEN MEETING LAW PROVIDES FOR REMOTE PARTICIPATION AT MEETINGS BY MEMBERS OF THE PUBLIC BODY. MUST BE ADOPTED BY THE BOS.
- THE CHAIR OF THE PUBLIC BODY MUST ANNOUNCE AT THE START OF A MEETING WHETHER VIDEO/AUDIO RECORDINGS ARE BEING MADE, INCLUDING THOSE BY PRIVATE INDIVIDUALS.
- TO ADDRESS A MEETING OF A PUBLIC BODY, PERMISSION OF THE CHAIR IS REQUIRED. THE CHAIR IS NOT REQUIRED TO ALLOW THE PUBLIC TO PARTICIPATE IN A PUBLIC MEETING AS OPPOSED TO A PUBLIC HEARING HELD UNDER ANOTHER STATUTORY SCHEME.
- PUBLIC COMMENT EXCEPTIONS -

PUBLIC COMMENT

- ▶ MORE RECENTLY MORE AND MORE QUESTIONS ACROSS THE COMMONWEALTH HAVE ARISEN REGARDING THE USE/ALLOWANCE OF PUBLIC COMMENT AT PUBLIC MEETINGS.
- ▶ GENERAL RULE – UNLESS IT IS A PUBLIC HEARING, PUBLIC COMMENT IS NOT A “RIGHT” OF THE PUBLIC, RATHER CONTROLLED BY THE CHAIR OR POLICY OF THE BOARD.
- ▶ EXCEPTIONS – IF A BOARD ALLOWS PUBLIC COMMENT THEN IT HAS CREATED A “LIMITED PUBLIC FORUM” AND PUBLIC COMMENT MAY NOT BE SHUT OFF ABSENT A COMPELLING GOVERNMENTAL PURPOSE.
 - ▶ THAT IS , THE CHAIR CANNOT REQUIRE A PERSON TO STOP SPEAKING DUE TO THE CONTENT OF THE PERSONS COMMENTS ABSENT A COMPELLING GOVERNMENTAL INTEREST. THIS IS A VERY HIGH BAR.
 - ▶ THE BOARD VIA A POLICY MAY SET REASONABLE TIME, PLACE, MANNER RESTRICTIONS IF PUBLIC COMMENT IS PERMITTED

- WHILE PUBLIC COMMENTS ARE NOT REQUIRED TO PERTAIN TO AN AGENDA ITEM FOR THAT PARTICULAR MEETING, SUCH COMMENTS MAY BE REQUIRED TO PERTAIN TO A MATTER WITHIN THE PUBLIC BODY'S JURISDICTION. PUBLIC COMMENTS ON MATTERS OUTSIDE THE PUBLIC BODY'S JURISDICTION MAY NOT BE PERMITTED.
- BECAUSE THEY ARE NOT CONSTITUTIONALLY PROTECTED, THE FOLLOWING COMMENTS MAY LIKEWISE NOT BE PERMITTED: TRUE THREATS, INCITEMENT TO IMMINENT LAWLESS CONDUCT, OBSCENITIES, PERSONAL ATTACKS, STATEMENTS THAT WERE FOUND BY A COURT OF LAW TO BE DEFAMATORY, AND SEXUALLY EXPLICIT STATEMENTS MADE TO APPEAL TO PRURIENT INTERESTS.

OPEN MEETING LAW

REMOTE PARTICIPATION

OUTSIDE OF COVID EMERGENCY ORDERS

- REGULATIONS ALLOW REMOTE PARTICIPATION BY MEMBERS OF A BODY ONLY AFTER AUTHORIZATION BY THE BOARD OF SELECTMEN.
- THE BOARD OF SELECTMEN HAVE THE AUTHORITY TO PLACE RESTRICTIONS ON THE USE OF REMOTE PARTICIPATION INCLUDING AMOUNT AND SOURCE OF FUNDING, AND WHICH BODIES PAY PARTICIPATE, IF ANY.
- THE CHAIR MUST DETERMINE THAT PHYSICAL ATTENDANCE WILL BE UNREASONABLY DIFFICULT
- ACCEPTABLE METHODS OF REMOTE PARTICIPATION INCLUDE ANY TECHNOLOGY THAT ENABLE THE REMOTE PARTICIPANT AND ALL PERSONS PRESENT AT THE MEETING LOCATION TO BE CLEARLY AUDIBLE TO ONE ANOTHER

OPEN MEETING LAW

REMOTE PARTICIPATION, CONT'D

- MINIMUM REQUIREMENTS
 - QUORUM MUST BE PHYSICALLY PRESENT AT MEETING LOCATION
 - MEMBERS PARTICIPATING REMOTELY AND ALL THOSE PRESENT AT THE LOCATION MUST BE CLEARLY AUDIBLE TO EACH OTHER
 - ALL VOTES TAKEN MUST BE BY ROLL CALL VOTE
- PROCEDURE:
 - CHAIR MUST ANNOUNCE AT START OF MEETING THE NAME OF REMOTE PARTICIPANT AND FOR WHICH REASON .
 - REMOTE PARTICIPANTS MAY VOTE AND ARE NOT DEEMED ABSENT
 - REMOTE PARTICIPANTS MAY PARTICIPATE IN EXECUTIVE SESSION BUT MUST STATE AT THE START THAT NO ONE ELSE IS PRESENT OR ABLE TO HEAR THE DISCUSSION AT THE REMOTE LOCATION, UNLESS THE PUBLIC BODY HAS APPROVED THE PRESENCE OF THAT INDIVIDUAL
 - ANY TIME TECHNOLOGICAL DIFFICULTIES MAKE THE USE OF REMOTE PARTICIPATION INEFFECTIVE, THE CHAIR MAY DECIDE HOW TO ADDRESS THE ISSUE.

COVID EMERGENCY ORDERS EXTENDED

- **CHAPTER 22 OF THE ACTS OF 2022 EXTENDING COVID-19 MEASURES**

- **ON FEBRUARY 15, 2022, GOVERNOR BAKER SIGNED INTO LAW A NEW SESSION LAW EXTENDING CERTAIN COVID-19 RELATED MEASURES. THE NEW LAW EXTENDS THE REMOTE MEETING PROVISIONS OF THE GOVERNOR'S MARCH 12, 2020, EXECUTIVE ORDER SUSPENDING CERTAIN PROVISIONS OF THE OPEN MEETING LAW UNTIL JULY 15, 2022. AS SUCH, THE TOWN WILL BE ABLE TO HOLD COVID-19 REMOTE AND HYBRID MEETINGS UNTIL THIS DATE.**

OPEN MEETING LAW

EMAIL

- AS NOTED IN THE DEFINITION OF DELIBERATION, DISCUSSIONS VIA EMAIL OF TOPICS WITHIN A BOARD'S JURISDICTION ARE DELIBERATIONS AND VIOLATE THE OPEN MEETING LAW.
- EMAIL COMMUNICATIONS MUST THEREFORE BE LIMITED TO THE DISTRIBUTION OF MEETING MATERIALS AND SIMILAR INFORMATION.
- IT IS SUGGESTED THAT ALL EMAILS CONTAIN THE FOLLOWING STATEMENT: "THIS EMAIL IS FOR THE DISTRIBUTION OF MATERIALS ONLY, NOT FOR DISCUSSION PURPOSES."

OPEN MEETING LAW

EMAIL

- A DECISION BY THE AG'S OFFICE FOUND THAT COMMUNICATION VIA EMAIL CONSTITUTE DELIBERATION IN VIOLATION OF THE OML
 - IN THIS CASE, A STUDY COMMITTEE CREATED A VOTING GRID ADDRESSING A NUMBER OF POTENTIAL ISSUES, WHICH WAS CIRCULATED VIA EMAIL TO THE MEMBERS OF THE COMMITTEE.
 - THE AG FOUND THAT EVERY EMAIL EXCHANGED CONTAINING COMPLETED VOTING GRIDS CONSTITUTED AN OML VIOLATION AS IMPROPER DELIBERATION.
 - THE CIRCULATION OF THE BLANK VOTING GRID WAS NOT FOUND TO CONSTITUTE A VIOLATION, THE VIOLATION OCCURRED WHEN COMPLETED GRIDS WERE CIRCULATED.

OPEN MEETING LAW

EXECUTIVE SESSION

- EXECUTIVE SESSION IS ANY PART OF ANY MEETING OF A PUBLIC BODY THAT IS NOT OPEN TO THE PUBLIC. THE FOLLOWING MAY BE DISCUSSED PROVIDED THE CHAIR ANNOUNCES IN OPEN SESSION THAT DISCUSSION IN OPEN SESSION WOULD HAVE A DETRIMENTAL EFFECT:
 - TO DISCUSS THE REPUTATION, CHARACTER, PHYSICAL CONDITION OR MENTAL HEALTH, RATHER THAN PROFESSIONAL COMPETENCE, 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;
 - TO CONDUCT STRATEGY SESSIONS IN PREPARATION FOR NEGOTIATIONS WITH NONUNION PERSONNEL OR TO CONDUCT COLLECTIVE BARGAINING SESSIONS OR CONTRACT NEGOTIATIONS WITH NONUNION PERSONNEL;
 - 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;

OPEN MEETING LAW

EXECUTIVE SESSION CONT'D

- TO DISCUSS THE DEPLOYMENT OF SECURITY PERSONNEL OR DEVICES, OR STRATEGIES WITH RESPECT THERETO;
- TO INVESTIGATE CHARGES OF CRIMINAL MISCONDUCT OR TO CONSIDER THE FILING OF CRIMINAL COMPLAINTS;
- TO CONSIDER THE PURCHASE, EXCHANGE, LEASE OR VALUE OF REAL PROPERTY IF THE CHAIR DECLARES THAT AN OPEN MEETING MAY HAVE A DETRIMENTAL EFFECT ON THE NEGOTIATING POSITION OF THE PUBLIC BODY; (MAY NOT HAVE THE OTHER PARTY IN THE ES)
- TO COMPLY WITH, OR ACT UNDER THE AUTHORITY OF, ANY GENERAL OR SPECIAL LAW OR FEDERAL GRANT-IN-AID REQUIREMENTS;

OPEN MEETING LAW

EXECUTIVE SESSION CONT'D

- TO CONSIDER OR INTERVIEW APPLICANTS FOR EMPLOYMENT OR APPOINTMENT BY A PRELIMINARY SCREENING COMMITTEE IF THE CHAIR DECLARES THAT AN OPEN MEETING WILL HAVE A DETRIMENTAL EFFECT IN OBTAINING QUALIFIED APPLICANTS; PROVIDED, HOWEVER, THAT THIS CLAUSE SHALL NOT APPLY TO ANY MEETING, INCLUDING MEETINGS OF A PRELIMINARY SCREENING COMMITTEE, TO CONSIDER AND INTERVIEW APPLICANTS WHO HAVE PASSED A PRIOR PRELIMINARY SCREENING;
- TO MEET OR CONFER WITH A MEDIATOR, AS DEFINED IN SECTION 23C OF CHAPTER 233, WITH RESPECT TO ANY LITIGATION OR DECISION ON ANY PUBLIC BUSINESS WITHIN ITS JURISDICTION INVOLVING ANOTHER PARTY, GROUP OR ENTITY;
- TO DISCUSS TRADE SECRETS OR CONFIDENTIAL, COMPETITIVELY-SENSITIVE OR OTHER PROPRIETARY INFORMATION PROVIDED IN THE COURSE OF ACTIVITIES CONDUCTED BY A GOVERNMENTAL BODY AS AN ENERGY SUPPLIER UNDER A LICENSE GRANTED BY THE DEPARTMENT OF PUBLIC UTILITIES

OPEN MEETING LAW

MINUTES

- MUST INCLUDE A SUMMARY OF DISCUSSIONS ON EACH SUBJECT, LIST OF EXHIBITS USED AT THE MEETING AND DECISIONS MADE, INCLUDING A RECORD OF ALL VOTES.
- ALL EXHIBITS SHALL BECOME PART OF THE OFFICIAL RECORD AND A LIST OF THE EXHIBITS MUST BE INCLUDED IN THE MINUTES.
- MINUTES OF EXECUTIVE SESSIONS MUST BE DISCLOSED “WHEN THE PURPOSE FOR WHICH [THE] . . . EXECUTIVE SESSION WAS HELD HAS BEEN SERVED.”
- AT REGULAR INTERVALS, A PUBLIC BODY SHALL REVIEW THE MINUTES OF EXECUTIVE SESSIONS TO DETERMINE IF CONTINUED NON-DISCLOSURE IS WARRANTED.

OPEN MEETING LAW

MINUTES

- MINUTES OF ALL OPEN SESSIONS MUST BE APPROVED IN A TIMELY MANNER.
 - IN A RECENT CASE, THE AG'S OFFICE FOUND THAT A BOARD MEETING ON A REGULAR BASIS A DELAY OR MORE THAN TWO TO THREE MONTHS IN PREPARING AND APPROVING MINUTES CONSTITUTES A VIOLATION.
 - IN ANOTHER RECENT CASE, THE AG'S OFFICE FOUND NOT ONLY THAT MINUTES WERE NOT APPROVED IN A TIMELY MANNER, BUT ALSO THAT THE MINUTES DID NOT CONTAIN SUFFICIENT DETAIL AND ACCURACY.
 - THE MINUTES WERE DEFICIENT BECAUSE THEY DID NOT IDENTIFY THE SUBJECT MATTER OF COMMENTS FROM A MEMBER OF THE PUBLIC, AND THE MINUTES WERE NOT SUFFICIENTLY DETAILED TO ALLOW A PERSON WHO DID NOT ATTEND THE MEETING TO DEDUCE THE NATURE OF THE CONCERNS RAISED BY THE SPEAKER.

OPEN MEETING LAW

ENFORCEMENT

- ALL COMPLAINTS OF OPEN MEETING LAW VIOLATIONS MUST BE FILED WITH THE PUBLIC BODY AND THE TOWN CLERK, WITHIN 30 DAYS OF THE ALLEGED VIOLATION.
- WITHIN 14 BUSINESS DAYS OF RECEIPT OF THE COMPLAINT, THE PUBLIC BODY MUST TAKE ANY NECESSARY REMEDIAL ACTION AND SEND A COPY OF THE COMPLAINT AND DESCRIPTION OF REMEDIAL ACTION TO THE DOG.
- IF THE PUBLIC BODY DOES NOT TAKE THE NECESSARY REMEDIAL ACTION WITHIN 30 DAYS OF RECEIPT OF THE COMPLAINT, THE COMPLAINANT MAY FILE A COPY OF THE COMPLAINT WITH THE DOG.
- THE DOG WILL DETERMINE IF THE COMPLAINT WARRANTS AN INVESTIGATION INTO THE ALLEGED OPEN MEETING LAW VIOLATIONS.

OPEN MEETING LAW

ENFORCEMENT CONT'D

- THE DOG MAY RESOLVE OPEN MEETING LAW VIOLATIONS THROUGH INFORMAL COMMUNICATIONS WITH THE PUBLIC BODY OR A FORMAL ORDER WHICH MAY REQUIRE THE FOLLOWING:
 - IMMEDIATE AND FUTURE COMPLIANCE WITH THE OPEN MEETING LAW;
 - ATTENDANCE AT A TRAINING SESSION AUTHORIZED BY THE AG;
 - THAT MINUTES, RECORDS OR OTHER MATERIALS BE MADE PUBLIC;
 - NULLIFICATION OF ACTION TAKEN BY THE PUBLIC BODY;
 - IMPOSITION OF A FINE UPON THE PUBLIC BODY FOR NOT MORE THAN \$1,000.00 PER INTENTIONAL VIOLATION;
 - OTHER APPROPRIATE ACTION.

OPEN MEETING LAW

ENFORCEMENT CONT'D

- ALL MUNICIPAL EMPLOYEES WILL BE DEEMED TO HAVE KNOWLEDGE OF THE OPEN MEETING LAW AS THEY ARE REQUIRED TO RECEIVE A COPY.
- ACCORDINGLY, ANY VIOLATION OF THE OPEN MEETING LAW COULD BE CONSIDERED WILLFUL BECAUSE OF THE EMPLOYEE'S KNOWLEDGE OF THE LAW.

OPEN MEETING LAW

ADVISORY OPINIONS

- AG MAY ISSUE ADVISORY OPINIONS ON REQUEST OR BY HIS OR HER OWN INITIATIVE. (EXAMPLE: REQUEST OF TOWN MANAGER ABOUT A TOWN MANAGER APPOINTED COMMITTEE)
- ACTION TAKEN BY A PUBLIC BODY IN GOOD FAITH RELIANCE ON AN ADVISORY OPINION WILL NOT CONSTITUTE AN INTENTIONAL VIOLATION OF THE OPEN MEETING LAW PROVIDED THE CIRCUMSTANCES ARE NOT MATERIALLY DIFFERENT FROM THOSE IN THE ADVISORY OPINION.



BURLINGTON TOWN HALL

PUBLIC RECORDS LAW

G.L. C. 4, S. 7

G.L. C. 66

950 CMR 32.00

WHAT IS A PUBLIC RECORD?

"PUBLIC RECORDS" SHALL MEAN ALL BOOKS, PAPERS, MAPS, PHOTOGRAPHS, RECORDED TAPES, FINANCIAL STATEMENTS, STATISTICAL TABULATIONS, OR OTHER DOCUMENTARY MATERIALS OR DATA, REGARDLESS OF PHYSICAL FORM OR CHARACTERISTICS, MADE OR RECEIVED BY ANY OFFICER OR EMPLOYEE OF ANY AGENCY, EXECUTIVE OFFICE, DEPARTMENT, BOARD, COMMISSION, BUREAU, DIVISION OR AUTHORITY OF THE COMMONWEALTH, OR OF ANY POLITICAL SUBDIVISION THEREOF, OR OF ANY AUTHORITY ESTABLISHED BY THE GENERAL COURT TO SERVE A PUBLIC PURPOSE, OR ANY PERSON, CORPORATION, ASSOCIATION, PARTNERSHIP OR OTHER LEGAL ENTITY WHICH RECEIVES OR EXPENDS PUBLIC FUNDS FOR THE PAYMENT OR ADMINISTRATION OF PENSIONS FOR ANY CURRENT OR FORMER EMPLOYEES OF THE COMMONWEALTH OR ANY POLITICAL SUBDIVISION... UNLESS SUCH MATERIALS OR DATA FALL WITHIN ONE OF THE ENUMERATED EXEMPTIONS. G.L. C. 4 SEC. 7 CLAUSE 26TH.

WHAT IS NOT A PUBLIC RECORD

- EXEMPTED FROM DISCLOSURE BY STATUTE
- PERSONNEL AND MEDICAL FILES OR INFORMATION
- INTER OR INTRA POLICY DEVELOPMENT MEMOS
- PERSONAL NOTES OF EMPLOYEE
- INVESTIGATORY MATERIALS COMPILED BY LAW ENFORCEMENT
- PROPOSALS AND BIDS BEFORE OPENING
- APPRAISALS OF REAL PROPERTY UNTIL FINAL AGREEMENT OR IF FOR LITIGATION ONCE RESOLVED
- NAMES AND ADDRESSES OF APPLICANTS FOR GUN LICENSE
- RECORDS OF PLANS AND PROCEDURES FOR SECURITY MEASURES
- HOME ADDRESSES OF CERTAIN GOVERNMENTAL EMPLOYEES
- NAME AND HOME ADDRESS OF FAMILY MEMBER OF EMPLOYEE
- TRADE SECRETS

- NOTE THAT THE PUBLIC RECORDS DIVISION HAS RECENTLY DETERMINED THAT THE INTER OR INTRA POLICY DEVELOPMENT EXEMPTION DOES NOT APPLY TO DRAFT DOCUMENTS AFTER THE UNDERLYING POLICY HAS BEEN FINALIZED.

EFFECTIVE JANUARY 1, 2017

EVERY TOWN MUST DESIGNATE A RECORDS ACCESS OFFICERS (RAO).

- ALL TOWNS MUST DESIGNATE 1 OR MORE RAO'S;
- RAO MAY BE THE TOWN CLERK OR THE CLERK'S DESIGNEE UNLESS SOMEONE ELSE IS DESIGNATED BY THE SELECTMEN;

NOTICE OF THE NAME, TITLE, BUSINESS ADDRESS, BUSINESS EMAIL ADDRESS, AND BUSINESS TELEPHONE NUMBER OF DESIGNATED RAO'S MUST BE POSTED IN A CONSPICUOUS LOCATION AT TOWN HALL AND ON THE TOWN'S WEBSITE.

PUBLIC RECORDS LAW

THE RAO HAS THE FOLLOWING RESPONSIBILITIES:

- ASSIST THE CUSTODIAN OF RECORDS IN PRESERVING RECORDS ACCORDING TO APPLICABLE LAWS, RULES, REGULATIONS, AND SCHEDULES;
- COORDINATE TOWN'S RESPONSE TO RECORDS REQUESTS;
- ASSIST REQUESTERS IN IDENTIFYING THE RECORDS THEY SEEK;
- PREPARE GUIDELINES THAT ENABLE REQUESTERS TO MAKE INFORMED REQUESTS REGARDING AVAILABILITY OF RECORDS;
- DOCUMENT EACH PUBLIC RECORDS REQUEST.

PUBLIC RECORDS LAW

A PERSON MAKING A PUBLIC RECORDS REQUEST MAY DO SO:

- ORALLY IN PERSON,
- DELIVERED TO THE RAO BY HAND,
- DELIVERED TO THE RAO VIA FIRST CLASS MAIL, VIA EMAIL OR FACSIMILE,
- NOT REQUIRED TO TAKE PHONE REQUESTS.

PUBLIC RECORDS LAW

WHEN THE RAO OR RECORDS CUSTODIAN RESPONDS TO A PUBLIC RECORDS REQUEST, THE RESPONSE MUST FOLLOW THE FOLLOWING GUIDELINES:

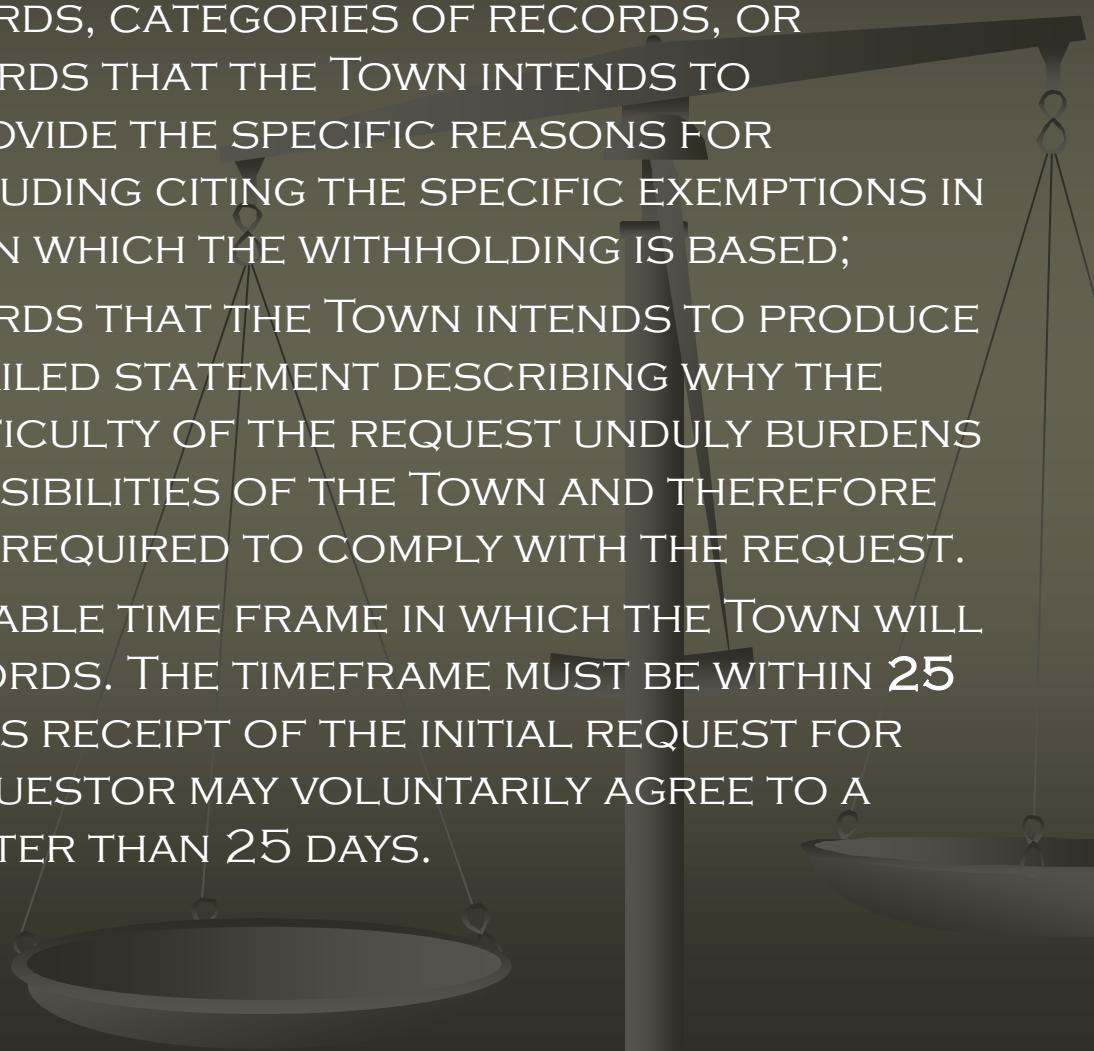
- A. IF THE REQUEST REASONABLY DESCRIBES THE PUBLIC RECORD SOUGHT, AND THE RECORD IS WITHIN THE POSSESSION, CUSTODY, OR CONTROL OF THE TOWN, AND THE REASONABLE FEE HAS BEEN PAID:
 - I. RECORDS MUST BE PROVIDED NOT LATER THAN 10 BUSINESS DAYS FOLLOWING RECEIPT OF THE REQUEST;
 - II. IF THE RAO DOES NOT PROVIDE AN INITIAL RESPONSE WITHIN 10 DAYS, CANNOT CHARGE FEE
 - III. RECORDS MUST BE PROVIDED IN ELECTRONIC FORM UNLESS NOT AVAILABLE IN THAT FORM OR THE REQUESTER DOES NOT HAVE THE CAPACITY TO RECEIVE THE RECORDS ELECTRONICALLY;

PUBLIC RECORDS LAW

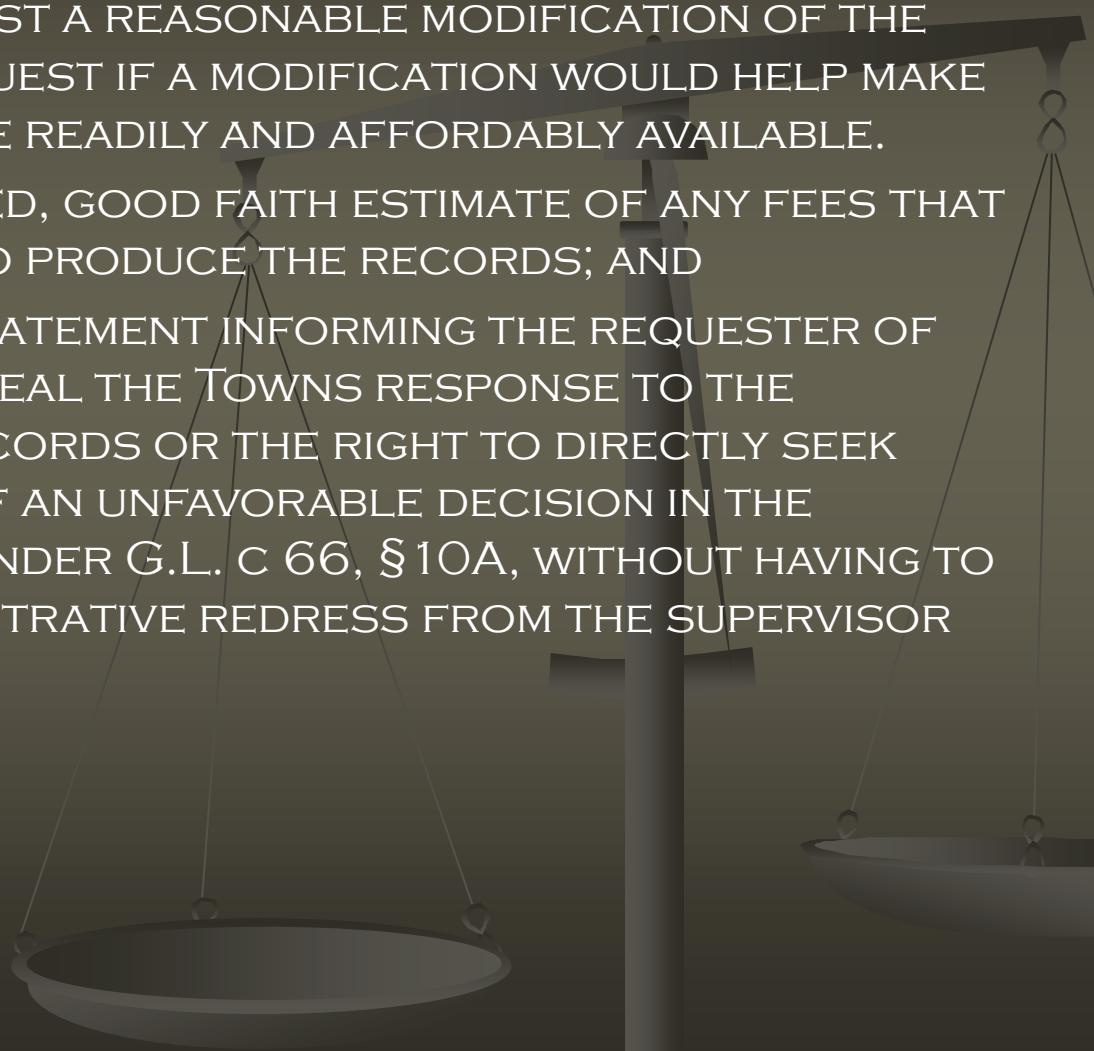
B. IF THE TOWN DOES NOT INTEND TO OR CANNOT PROVIDE THE RECORDS, OR NEEDS MORE TIME TO PROVIDE THE RECORDS, OR THE SIZE OR DIFFICULTY OF THE REQUEST, OR MULTIPLE REQUESTS FROM THE SAME PERSON, UNDULY BURDEN THE OTHER RESPONSIBILITIES OF THE TOWN, THE TOWN MUST PROVIDE A WRITTEN RESPONSE VIA FIRST CLASS OR ELECTRONIC MAIL TO THE REQUESTER WITHIN 10 BUSINESS DAYS OF INITIAL RECEIPT OF THE REQUEST WHICH MUST:

- I. CONFIRM RECEIPT OF THE REQUEST;
- II. IDENTIFY ANY RECORDS OR CATEGORY OF RECORDS REQUESTED THAT ARE NOT WITHIN THE POSSESSION, CUSTODY, OR CONTROL OF THE TOWN;
- III. IDENTIFY WHAT AGENCY OR TOWN MAY HAVE THE RECORDS REQUESTED, IF KNOWN;

PUBLIC RECORDS LAW

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- iv. IDENTIFY ANY RECORDS, CATEGORIES OF RECORDS, OR PORTIONS OF RECORDS THAT THE TOWN INTENDS TO WITHHOLD, AND PROVIDE THE SPECIFIC REASONS FOR WITHHOLDING, INCLUDING CITING THE SPECIFIC EXEMPTIONS IN G.L. C. 4, §7(26) ON WHICH THE WITHHOLDING IS BASED;
 - v. IDENTIFY ANY RECORDS THAT THE TOWN INTENDS TO PRODUCE ALONG WITH A DETAILED STATEMENT DESCRIBING WHY THE MAGNITUDE OR DIFFICULTY OF THE REQUEST UNDULY BURDENS THE OTHER RESPONSIBILITIES OF THE TOWN AND THEREFORE ADDITIONAL TIME IS REQUIRED TO COMPLY WITH THE REQUEST.
 - vi. IDENTIFY A REASONABLE TIME FRAME IN WHICH THE TOWN WILL PRODUCE THE RECORDS. THE TIMEFRAME MUST BE WITHIN **25** DAYS OF THE TOWN'S RECEIPT OF THE INITIAL REQUEST FOR RECORDS. THE REQUESTOR MAY VOLUNTARILY AGREE TO A RESPONSE DATE LATER THAN 25 DAYS.

PUBLIC RECORDS LAW

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- vii. IDENTIFY OR REQUEST A REASONABLE MODIFICATION OF THE SCOPE OF THE REQUEST IF A MODIFICATION WOULD HELP MAKE THE RECORDS MORE READILY AND AFFORDABLY AVAILABLE.
 - viii. INCLUDE AN ITEMIZED, GOOD FAITH ESTIMATE OF ANY FEES THAT MAY BE CHARGED TO PRODUCE THE RECORDS; AND
 - ix. MUST INCLUDE A STATEMENT INFORMING THE REQUESTER OF THEIR RIGHT TO APPEAL THE TOWNS RESPONSE TO THE SUPERVISOR OF RECORDS OR THE RIGHT TO DIRECTLY SEEK JUDICIAL REVIEW OF AN UNFAVORABLE DECISION IN THE SUPERIOR COURT UNDER G.L. C 66, §10A, WITHOUT HAVING TO FIRST SEEK ADMINISTRATIVE REDRESS FROM THE SUPERVISOR OF RECORDS.

PUBLIC RECORDS LAW

C. THE RAO MAY, AS SOON AS PRACTICABLE AND WITHIN 20 BUSINESS DAYS AFTER THE INITIAL REQUEST, OR WITHIN 10 DAYS AFTER RECEIPT OF A DETERMINATION BY THE SUPERVISOR OF PUBLIC RECORDS, PETITION THE SUPERVISOR OF PUBLIC RECORDS FOR AN EXTENSION OF TIME, UP TO 30 DAYS, TO PROVIDE THE RECORDS THEY HAVE WITHIN THEIR POSSESSION, CUSTODY, OR CONTROL. A COPY OF THE PETITION MUST BE PROVIDED TO THE REQUESTER.

FEES FOR PUBLIC RECORDS

THE FOLLOWING IS AN OUTLINE OF HOW FEES MAY BE CALCULATION AND WHAT FEES ARE ALLOWABLE FEES FOR THE PRODUCTION OF RECORDS NOT OTHERWISE AVAILABLE FOR PUBLIC INSPECTION:

- ACTUAL COST OF ANY STORAGE DEVICE OR MATERIAL PROVIDED MAY BE CHARGED;
- FEE CANNOT EXCEED ACTUAL COST OF PRODUCTION;
- \$.05 FOR BLACK AND WHITE PAPER COPIES OR COMPUTER PRINTOUTS OF PUBLIC RECORDS, FOR BOTH SINGLE AND DOUBLE-SIDED SHEETS;

FEES FOR PUBLIC RECORDS

- IF MORE THAN 2 HOURS OF EMPLOYEE TIME IS REQUIRED TO SEARCH FOR, COMPILE, SEGREGATE, REDACT, OR REPRODUCE THE RECORDS, THE TOWN MAY CHARGE AN HOURLY RATE OF NO MORE THAN \$25 WHICH IS EQUAL TO OR LESS THAN THE HOURLY RATE OF THE LOWEST PAID EMPLOYEE WITH THE NECESSARY SKILL TO PERFORM THE WORK;
- CANNOT BE CHARGED FOR FIRST 2 HOURS OF WORK IF THE TOWN HAS A POPULATION OF OVER 20,000 PEOPLE;
- CANNOT BE CHARGED FOR TIME SPENT SEGREGATING OR REDACTING UNLESS REQUIRED BY LAW OR APPROVED BY THE SUPERVISOR OF RECORDS.
- FEES MAY BE WAIVED OR REDUCED UPON A SHOWING THAT PRODUCTION OF THE REQUESTED RECORDS ARE IN THE PUBLIC INTEREST BECAUSE THEY ARE LIKELY TO CONTRIBUTE SIGNIFICANTLY TO THE PUBLIC UNDERSTANDING OF THE OPERATIONS OF THE GOVERNMENT AND DISCLOSURE IS NOT PRIMARILY IN THE COMMERCIAL INTEREST OF THE REQUESTOR.

FEES FOR PUBLIC RECORDS

- FEES MAY ALSO BE WAIVED OR REDUCED UPON A SHOWING THAT THE REQUESTOR LACKS THE FINANCIAL ABILITY TO PAY THE FULL AMOUNT OF THE REASONABLE FEE.
- NO FEE WILL BE PERMITTED IF THE TOWN FAILS TO RESPOND TO A REQUESTOR WITHIN 10 BUSINESS DAYS



CONFLICT OF INTEREST

CHAPTER 268A

- YOU ARE LIKELY A MUNICIPAL EMPLOYEE FOR THE PURPOSES OF THE CONFLICT INTEREST LAW
 - APPOINTED OR ELECTED
 - PAID OR VOLUNTEER
 - REGULAR EMPLOYEE OR BOARD MEMBER
- REMINDER ~ THE APPEARANCE OF A CONFLICT MAY VIOLATE THE LAW
- REMINDER ~ OFTEN, YOU MAY NOT HOLD MULTIPLE POSITIONS
- REMINDER ~ YOU MAY NOT ACT ON A MATTER IN WHICH YOU HAVE A FINANCIAL INTEREST
- REMINDER ~ YOU MAY NOT APPEAR ON BEHALF OF A THIRD PARTY BEFORE A TOWN BODY
- REMINDER ~ YOU MAY NOT ACCEPT GIFTS, Bribes OR USE YOUR POSITION TO INFLUENCE A RESULT
- REMINDER ~ YOU MAY BE BARRED FROM ACTING ON MATTERS AFTER YOU LEAVE YOUR POSITION

GIFTS

- AS NOTED ABOVE, GIFTS OVER \$50 GENERALLY PROHIBITED.
- EXEMPTIONS
 - GIFTS TO GROUP — EXAMPLE — FIRST RESPONDERS / BANK
 - GIFTS NOT RELATED TO OFFICIAL POSITION:

PUBLIC EMPLOYEES MAY ACCEPT ANY GIFT THAT IS ENTIRELY UNRELATED TO OFFICIAL ACTION BY THE PUBLIC EMPLOYEE, AND TO THE PUBLIC EMPLOYEE'S OFFICIAL POSITION, AND TO THE PUBLIC EMPLOYEE'S PERFORMANCE OF OFFICIAL DUTIES, FROM PERSONS OTHER THAN LOBBYISTS, BECAUSE THESE GIFTS ARE NOT PROHIBITED BY M.G.L. c. 268A, §§ 3, 23(B)(2), AND 23(B)(3). NO DISCLOSURE IS REQUIRED AT THE TIME OF ACCEPTANCE OF THESE GIFTS, BUT IF A MATTER INVOLVING THE GIVER COMES BEFORE THE PUBLIC EMPLOYEE DURING THE SIX MONTHS FOLLOWING SUCH ACCEPTANCE, OR IF SUCH A GIFT FOLLOWS ANY OFFICIAL ACTION BY THE EMPLOYEE INVOLVING THE GIVER WITHIN SIX MONTHS, THE EMPLOYEE MUST MAKE A WRITTEN PUBLIC DISCLOSURE CONCERNING THE GIFT PURSUANT TO M.G.L. c. 268A, § 23(B)(3), USING THE PROCEDURE EXPLAINED IN 930 CMR 5.07(2).



THE END

