



# TOWN OF LINCOLN

## MIDDLESEX COUNTY MASSACHUSETTS

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**TO: Board**  
**FR: Tim**  
**DT: May 10, 2024**  
**RE: Open Meeting Law Discussion**  
**Social Media/List Serve Legal Issues & Best Practices**

Recent discussions regarding board and committee use of Lincoln Talk prompted me to ask Town Counsel to clarify the Open Meeting Law's restrictions on the use of social media, including listservs. The points below highlight the key legal considerations and suggested best practices. **The one-sentence summary is that Town officials may participate and post on social media, but they must avoid any discussions or "deliberations" with fellow board members and should limit their posts to simple factual points.**

#### Legal considerations:

- Board and committee members are permitted to be members of a listserv.
- Board and committee members' use of listservs should be limited, however.
- It is permissible for board and committee members to post information about meeting schedules and other basic administrative matters.
- It is also permissible for board or committee members to post basic factual information, including offering corrections to misstatements.
- It is impermissible, however, for a member of a board or committee to post a response to the posting of another member as doing so risks becoming a deliberation outside the confines of a properly convened public meeting.
- It is also impermissible for a board or committee member to use the listserv to engage in debate with fellow board members or the public.

#### Best practices:

- Lincoln Talk has a limited place among the Town's communication and outreach strategies. It is not the primary vehicle through which the Town communicates with its residents.
- Residents who post questions or concerns to Lincoln Talk should not expect that a town official will be responding.
- Instead, residents who have questions or concerns are encouraged to contact the relevant board or department directly. Contact information for boards and departments is available on the town's website. Residents who are not sure where to start are welcome to contact the Town Administrator's Office.

- There are multiple reasons why town officials should not respond to questions or concerns raised on Lincoln Talk including, as discussed above, board and committee members risk violating the Open Meeting Law; individual opinions may not reflect the opinion of the full board/committee; and, neither board members nor staff are assigned to monitor Lincoln Talk, and none should be responding unless authorized to do so.
- The Town's website is the most reliable source for official information. Oftentimes, the best response from a board or committee to a question raised on Lincoln Talk, if a response is warranted at all, would be to provide a link to the relevant page on the Town's website.
- Boards and committees should formally discuss their protocols for using Lincoln Talk and, if having decided to use Lincoln Talk, authorize a member and/or staff member to do so on behalf of the body.

Sources:

- The Attorney General's guidance on the subject ([Frequently asked questions about the Open Meeting Law | Mass.gov](#)) urges caution on the use of social media and list serv platforms.
- From the AG's FAQ:
  - May a member of a public body participate in a listserv?
    - It depends. A listserv is an electronic mailing list. A member of a public body may subscribe to a listserv. However, where a quorum of the members of a public body subscribe to a listerv, the public body risks unlawful deliberation. *Where a quorum of the members of a public body belong to a listserv, public body members cannot participate in discussions which involve subject matter within the jurisdiction of the public body without engaging in unlawful deliberation.* Therefore, we recommend that public body members use caution when joining or participating in listservs in which subject matters within the jurisdiction of their public body may be discussed.
- KP-Law Client Memo (The Open Meeting Law and Social Media -Potential Pitfalls by Attorney Brian Riley)

**Higgins, Timothy S.**

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**From:** Vaughn, Paula  
**Sent:** Wednesday, April 17, 2024 4:03 PM  
**To:** Margaret Olson; Lynn DeLisi (LDeLisi@challiance.org); Taylor, Gary; Ephraim Flint (ebflint@verizon.net); Craig Nicholson; Curtin, Jennifer  
**Subject:** FAQ's regarding Open Meeting Law

Hi all,

Below are some excerpts from the Mass.gov FAQ section on the Open Meeting Law. To read the full text, please use the following link.

<https://www.mass.gov/info-details/frequently-asked-questions-about-the-open-meeting-law#frequently-asked-questions-about-meetings->

Thanks!

Paula

## **Frequently asked questions about the Open Meeting Law: deliberation and electronic communication**

### **May a public body member communicate with other public body members over email?**

Yes, but only in limited circumstances. A member of a public body may email other public body members on matters within jurisdiction of a public body so long as the email does not reach a quorum of the public body. Communications between and among a quorum of a public body on matters within the jurisdiction of the public body must occur during a noticed meeting. G.L. c. 30A, §§ 18, 20. A public body member may lawfully email a quorum of the public body only to discuss scheduling a meeting, distribute a meeting agenda, or to distribute reports or documents to be discussed at a meeting, provided that no opinion of a member of the public body is expressed. See G.L. c. 30A, § 18.

### **May members of a public body communicate with the public through social media platforms such as Facebook, Twitter, and webpages?**

Yes, members of public bodies may communicate with members of the public through any social media platform. However, members of public bodies must be

careful not to engage in deliberation with the other members of the public body through such communications. If a member of a public body communicates directly with a quorum of the public body over social media platforms such as Facebook or Twitter, that communication may violate the Open Meeting Law. Public body members should proceed with caution when communicating via these platforms.

**May a members of a public body participate in a listserv?**

It depends. A listserv is an electronic mailing list. A member of a public body may subscribe to a listserv. However, where a quorum of the members of a public body subscribe to a listserv, the public body risks unlawful deliberation. Where a quorum of the members of a public body belong to a listserv, public body members cannot participate in discussions which involve subject matter within the jurisdiction of the public body without engaging in unlawful deliberation. Therefore, we recommend that public body members use caution when joining or participating in listservs in which subject matters within the jurisdiction of their public body may be discussed.

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## The Open Meeting Law and Social Media — Potential Pitfalls

The Open Meeting Law (OML) prohibits a quorum of a public body from deliberating outside of a properly posted public meeting about matters within the jurisdiction of that body. When the OML was revised in 2010, “deliberation” was expressly defined to include exchanges by email. There is ample precedent from the Attorney General’s Division of Open Government (“Division”) that a violation of the OML occurs when a quorum emails about official business. It is less clear, however, how the OML applies to social media, such as Facebook, Twitter or Instagram, where communication is typically less direct. In fact, there are an ever increasing number of social media formats that leave a record of written posts or other communications that could lead to OML violations. While there is no clear answer, members of multiple member bodies should approach the issue proactively, exercising caution to avoid social media exchanges that could result in a written exchange between a quorum of members in violation of the OML.

The Division found a violation of the OML when one board member sent an email to the other members expressing her opinion on a matter within the jurisdiction of that board, even though none of the other members responded. See OML 2012-93. In that case, the Division concluded that a single member had violated the OML by sharing her opinion with a quorum outside of a posted meeting. Trying to anticipate how this ruling would apply to exchanges on social media, consider the result if a board member posts a comment on her Facebook page concerning a pending application for a permit, and a majority of her fellow board members are Facebook “friends”. Is the fact that a quorum may have read the post enough to violate the OML? In the only formal determination concerning a Facebook post, the Division found no violation when a board of selectmen chairman posted an opinion on a matter before the board on his Facebook page, but the Division also specifically noted that the other Selectmen did not follow the chairman on Facebook. See OML 2013-27. This holding suggests that the Division could have found a violation if the other board members had access to each other’s Facebook pages, and that such a finding would have been even more likely if the other members posted comments in response to the original post.

Community social media platforms are often a constructive means for residents to exchange opinions and share ideas, and elected or appointed municipal board members may wish to similarly share their expertise, insight, and opinions. The Division recognizes that certain action taken by members of a multiple-member body may be “political” in nature, and has concluded that discussions between members of a public body may not violate the OML if they relate to a political statement. See OML 2012-10. However, the Division cautions that members of a board or committee must be “conscious, when formulating such statements, of the need to limit discussion to the political statement and avoid discussing matters that are within the public body’s jurisdiction”. The repercussions for making a mistake in this regard are potentially severe, ranging from an order that all posts be made part of a meeting record, to invalidating a vote or decision made by a board, or even imposing a fine for repeat offenses.

While the Division has not yet issued much formal specific guidance on this topic, here are some issues members of a public body should consider when using social media:

1. The safest course is to avoid “friending” or “following” members of your board or committee, and further to refrain from commenting on “friends of friends” posts on other members’ pages or sites as to any matter within the jurisdiction of your board or committee.
2. If you do choose to “friend” or “follow” other members, avoid posting with respect to applications, hearings or other specific matters that are pending or likely to be pending before your board. Note that in addition to avoiding OML issues, this proactive approach will also protect the public body from a charge that the body has violated the due process rights of the applicant.
3. If you do choose to post concerning municipal matters, such posts should be made in a broad fashion so as to address the remarks to the public, i.e., all followers or “friends”, rather than targeting just fellow board members. We anticipate that the Division would look to whether the member’s comments were intended to reach the quorum, similar to an email addressed to a quorum, as opposed to reaching everyone with access to the social media site. In other words, while simply posting a comment may not violate the OML, even if a quorum of board members are “friends”, calling them out in the post, and/or sending a direct message, would be likely to do so.
4. If you see a post from a fellow board member on a specific pending matter, do not write a comment or reply in any way. If needed, you may request that the chair include the topic on the notice for a properly posted meeting.
5. Comments made to a closed listserve format, where the member is presumably aware that their fellow board members will “receive” the comments, if challenged, would likely pose a significant risk of a violation for improper deliberation.

In summary, members of boards and committees do not cede all of their first amendment rights when they take office. However, great caution should be exercised when using any social media platform to discuss matters within a board member’s official jurisdiction, particularly if the board member is “connected” with a quorum of members of their multiple-member body. Such “discussions” occurring in the context of a public hearing or other quasi-judicial process may also create a very real risk of due process claims. Finally, if social-media statements are made by elected or appointed officials concerning municipal matters, ensure that it is clear such statements are made in the political context, such as using a “campaign” page or the like.

Please contact Attorney Brian W. Riley ([briley@k-plaw.com](mailto:briley@k-plaw.com)) or any member of the firm’s Government Access and Information Group at 617.556.0007 with further questions on the Open Meeting Law and social media.

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