



Allen Nitschelm <allen@thehomesteader.com>

## Your Open Meeting Law Complaint Concerning April 26, 2017 Acton-Boxborough Regional School Committee Executive Session Meeting

1 message

**Ebb, Peter L.** <Peter.Ebb@ropesgray.com>  
To: "allen@thehomesteader.com" <allen@thehomesteader.com>  
Cc: "Ebb, Peter L." <Peter.Ebb@ropesgray.com>

Mon, Aug 21, 2017 at 6:51 PM

Dear Mr. Nitschelm:

As you are aware, the April 26 executive session minutes, to which you refer in your complaint (a copy of which is attached), were released by the School Committee in redacted form to protect the legitimate and legally-guaranteed privacy rights of the individuals they concern. It is obvious from your complaint that you have reviewed an unredacted version of those minutes, which I understand you claim was revealed to you by a manipulation of the redacted pdf that you were given. That the unredacted minutes are now in your possession does not change the school committee's obligation to respect, and to do all that it can do to preserve, the privacy interests which led to the minutes being produced in redacted form in the first place. Accordingly, the Committee will not engage in a discussion about the content of minutes which should never have become public at all, since to do so would only compound the impingement on personal privacy which already has occurred. I can, however, address several of the general assumptions which underlie your complaint, without needing to reference the specifics of any particular document, or of the executive session discussions which may have occurred.

Your complaint assumes that any discussion of a superintendent's job performance can only be done in open session, even if that performance is being discussed solely for the purpose of determining whether to impose discipline, or in connection with the hearing of a complaint. This is simply not the case. While it is true that a complaint against a public employee may factor into a later performance evaluation, or that earlier performance may be an important part of any disciplinary decision, the hearing of the actual complaint or the determination of whether to impose discipline is, by the express terms of the Open Meeting Law, appropriately done in executive session. See Mass. Gen. L. Chapter 30A, Section (a)(1) (executive session authorized "to discuss the discipline or dismissal of, or complaints or charges brought against, a public . . . employee"). As the Attorney General's Office has found on a number of occasions, a public body's consideration of the job performance of a public employee may properly be undertaken in executive session, to the extent that the job performance is part and parcel of hearing a complaint against the public employee or central to considering disciplinary action with respect to that employee. See, e.g., OML 2012 – 10 ("Where, as here, the discussion of professional competence is not in the context of an evaluation, but rather is discussed as a factor to be considered in [deliberations properly held in a closed meeting], it is appropriate for executive session.").

You further suggest that a public statement by the School Committee violates the Open Meeting Law if it diverges semantically from discussions held in executive session. The School Committee believes that no such divergence exists in the present circumstances. In any event, the Open Meeting Law governs the conduct of meetings of a public body and the maintenance of minutes of those meetings; it nowhere purports to create a test of semantic congruity between those minutes and subsequent statements concerning decisions that were lawfully reached.

If required, the School Committee is prepared to submit the unredacted minutes to the Attorney General's Office for an *in camera* review, and to discuss with that office the connection between the issues considered and the stated, lawful purpose of the meeting. For the reasons noted above, however, the Committee properly held the discussions reflected in those minutes in executive session, and its subsequent public statements were in no way a violation of the Open Meeting Law.