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 Office of the Attorney General's Division of Open Government is responsible for interpreting and enforcing the Open Meeting Law. Pursuant to G.L. c. 30A, §23, the Open Meeting Law requires that complaints must first be filed with the public body that is alleged to have committed the violation, prior to filing a complaint with the Attorney General.

The complaint must be filed with the public body within 30 days of the alleged violation, or if the alleged Open Meeting Law 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. The complaint must set forth the circumstances which constitute the alleged violation, giving the public body an opportunity to remedy the alleged violation.

Please complete the entire form, providing as much information as possible, to assist the public body in responding to your complaint. The Division of Open Government will not, and public bodies are not required to, investigate anonymous complaints. You may attach additional materials to your complaint if necessary. The public body may request additional information if necessary.

For complaints alleging a violation of the Open Meeting Law by a local public body, you must file with the public body and file a copy with the clerk of the city or town where the alleged violation occurred. For complaints alleging a violation by a county, regional or state public body, you must file with the chair of the public body.

If you are not satisfied with the action taken by the public body in response to your complaint, you may file a copy of your complaint with the Attorney General's Office 30 days after filing your complaint with the public body. The Attorney General's Office may decline to investigate a complaint that is filed with the Attorney General's Office more than 90 days after the alleged OML violation, unless an extension was granted to the public body or the complainant demonstrates good cause for the delay.

The complaint must include this form and any documents relevant to the alleged violation. A complaint may be filed either by mail or by hand:

Office of the Attorney General
Division of Open Government
One Ashburton Place
Boston, MA 02108

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: Jonathan Last Name: Lothrop

Address: 18 Willow Lane

City: Pittsfield State: MA Zip Code: 01201

Phone Number: +1 (413) 281-0994 Ext.

Email: jlothrop@berkshire.rr.com

Organization or Media Affiliation (if any): Pittsfield City Councilor

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): Pittsfield Public Employees Committee (PEC)

Specific person(s), if any, you allege committed the violation: See Attached six page letter, which details the allegations of a series of violations of the Open Meeting Laws

Date of alleged violation: Sep 29, 2014

2014 OCT 24 A 9:13

CITY OF PITTSFIELD, MA
RECEIVED
CITY CLERK

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.

See the attached six page letter.
This space is limited to 3000 characters.
My complaint is far longer.

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.

See attached six page letter for full detail for the reasons for this requested remedy.
My requested remedy exceeds 500 characters.

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, will be considered a public record and available to any member of the public upon request. In response to such a request, the AGO generally will not disclose 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: Jonathan Lothrop

Date: 10-24-14

For Use By Public Body
Date Received by Public Body:

For Use By AGO
Date Received by AGO:

Jonathan Lothrop
Pittsfield City Councilor, Ward 5
18 Willow Lane
Pittsfield, MA 01201
jlothrop@pittsfieldch.com
413-281-0994

October 23, 2014

Gerald Miller, Chair
Brendan Sheran, Vice-Chair
Pittsfield Public Employee Committee
Pittsfield City Hall
70 Allen Street
Pittsfield, MA 01201

Dear Chairman Miller and Vice-Chairman Sheran:

Pursuant to G.L. c. 30A, Section 23 of The Open Meeting Law ("OML"), I am providing notice to the Public Employee Committee ("PEC") of a formal complaint alleging facts and circumstances leading up to the PEC's vote to leave the state's Group Insurance Commission ("GIC") and join the Blue Cross/Blue Shield of Massachusetts ("BC/BS") which constitute a violation of the Open Meeting Law. As a result of these violations of the Open Meeting Law, the public, municipal taxpayers and city employees were deprived the opportunity to participate in important discussions regarding municipal finances and health insurance coverage provided to municipal employees, retirees, and their families. To remedy these violations, the PEC must rehold all meetings, deliberations, and votes to leave the GIC and join BC/BS in compliance with the Open Meeting Law and the GIC should be notified that the decision to leave the GIC was made in violation of the OML.

The purpose of the Open Meeting Law is to ensure transparency in the deliberations on which public policy is based. Because the democratic process depends on the public having knowledge about the considerations underlying governmental action, the Open Meeting Law requires, with some exceptions, that meetings of public bodies be open to the public. It also seeks to balance the public's interest in witnessing the deliberations of public officials with the government's need to manage its operations efficiently.

With certain exceptions, all meetings of a public body must be open to the public. A meeting is generally defined as "a deliberation by a public body with respect to any matter within the body's jurisdiction." A deliberation is a communication between or among members of a public body.

These four questions will help determine whether a communication constitutes a meeting subject to the law:

1) is the communication between members of a **public body**;
2) does the communication constitute a **deliberation**;
3) does the communication involve a matter within the body's **jurisdiction**; and
4) does the communication fall within an **exception** listed in the law.

Any multi-member board, commission, committee or subcommittee of a city, if established to serve a public purpose, is subject to the law. The law includes any multi-member body created to advise or make recommendations to a public body, and also includes the governing board of any local housing or redevelopment authority, and the governing board or body of any authority established by the Legislature to serve a public purpose.

The City of Pittsfield's Public Employees Committee is created pursuant to G.L. c. 32b, Section 19, which provides the form and manner in which municipalities shall provide health insurance to their employees. As a creation of state law, the PEC is not an ad hoc or purely advisory subcommittee to the Mayor, but instead formally represents the interests of both municipal employees and retirees in the negotiating process regarding health insurance coverage which will be provided by a municipality. For these reasons, the PEC is a public body which must comply with the Open Meeting Law.

The Open Meeting Law defines deliberation as "an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction." Discussions regarding which health insurance plan should be offered by the City of Pittsfield is a deliberation covered by the Open Meeting Law.

The Open Meeting Law applies to the discussion of any "matter within the body's jurisdiction." Under G.L. c. 32B, the only subject under the jurisdiction of the PEC is health insurance plans provided by a municipality.

For local public bodies, meeting notices must be filed with the municipal clerk sufficiently in advance of a public meeting to permit posting of the notice at least 48 hours in advance of the public meeting. Meeting notices must be posted in a legible,

easily understandable format; contain the date, time and place of the meeting; and list all topics that the chair reasonably anticipates, 48 hours in advance, will be discussed at the meeting. The list of topics must be sufficiently specific to reasonably inform the public of the issues to be discussed at the meeting.

There is no applicable exception to the Open Meeting Law that applies to these deliberations of a public body that would allow the PEC to hold these discussions outside of the public's view.

As a member of the Pittsfield City Council, I received an e-mail from a constituent on Sunday, September 28th stating that the City of Pittsfield's Public Employees Committee (PEC) was on the verge of voting to leave the State GIC Health Insurance Plan and to join the Blue Cross and Blue Shield (BC/BS) of Massachusetts. Further, I was advised that a planned vote by the PEC was scheduled for the following day on Monday, September 29, 2014.

I was further informed that to meet the State GIC Deadline to withdraw from its coverage starting on July 1, 2015, that the GIC needed to be notified by October 1, 2014. Given the short window of time, a vote was needed by the PEC to endorse the BC/BS proposal. I further learned that there had been a previous proposal that had been rejected by the PEC earlier in the summer; however, the exact date of this vote in unknown to me at this time.

Also on September 28th, I contacted the Vice-Chair of the PEC, Brendan Sheran, by e-mail and asked to speak with him urgently about this matter. Mr. Sheran kindly responded that same day and we did have an extensive and pleasant conversation regarding the matter. Mr. Sheran stated that the PEC had been meeting regularly over the past several months and that an earlier proposal had been rejected. He further confirmed the constituent's assertion that a vote by the PEC was to be held the next day on September 29th where it was possible they would be endorsing the BC/BS proposal.

It should be noted that I expressed my concern about the Pittsfield City Council being left out of the loop, having no knowledge of this proposal or negotiation with BC/BS until the e-mail from the constituent today. I further noted the fact that the Pittsfield City Council had voted as a Legislative body to join the GIC (in 2008) and asked how could it be that we were never asked to vote to leave the GIC? Mr. Sheran understood the concern relative to the City Council being uninformed. In fairness to Mr. Sheran, that is not his responsibility.

The following day (September 29th), I again asked Mr. Sheran to let me know the outcome of any vote by the PEC. Mr. Sheran advised me late in the day on Monday, September 29th that the PEC had indeed voted (by weighted vote) to accept the BC/BS proposal. Again, this was all done in order for Pittsfield Mayor Daniel Bianchi to notify the GIC that the City would be exiting by the required October 1st deadline, as outlined in Massachusetts General Law.

The Pittsfield City Council was officially notified of this pending action (to leave the GIC and go to BC/BS) when Mayor Bianchi submitted a report to the City Council for its October 14th regularly scheduled meeting.

Between September28, 2014 and the City Council meeting on October 14th, I heard from a number of active and retired employees who reported that they had no idea of this pending negotiation. Other members told me they had no idea about these negotiations until just a few days prior to the vote to leave the GIC.

At the Pittsfield City Council Meeting, we received a presentation from representatives of BC/BS and the Massachusetts Interlocal Insurance Agency (MIIA). During this presentation, it was stated by representatives of MIIA and BC/BS that there were numerous meetings between these groups and the Pittsfield PEC that took place throughout 2014. In addition, it was represented that the PEC held numerous public meetings to brief their members.

It was at this point during the BC/BS presentation that I began to grow concerned about whether the Pittsfield PEC had, in fact, complied with the Open Meeting Law (OML). I asked questions of BC/BS and was assured that "public meetings" had been posted and that the media had attended some of them. Later in the presentation/dialogue with City Councilors, the Pittsfield City Solicitor Kathleen Degnan stated that the PEC had not been subject to the OML requirements because "they were "informational" or matters of "negotiation," not subject to being "an open meeting."

During this City council Meeting, during my time to debate and ask questions, I noted that I had done a quick search of the last two months of the City website where Public Meetings were posted, and had been unable to locate any reference to the Pittsfield PEC being listed. There should have been multiple listings for the final week of September, but I was unable to see them listed. Further, I asked City Clerk, Linda Tyer if all public bodies in the City were required to file Public Meeting Notices through her office? Clerk Tyer responded that Public Meetings/Open Meetings were filed with her office and were posted on-line on the City Website, on the Locked Bulletin Board

outside the Clerk's office, and on their Electronic Bulletin Board which is visible outside one of the entrances of City Hall.

After the conclusion of the Pittsfield City Council meeting, I personally spoke to iBerkshire's (a local on-line newspaper) reporter Joe Durwin about the Open Meetings Law and whether he was aware of any postings that he could recall seeing or attending for the PEC. Mr. Durwin stated that he had seen one meeting notice earlier in the process, but could not recall the exact date. Mr. Durwin further stated that he attended the meeting personally to report on it, but that this point there was no proposal on the table, so there was no story to report.

Three days after the City Council Meeting, on October 17, 2014, I e-mailed a Public Records Request to the Pittsfield City Clerk, Linda Tyer, asking for any and all records relating to the Pittsfield PEC's public meeting postings, minutes and agenda's for 2014. I received a response from Clerk Tyer the same day indicating that the only document the City Clerk's Office had for the Pittsfield PEC was one (1) Open Meeting Notice to be held on Monday, August 18, 2014 at 3 PM at the Pittsfield Senior Center. This is the sole document on file with the City Clerk's office for the PEC in 2014.

I also made an e-mail request for a Public Records Request to Mayor Bianchi and Solicitor Degnan on Friday, October 17th with the same request for documents, agenda's and minutes of these meetings as had been requested of the City Clerk. As of 8:00 AM on October 23, 2014, I have received no response of any kind from either the Mayor or the Solicitor.

Based on my experience in learning about the PEC, it seems clear that the representative of BC/BS, MIIA, Mr. Sheran of the PEC and the Mayor all indicated that a series of meetings took place over the summer of 2014 to discuss a possible switch from the GIC to BC/BS. In fact, there was one meeting earlier in the summer where the PEC reportedly unanimously voted down the initial proposal. The exact date of this meeting in unknown to me.

Further, it seems clear that a series of meetings were held between BC/BS, the Mayor (or his representative) and the PEC during the final week of September. The exact dates and times of these meeting is currently unknown to me, other than the meeting on Monday, September 28th where the PEC reportedly voted took to leave the GIC and to join BC/BS, as confirmed by Mr. Sherin.

In short, it seems highly likely that the OML was violated on numerous occasions.

I am requesting the following:

1. That all documents (agenda's, roll calls of members present and those absent, roll call votes taken, meeting minutes, proposals and correspondence between the PEC, the Mayor's office, BC/BS, MIIA and any other party relative to the switch to BS/BS be made public by filing them all with the Pittsfield City Clerk where they can be open to public inspection or copying.
2. That the dates, times and location of all PEC meetings in 2014 be made public.
3. That any, and all votes taken by the Pittsfield PEC that were not taken at a publically posted public meeting be invalidated as illegal.
4. Further, that any future Public meetings of the PEC, including any that are called in order to "Cure" or address these allegations be specifically noticed to the Pittsfield City Council so that it can be notified of these proceedings.
5. That the Massachusetts GIC be advised of the improper and illegal votes taken by the PEC invalidate the City's notification to the GIC that the City of Pittsfield is withdrawn from the GIC coverage.

I look forward to your timely response to address and remedy these issues of concern. Please contact me at the address, e-mail or phone number listed on page one of this letter.

Sincerely,

10-24-14

Jonathan Lothrop Date
Pittsfield City Councilor

CC: Pittsfield City Clerk's Office

From: **Linda Tyer Cell** LTyer@pittsfieldch.com
Subject: **RE: Public records request**
Date: **October 17, 2014 at 2:59 PM**
To: **Jonathan Lothrop** jlothrop@pittsfieldch.com

Councilor Lothrop:

I have received your public records request dated October 18, 2014 wherein you requested "copies of any publicly posted meeting(s) notices, agendas, minutes or any other documents relating to this Committee that where processed, posted or filed through the Office of the City Clerk from January 1, 2014 through today, October 17, 2014." I have completed a review of the city clerk's records and found only one document related to your request. The document is a meeting notice that my office received on August 13, 2014. There is no fee for this documents.

Please let me know if you have any questions.

Linda M. Tyer, City Clerk
City of Pittsfield
70 Allen Street
Pittsfield, MA 01201
Phone:(413) 499-9361
Fax: (413) 499-9463

From: Lothrop, Jonathan
Sent: Friday, October 17, 2014 1:54 PM
To: Tyer, Linda
Subject: Public records request

Dear City Clerk Linda Tyer:

Please consider this a formal request for any, and all, records relating to the Public Employees

Committee which recently negotiated with the Mayor of the City of Pittsfield regarding the City's Health Insurance coverage. Specifically, I am requesting copies of any publicly posted meeting(s) notices, agendas, minutes or any other documents relating to this Committee that where processed, posted or filed through the Office of the City Clerk from January 1, 2014 through today, October 17, 2014.

Thank you,

Jonathan Lothrop
Ward 5 City Councilor.

PEC Meeting Notice.pdf

Public Meeting

The Public Employees' Committee for the City of Pittsfield will be meeting Monday August 18, 2014 at 3pm at the Senior Center to discuss future Health Insurance options for Municipal Employees and Municipal Retirees.