



SEARCH COMMITTEE PROTOCOL

The following procedures may be used as a general guideline for conducting a search for a position to be filled by a committee:

General Guidance:

- All provisions of the Open Meeting Law (“OML”) apply to the search committee, including the requirements for posting detailed meeting notices, convening open sessions prior to going into executive session, making the statement required prior to convening executive session, taking a roll call vote for such purposes, and keeping detailed minutes of all open meetings and executive sessions.
- As a general rule, matters discussed in executive session may not be publicly discussed or disclosed except in accordance with a vote of the search committee, particularly where privacy rights of individuals may be implicated.
- Communications between or among members in person, or by telephone, e-mail or social media are strongly discouraged in consideration of the importance of the work of search committees and the privacy issues at stake, and communications initiated by members of the search committee must be limited to scheduling purposes only.
- All provisions of the Public Records Law (“PRL”) apply, subject to the exemptions contained therein, meaning that the materials created by or submitted to the search committee are subject to the law and are subject to disclosure unless falling within one of the limited exemptions to the law.
- Members of the search committee are Municipal Employees for purposes of the Conflict of Interest (“COI”) Law and should be aware of the restrictions and obligations of the law; unless designated as “special”, this fact can vastly limit the ability of members to appear on behalf of others in matters in which the Town has a direct and substantial interest.

Procedures:

The below suggested steps are meant as a guide; variations may be made to suit a particular hiring situation, provided that the applicable provisions of state law, and local charter or bylaws, are observed.

Step 1: Establish Parameters of the Search Process – Open Session (whether done by the appointing body or the search committee)

- Develop job criteria, minimum qualifications and application procedures.
- Establish a procedure for issuance and receipt of applications and deadlines for submissions and decision making.
- Determine how many candidates will be recommended to the appointing body as finalists, so that it is clear when the search committee's work is done. (Must be more than one; at least one court has concluded that using the preliminary screening process to winnow applicants down to only one finalist, all in executive session, violates the OML).

Step 2: Receive and Discuss Applications – Executive Session if OML Conditions are Met (Note - Step 2 and Step 3 may occur in reverse order or simultaneously)

- Pursuant to G.L. c. 30A, §21(a)(8), the search committee may meet in executive session to consider or interview applicants for employment **if the chair declares** that an open meeting will have a detrimental effect in obtaining qualified applicants.
- Generally, the search committee may enter executive session if one or more candidates have stated that they wish their candidacy to be considered confidentially at the initial stages of the search process.
- At this initial stage, if confidentiality is invoked, the search committee may discuss in executive session each of the applications received and determine which candidates, if any, will be invited for the first round of interviews.

Step 3: Develop Interview Questions – Open Session

- Core questions should be developed by the search committee in open session prior to the interviews.
- It is generally recommended that each candidate be asked the same core questions.
- If there is interest in asking candidates questions for which they are required to provide an instinctive answer, each member of the search committee could be asked to prepare a single question for such purposes, and each candidate could be asked that question in executive session.

Step 4: First Round of Interviews – Executive Session if OML Conditions are Met

- The search committee may interview each candidate in executive session if the requirements of Purpose 8 of the Open Meeting Law are met, as described above.

- The search committee may discuss in executive session the merits of each candidate, and decide whether the candidate will be invited for a second round of interviews or named as a finalist to be recommended to the appointing body.

Step 5: Second Round of Interviews – If Applicable

- Additional candidates may be interviewed.
- Similarly, candidates previously interviewed may be called back for a second interview provided that number of eligible candidates has not dropped to the number of candidates the search committee has indicated will be recommended as finalists to the appointing body.

Step 6: Notify Finalists and Make Recommendation to the Appointing Body

- Once the search committee has recommended finalists to the appointing body, Purpose 8 of the Open Meeting Law no longer applies and the remainder of the process must be carried out in open session.
- Prior to making a recommendation, each finalist should be notified of the search committee's decision and given an opportunity to withdraw their name from consideration.
- If the process was conducted in executive session, only the names of the finalists who agree to be considered by the appointing body should be released publicly.

Step 7: Appointing Body Interviews Finalists – Open Session

- Once finalists have been recommended to the appointing body, such board or committee's consideration of such finalists must occur in open session, including interviews of the candidates identified as finalists.
- There is no limit on the number of times a particular candidate may be interviewed in open session.
- Executive session may only be used for strategy with respect to negotiations with non-union personnel, or to actually negotiate an employment contract; in our experience, the appointing body will often delegate this responsibility to a single member, and then have that person bring recommendations back to the entire board.
- If all interviews are unsuccessful, the search committee may be tasked to revisit the search process, starting as far back in the process as Step 1, or later in the process.

Open Meeting Law, Public Records Law, and Conflict of Interest Law Implications

As noted above, the Open Meeting Law, Public Records Law, and Conflict of Interest Law apply to screening committees and their members.

Open Meeting Law (“OML”) –

1. Meeting Notice - Screening committee meetings must be posted in accordance with the OML, and all meetings must first convene in open session. The screening committee must provide 48 hours posted notice of any meeting, Saturdays, Sundays, and legal holidays excluded. The agenda must include notice of an executive session (if one is to be held), and the general topics to be discussed.

For instance:

- “G.L. c.30A, §21(a)(8) - To review resumes of candidates as part of the preliminary screening process.”
 - “G.L. c.30A, §21(a)(8) - To conduct interviews of candidates as part of the preliminary screening process.”
 - “G.L. c.30A, §21(a)(8) - To screen candidates as part of the preliminary screening process.”
 - “G.L. c.30A, §21(a)(8) - To develop a short-list of candidates for further screening or to recommend to the Board of Selectmen.”
2. Determination of Chair - Where executive session is appropriate, both the Agenda and the motion to convene in executive session should state that the chairman has determined that an open meeting will have a detrimental effect in obtaining qualified applicants.
 - The chairman may only make this declaration if one or more candidates have stated that he or she wishes that their candidacy be considered during the preliminary screening stages only in executive session.
 - Candidates should be asked this question prior to the screening process. It is advisable to include this question on the application form.
 3. Roll Call Votes - Where an executive session is held, the vote to go into executive session and any votes taken during executive session must be by roll call. The vote to exit the executive session should also be by roll call. The vote to convene in executive session must state whether the screening committee will return to open session after the executive session.
 4. Detailed Minutes - Of course, detailed minutes of both open and executive session meetings must be kept. We recommend that the executive session minutes be kept separate and apart from the minutes of any open session. The names of candidates screened must be included in the minutes. Do not discuss any matters in executive

session that do not relate directly to the screening of candidates or were not included in the agenda notice. The minutes must include detailed information sufficient to identify the questions asked and the answers provided.

5. Provided that the preliminary screening process was appropriately conducted in executive session, the names and identifying details of candidates considered during the screening process who were not identified as finalists may be kept confidential even after the selection is made, which includes redacting such information from the executive session meeting minutes in response to a public records request for same. (Protection of privacy rights under G.L. c. 214, s.1B and Exemption (7) of the OML – to comply with the provisions of any general or special law).
6. General OML principles govern email communications between screening committee members, and even communications between committee members and applicants, board of selectmen, town employees or officials, and the like. As such, avoid the use of email except for scheduling purposes. (The chair of the screening committee or a staff member may send an email to committee members scheduling meetings and distributing information.) Screening committee members should never email each other or engage in any discussions by email. Avoid sharing ideas, beliefs, reflections, or opinions in email communications, and never use “reply to all”.

Public Records Law –

1. Emails of screening committee members that relate to the business of the committee, even if exchanged through private email addresses, are public records and must be retained and disclosed if requested and if no exemption from disclosure applies.
2. Of note, as the privacy interests held by applicants who do not reach the finalist stage are significant, it may be that the executive session minutes of the screening committee meetings may be withheld from disclosure under the Open Meeting Law as it operates through exemption (a) of the Public Records Law and under the first and second clauses of exemption (c) of the Public Records Law. . The application of these exemptions requires case-by-case analysis.
3. Application materials, including resumes, of candidates that are never considered in open session, may be withheld from disclosure in response to a public records request. Resumes of finalists (but not other application materials), discussed in open session, are public records.

Conflict of Interest (“COI”) Law –

1. Members of a screening committee are considered municipal “employees” for purposes of the COI Law. G.L. c. 268A, §23(C) provides, in relevant part:

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(c) No current or former officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

(1) accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority;

(2) improperly disclose materials or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were acquired by him in the course of his official duties nor use such information to further his personal interest.

2. As a result, it is a violation of the COI Law to reveal executive session information until the reason for the executive session no longer applies and the full committee votes to release the minutes.
3. Furthermore, a screening committee member may not participate in any matter in which the member or an immediate family member has a financial interest. Other prohibitions apply. If you are in doubt, contact the State Ethics Commission or Town Counsel (through the Town Manager's office.) If a screening committee member learns that an immediate family member, neighbor, friend, or business associate has applied for the position, the committee member should not participate any further in the screening process until an opinion has been issued with respect to the COI question.

Helpful Links

Attorney General's Open Meeting Law Website:

<http://www.mass.gov/ago/government-resources/open-meeting-law/>

Secretary of the Commonwealth Public Records Law:

<http://www.sec.state.ma.us/pre/preidx.htm>

State Ethics Commission Website:

<http://www.mass.gov/ethics>

Contact Information

Kopelman and Paige, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110
(617) 556-0007
514190

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Reasons for Convening Executive Session (M.G.L. c.30A, Sec. 21(a) – Effective July 1, 2010)

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or discuss the discipline or dismissal of, or complaints or charges against, a public officer, employee, staff member or individual. (*See Rights of Individuals – next page*)
2. To conduct strategy sessions in preparation for negotiations with non-union personnel or to conduct collective bargaining sessions or contract negotiations with non-union personnel.
3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares.
4. To discuss the deployment of or strategy regarding security personnel or devices, e.g., a sting operation.
5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints.
6. To consider the purchase, exchange, lease or value of real estate, if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body.
7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements.
8. **To consider or interview applicants for employment by a preliminary screening committee, if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants. This shall not apply to any meeting regarding applicants who have passed a prior preliminary screening.**
9. To meet with a mediator regarding any litigation or decision; provided that (i) any decision to participate in mediation shall be made in open session and the parties disclosed and (ii) no action shall be taken with respect to the issues involved without deliberation and approval of the action at an open session.
10. To discuss trade secrets or confidential or proprietary information regarding activities by a governmental body as energy supplier, municipal aggregator or energy cooperative, if an open session will adversely affect conducting business relative to other entities making, selling or distributing energy.

Procedures for Convening Executive Session

- 1. The meeting must be convened in an open posted session, with executive session listed on the agenda when reasonably anticipated by the chair.**
- 2. The chair states the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose of the executive session (and, under exemptions 3, 6, and 8, makes the required declaration).**
- 3. A majority must vote in a recorded roll call to go into executive session.**
- 4. The chair announces whether the meeting will reconvene in open session.**
- 5. Accurate minutes and other records of the executive session must be maintained, with all votes recorded by roll call.**

Rights of Individuals (Exemption 1)

- 1. When a governmental body wishes to discuss: (a) the reputation, character, physical or mental health of an individual; or (b) the discipline or dismissal of or complaints or charges brought against a public officer, employee, staff member or individual, it must notify that person in writing at least 48 hours in advance of the meeting, not including Saturdays, Sundays or holidays.**
- 2. Written notice may be waived by the individual.**
- 3. The individual may request that the meeting be held in open session.**
- 4. If an executive session is held, the individual has the right to be present for deliberations and to speak, and to have counsel or a representative of choice present for the purpose of giving advice but not for active participation.**
- 5. The individual may have an independent record of the executive session created by audio recording or transcription, at the individual's expense.**