



Kitty Axelson-Berry
89 Stony Hill Road
Amherst, MA 01002
axelsonberryk@gmail.com

November 2, 2021

VIA email

Re: Open Meeting Law Complaint Received October 12, 2021

Dear Ms. Axelson-Berry:

The Community Resources Committee (CRC) is in receipt of your Open Meeting Law Complaint (attached), received on October 12, 2021. On October 29, 2021, the Community Resources Committee received an extension of time until November 4, 2021 from the Division of Open Government to respond to this Complaint. On November 2, 2021, the Community Resources Committee met in an open meeting to respond to the Complaint and **voted ___ to submit this response.**

In your complaint, you allege that the CRC violated the open meeting law on August 24, September 14, and September 28, 2021 by stating “Minutes have not been made available to the public”, specifically alleging that the minutes for the following meetings have not been made available to the public:

- May 11, 2021;
- May 19, 2021;
- June 3, 2021;
- July 21, 2021;
- August 24, 2021;
- September 14, 2021; and
- September 28, 2021.

Your requested action is to make minutes of “all recent meetings...available to the public.”

In the first instance, the **CRC responds that there is no alleged violation of the Open Meeting Law, MGL Ch. 30A, Sections 18-25 in your complaint.** Specifically, the potentially relevant section of the Open Meeting Law, MGL Ch. 30A, Sec. 22, to your complaint states the following in part:

“(a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.

“...(c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.”

You do not allege that minutes were not created or maintained. You also do not allege that minutes were not “created and approved in a timely manner.”



Further, as far as the CRC is aware, you have never made a formal request to the CRC under MGL Ch. 30A, Sec. 22(c) that the minutes of any of these meetings be made available to you, nor have you alleged that the Town of Amherst, or the CRC failed to comply with such a request within 10 days. (See [Frequently asked questions about the Open Meeting Law | Mass.gov](#) for an explanation of requirements).

Instead, you chose to file a Complaint alleging generally that “minutes have not been made available to the public” without first making a request to the CRC to provide the minutes. Therefore, CRC responds that there has been no violation of the Open Meeting Law alleged, and therefore no action on its part is required.

However, even if, *arguendo*, you have alleged a violation of MGL Ch. 30A Sec. 22 in your complaint, the CRC responds that it has not violated the provisions of sections 22(a) or (c) and provides you the following information regarding each set of meeting minutes you identified in your complaint:

May 11, 2021 Meeting Minutes

CRC maintains there was no violation of the Open Meeting Law with respect to these minutes, as the minutes were “created and approved in a timely manner.”

- At the time you emailed your complaint to the CRC Chair, the minutes of the May 11, 2021 meeting were available online in the May 25, 2021 online meeting packet.¹
- CRC adopted the minutes of the May 11, 2021 meeting at its May 25, 2021 meeting, as presented.
- The adopted May 11, 2021 meeting minutes were placed in the “Meeting Minutes”² online archive on October 29, 2021, after the Chair realized they had not been posted there.

May 19, 2021 Meeting Minutes

CRC maintains there was no violation of the Open Meeting Law with respect to these minutes, as it is unaware of any guidance on the definition of “timely”. Further, even if the Attorney General determines that these minutes were not “created and approved in a timely manner,” CRC has remedied any alleged violation.

- The May 19, 2021 CRC Meeting was a joint meeting with the Amherst Planning Board. The general practice of the CRC (and the Town Council) when joining another public body at that public body’s meeting is to wait for the other public body to adopt the minutes of the meeting prior to the CRC adopting the minutes, in order to lessen the risk that the minutes of the joint portion of the meeting are different.

¹ All CRC Meeting Packets can be found here: <https://www.amherstma.gov/DocumentCenter/Index/3575>, with folders dated for specific meetings.

² While CRC draft meeting minutes can be found in the meeting packets for which they are on the agenda to be adopted, once adopted, they are also generally placed in an archive folder of all meeting minutes, for ease of access to the public. That folder can be found here: <https://www.amherstma.gov/DocumentCenter/Index/3574>.



-
- At the time you emailed your complaint to the CRC Chair, it is the understanding of the CRC that the minutes of the May 19, 2021 meeting were not yet in draft form, let alone adopted by the Planning Board. The CRC Chair had been regularly checking to see if the draft minutes were available or adopted, so that she could bring them to CRC.
 - On October 29, 2021, late in the afternoon, the CRC Chair saw that draft minutes of the May 19, 2021 Joint Meeting were available. Despite the general practice of waiting until the other public body adopts the minutes, the CRC Chair placed a modified set of those draft Planning Board minutes from the joint meeting (removing only the non-CRC portion of the meeting from the minutes) in the online packet for the November 2, 2021 Special CRC Meeting, with the intention of seeking adoption of the minutes at the special meeting under the “Items Not Anticipated 48 Hours in Advance). The CRC Chair did this in recognition that the minutes should be adopted as soon as practicable after they are available, and in light of the complaint filed.
 - CRC adopted the minutes of the May 19, 2021 meeting at its November 2, 2021 meeting, as presented.
 - The CRC Chair will request the adopted May 19, 2021 meeting minutes be placed in the Meeting Minutes online archive no later than November 3, 2021.

June 3, 2021 Meeting Minutes

CRC maintains there was no violation of the Open Meeting Law with respect to these minutes.

- CRC did not hold a meeting on June 3, 2021. The meetings that were noticed, and for which packets were created, were cancelled.

July 21, 2021 Meeting Minutes

CRC maintains there was no violation of the Open Meeting Law with respect to these minutes, as it is unaware of any guidance on the definition of “timely.” Further, even if the Attorney General determines that these minutes were not “created and approved in a timely manner,” CRC has remedied any alleged violation.

- The July 21, 2021 CRC Meeting was a joint meeting with the Amherst Planning Board. The general practice of the CRC (and the Town Council) when joining another public body at that public body’s meeting is to wait for the other public body to adopt the minutes of the meeting prior to the CRC adopting the minutes, in order to lessen the risk that the minutes of the joint portion of the meeting are different.
- At the time you emailed your complaint to the CRC Chair, it is the understanding of the CRC that the minutes of the July 21, 2021 meeting were not yet in draft form, let alone adopted by the Planning Board. The CRC Chair had been regularly checking to see if the draft minutes were available or adopted, so that she could bring them to CRC.
- On October 18, 2021, the CRC Chair received a copy of the draft Planning Board minutes for the July 21, 2021 meeting. Despite the general practice of waiting until the other public body adopts the minutes, the CRC Chair placed a modified set of those draft Planning Board minutes from



the joint meeting (removing only the non-CRC portion of the meeting from the minutes) in the online packet for the October 26, 2021 CRC Meeting. The CRC Chair did this in recognition that the minutes should be adopted as soon as practicable after they are available, and in light of the complaint filed.

- CRC adopted the minutes of the July 21, 2021 meeting at its October 26, 2021 meeting, as presented.
- The adopted July 21, 2021 meeting minutes were placed in the “Meeting Minutes” online archive on October 27, 2021.

August 24, 2021 Meeting Minutes

CRC maintains there was no violation of the Open Meeting Law with respect to these minutes, as the minutes were “created and approved in a timely manner.”

- At the time you emailed your complaint to the CRC Chair, the minutes of the August 24, 2021 meeting were available online in the September 28, 2021 online meeting packet.
- CRC adopted the minutes of the August 24, 2021 meeting at its September 28, 2021 meeting, as presented.
- The adopted August 24, 2021 meeting minutes were placed in the “Meeting Minutes” online archive on October 12, 2021.

September 14, 2021 Meeting Minutes

CRC maintains there was no violation of the Open Meeting Law with respect to these minutes, as the minutes were “created and approved in a timely manner.”

- At the time you emailed your complaint to the CRC Chair, the minutes of the September 14, 2021 meeting were available online in the September 28, 2021 online meeting packet.
- CRC adopted the minutes of the September 14, 2021 meeting at its September 28, 2021 meeting, as presented.
- The adopted September 14, 2021 meeting minutes were placed in the “Meeting Minutes” online archive on October 12, 2021.

September 28, 2021 Meeting Minutes

CRC maintains there was no violation of the Open Meeting Law with respect to these minutes, as the minutes were “created and approved in a timely manner.”

- At the time you emailed your complaint to the CRC Chair, the minutes of the September 28, 2021 meeting were available online in the October 12, 2021 online meeting packet.
- CRC adopted the minutes of the September 28, 2021 meeting at its October 12, 2021 meeting, as presented.



- The adopted September 28, 2021 meeting minutes were placed in the “Meeting Minutes” online archive on October 12, 2021.

In further response, CRC states that CRC has been diligent in adopting its meeting minutes and the CRC Chair has been diligent in finalizing the adopted minutes and then requesting the Clerk of the Council place the adopted minutes in the “Meeting Minutes” online archive, in order for the public to have easy access to the minutes, thereby lessening the need for residents to ask the Chair or the official public records official of the Town for a copy of the minutes. Such actions exceed the requirements of the Open Meeting Law and Public Records Laws.

In the future, CRC requests that if you wish to have a copy of the minutes of a CRC meeting and you cannot locate them online, you first ask the Committee Chair or the Clerk of the Council for a copy. If you had done so, you would have received copies of the four sets of minutes that were already on the website and you would have been notified that the June 3rd meeting had been cancelled. Regarding the other two sets of minutes that were not on the website at the time you filed your complaint, you would have been notified of the situation and a mutually agreeable solution may have been able to be worked out without the need for you to file this formal complaint with the Commonwealth.

Given the above outline of information, CRC maintains that this matter should be resolved in the Committee’s favor and further states that you have access to all minutes you were seeking access to and therefore, even if there was a violation, any such alleged violation has been remedied in a timely manner.

Yours,

Mandi Jo Hanneke, Chair
Community Resources Committee

On behalf of the Community Resources Committee:

Shalini Bahl-Milne, Vice Chair
Mandi Jo Hanneke, Chair
Dorothy Pam
Evan Ross
Steve Schreiber

CC: Division of Open Government, Massachusetts AGO, via email openmeeting@state.ma.us

Encl: Axelson-Berry Open Meeting Law Complaint received on October 12, 2021