

From: [Humbert, Jacob](#)
To: [Marilyn Bush](#)
Subject: Public Records Request
Date: Friday, October 28, 2022 7:06:18 AM
Attachments: [Finnie OML matter.pdf](#)

Marilyn Bush:

Attached please find the record responsive to your 10/14/22 records request, which you clarified on 10/19/22.

Thank you.

Jacob A. Humbert, Assistant Attorney General
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Pronouns: he/him/his

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August 2, 2022

Mr. Pat Finnie

[REDACTED]
Adamant, Vermont
05640

Sent email to Patrick Finnie - [REDACTED]

RE: Open Meeting Law Complaint

Dear Mr. Finnie,

I received your complaint that actions taken by the Selectboard of the town of Calais ("Selectboard") violated Vermont's Open Meeting Law, 1 V.S.A. § 310, *et seq.* ("OML"). I reviewed your allegations, and received input from the Selectboard and their attorney. Below are the facts gathered and my decision regarding your complaint.

Facts Presented

You made the following allegation:

I am writing to you in regards to a possible violation of the intent of the Vermont Open Meeting Law by the Selectboard of the Town of Calais. On July 6th a job description soliciting applicants for the newly created position of "Director of Public Works" appeared in the Calais Front Page Forum. On Thursday the 7th of July, I sent an email to the Select Board members expressing my angst over the lack of public notice about this new position. I waited until Monday the 11th of July, and having not heard back from the Select Board yet, I submitted a request on FPF that anybody please respond on FPF as to their knowledge, or lack thereof regarding the newly created position. That evening (July 11th) I attended the Select Board, and expressed my feelings about the way the issue was handled in person. I was allowed by Ms. Fannon, four minutes to express myself, and told that at the end of four minutes a bell would ring, and the board would move on to the next speaker. I may have used three minutes, and discretion being the better part of valor, decided to leave. As I stood up to leave another person who was there on another issue piped up and asked "so how much will this new position cost taxpayers?" My request on FPF was printed in the Tuesday 7/12/22 edition. As of today, Wednesday the 13th of July I have received four personal replies to me. Imagine my surprise when one of the respondents was Jeremy Weiss, the Calais Town

Clerk! I have included Jeremy's response with this letter as I believe that, at least to me, it speaks volumes about the lack of communication between the Select Board, and the people that they are elected to serve. I am hoping to see more replies on FPF tonight. Also included is correspondence between myself and the Secretary of State's Office. It was at the suggestion of Jenny Posser, the SOS General Counsel & Director of Municipal Assistance, that I am contacting you with my complaint. I have included all the correspondence with the select board, the Town Clerk, and the Secretary of State's office. There was someone videotaping the Select Board meeting, so that may (?) be available to view on the town web page soon. After reviewing this please reply with any suggestions, opinions, etc. Also, I would like to mention that one of your AAGs (Melanie Keane) is married to a Select Board member. I would ask that she be excluded from any communication or even knowledge of this matter.

The Selectboard provided the following information and chronology of public activity by the Selectboard regarding the director of public works position:

1. MAY 2, 2022

In a duly warned special meeting on May 2, 2022, the Selectboard warned the following item:

- Discuss creation of Director of Public Works position

Link to the May 2 agenda:

<https://www.calaisvermont.gov/index.asp?SEC=833E583B-1AE3-4118-BC9B-6CF53024A92C&DE=C154EDCA-EB98-4078-B471-1663E7093F8F>

The May 2 minutes are on the Town's website

(https://www.calaisvermont.gov/vertical/sites/%7B226D684E-C864-4AFA-B4A5-59BE32741B77%7D/uploads/2022-5-2_SB_draft_minutes.pdf) and reflect this summary:

Discuss creation of Director of Public Works position: The selectboard has previously mentioned that they are considering the creation of the position of director of public works in other open meetings. The delivery of municipal services has become more complicated and we are looking to integrate services among departments to best serve the needs of Calais and its residents. Some ideas for this position include facilities management, infrastructure, invasive species management, swim program and more.

While not clear in the minutes, during this meeting, the Board also discussed the aspects of the job description based on a draft job description that had been prepared.

2. JUNE 27, 2022

June 27 agenda at this link warns an executive session, if

necessary. Link: https://www.calaisvermont.gov/vertical/sites/%7B226D684E-C864-4AFA-B4A5-59BE32741B77%7D/uploads/6-27-2022_agenda.pdf

Coming out of executive session the Board carefully moved, and approved, several items, including giving final approval of the public works director job description. Those minutes are on the town's website at this link:

https://www.calaisvermont.gov/vertical/sites/%7B226D684E-C864-4AFA-B4A5-59BE32741B77%7D/uploads/6-27_and_6-28-2022_draft_minutes.pdf

The specific language from the minutes (bottom of page 5) state:

13. Executive Session pursuant to 1 VSA §313

At 8:40 pm, Rick Kehne moved to go into Executive Session for personnel related discussion. Seconded by Marc Mihaly, this motion was approved unanimously and the Board entered Executive Session. At 9:45 pm Marc Mihaly moved to come out of Executive Session, seconded by Rick Kehne and unanimously approved by the Board. By motion of Marc Mihaly, seconded by Rick Kehne, the Board voted unanimously to approve the following actions:

.....

4) The Board approved and signed the Director of Public Works job description and will post the ad in the Times Argus, Hardwick Gazette, FPF and website on Wednesday, July 6 with an application deadline of July 13, 2022.

The Board also made a motion and approved continuing the meeting to June 28 to discuss the position with Alfred Larrabee, the Town Road Commissioner. This appears in the June 27/28 minutes, as follows:

15. At 10:05 pm by motion of Rick Kehne, seconded by Marc Mihaly and approved unanimously by the Board, the Board continued this meeting to 7:45 pm on Tuesday, June 28, 2022, to meet with Alfred Larrabee and Toby Talbot (possible Executive Session) to discuss the position of Director of Public Works.

Then, in the meeting with Alfred Larrabee on June 28, the minutes state:

16. On Tuesday, June 28, 2022 at 7:53 pm at the Town Office the Board reconvened. The Board thanked Alfred for being available to meet and regrettably acknowledged that Toby Talbot was not available. The Board gave Alfred a copy of the signed job description and ad. The Board and Alfred discussed and answered questions about the need to create this position.

Findings

Based upon the above facts, I find that the Selectboard was not in compliance with the OML initially, as alleged, because they did not formally vote to create the position in question in accordance with 1 V.S.A § 312(a). However, I have determined that the Attorney General's Office will not file an enforcement action at this time, because the Selectboard has conceded and effectively cured the violation you cited by ratification in accordance with 1 V.S.A § 314 (4)(a) by taking publicly voting on the matter in a later warned meeting. Additionally, I have clarified with the Selectboard their legal responsibilities under the OML and received their assurance of compliance going forward. Of course, future violations can form the basis of a new complaint, and as described below you may bring a private right of action.

Additionally, please note that all citizens have the right to file an enforcement action under Vermont's Open Meeting law. For more information, you may wish to review the Vermont Secretary of State's guide to Vermont's Open Meeting law at: <https://www.sec.state.vt.us/media/786069/oml-rev-sept-2016.pdf> (see "How does a member of the public enforce the open meeting law?" page 13).

In addition, and to the extent you wish to speak with your own lawyer, the Vermont Bar Association offers a Lawyer Referral Service. Their attorneys provide an initial 30-minute consultation for no more than \$25. For more information about the Lawyer Referral Service, contact 1-800-639-7036 or visit: <https://www.vtbar.org/FOR%20THE%20PUBLIC/Find%20a%20Lawyer/Lawyer%20Referral%20Service%20Information.aspx>.

Kind Regards.

Michelle Anderson

Michelle Anderson
Assistant Attorney General