

# COMMITTEE ON OPEN GOVERNMENT

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## EXECUTIVE DIRECTOR

SHOSHANAH BEWLAY

November 12, 2024

*By Electronic Mail Only*

Charlie Specht  
Charlie.Specht@wgrz.com

*The Committee on Open Government is authorized to issue advisory opinions. The ensuing advisory opinion is based solely upon the information presented in your correspondence.*

Dear Mr. Specht:

This is in response to your request for an advisory opinion regarding meetings conducted by the Buffalo Water Board (Water Board). Please note that the Committee on Open Government (Committee) is authorized to provide information, guidance, and opinions regarding the Open Meetings Law (OML). Only a court may declare in a special proceeding pursuant to Article 78 of the Civil Practice Law and Rules that a “public body violated [the OML]” pursuant to Public Officers Law (POL) § 107(1).

In your correspondence to this office, you allege that although the Water Board maintains an office in Buffalo City Hall (City Hall), it holds its meetings at the Col. Francis G. Ward Pumping Station (Pumping Station). You further allege that the Pumping Station presents physical barriers to access that make it an unsuitable location for meetings of public bodies consistent with the OML. Of these physical barriers to access, you cite the relative difficulty of accessing the Pumping Station from the City of Buffalo due to the presence of a highway and its use of a security guard and gate.

POL § 103(b) provides that “[p]ublic bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision five of section fifty of the public buildings law.” The Committee has advised that the responsibility to make “all reasonable efforts” to permit barrier-free physical access to facilities means that, where a public body has the capacity to hold its meetings at multiple facilities, those meetings should be held in the location most likely to accommodate the needs of persons wishing to attend. See [OML-AO-3084](#). Similarly, POL § 103(d) provides that public bodies must make “all reasonable efforts to ensure that meetings are held in an appropriate facility which can adequately accommodate members of the public who wish to attend such meetings.” In our opinion, this use of the phrase “all reasonable efforts” in both sections of the OML creates an analogous obligation to hold meetings at the facility most likely to adequately accommodate any person who wishes to attend where a public body, such as the Water Board, has access to multiple facilities.

The geographic location of the Pumping Station, although separated by Interstate I-90 from downtown Buffalo, would not in our opinion make it an inaccessible venue to hold meetings of a public body. The Committee has advised that public bodies may hold meetings at locations that require attendees to pass through security protocols so long as those protocols treat all members of the public equally. See [OML-AO-3527](#). Additionally, and for clarity's sake, pursuant to its website, the Water Board holds its meetings in the Pumping Station Administration Building Conference Room, which because it is a conference room is presumably adequately equipped to hold meetings. It is unclear from your correspondence that a City Hall meeting location would be more likely to adequately accommodate members of the public than the Pumping Station, and therefore whether the Water Board has any obligation to hold its meetings at City Hall pursuant to the OML.

Next, you claim that the Water Board without advance notice cancelled its 9:00 am meeting on September 18, 2024. You state that notice of the cancellation (and rescheduling of the meeting for September 26, 2024) appeared only *after* 9:00 am on September 18 on the Water Board website. POL § 104(1) requires that “[p]ublic notice of the time and place of a meeting scheduled at least one week prior thereto” be given “at least seventy-two hours before such meeting.” POL § 104(6) requires that, “[w]hen a public body has the ability to do so,” notice should be “conspicuously posted” on the internet website of the public body. While no provision of the OML requires that a public body provide notice of the cancellation of a meeting, the notice of the rescheduled meeting must conform to the notice requirements of the OML. On September 18, when you state that the Water Board posted the notice of the rescheduled meeting on September 26 on its website, it was more than seventy-two hours prior to the rescheduled meeting date. Regardless of when the Water Board decided to cancel its September 18 meeting, the timeframe requirements for notice under POL § 104(1) would have been met as to the rescheduled September 26 meeting.

In the agenda posted on the Water Board website for the September 26 meeting, which also seems to serve as the online public notice for the meeting, the Water Board states: “[t]he meeting will be held in the Colonel Ward Water Treatment Facility Administration Building Conference Room located at 2 Porter Avenue, Buffalo, NY 14201 for all Water Board Members, and a few other designated attendees. Others may attend via video conference call through MSTeams.” POL § 103(a) requires that “[e]very meeting of a public body shall be open to the general public” except for executive sessions held pursuant to § 105. In other words, a public body has no authority to specifically designate or limit in person attendees of its meetings: anyone wishing to attend a public meeting has a statutory right to do so. As you noted, POL § 104(4) requires that, “[i]f videoconferencing is used to conduct a meeting, the public notice for the meeting shall . . . state that the public has the right to attend the meeting at any of the locations.” In our opinion, the notice provided on the agenda for the September 26 meeting did not comply with the requirements of § 104(4), as it only provided for the option of attending by videoconference and stated that only designated persons may attend the meeting in person at its physical location.

Finally, the Water Board website maintains a page collecting its meeting minutes through June 18, 2024. POL § 106(1) requires that “[m]inutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and vote thereon.” POL § 106(3) states, in relevant part, that:

[i]f the agency in which a public body functions maintains a regularly and routinely updated website and utilizes a high speed internet connection, such minutes shall be posted on the website within two weeks from the date of such meeting except that minutes taken pursuant to subdivision two of this section shall be available to the public within one week from the date of the executive session. For purposes of this subdivision unabridged video recordings or unabridged audio recordings or unabridged written transcripts may be deemed to be meeting minutes. Nothing in this section shall require the creation of minutes if the public body would not otherwise take them.

The Water Board's use of its website to post its meeting minutes generally establishes that its website is routinely updated. That the Water Board routinely makes use of videoconferencing to conduct its meetings establishes that it utilizes a high-speed internet connection. Therefore, to the extent that the Water Board took any action at a meeting requiring minutes subsequent to June 18, POL § 106(3) requires that the Water Board post those minutes to its website within two weeks of the meeting, or one week of an executive session.

Additionally, POL § 103-a(g) provides that "each meeting conducted using videoconferencing shall be recorded and such recordings posted or linked on the public website of the public body within five business days following the meeting, and shall remain available for a minimum of five years thereafter." At the time of this writing, no link to a recording of the September 26 meeting or any other meeting conducted using videoconferencing is available on the Water Board website, nor has it posted unabridged written transcripts to fulfill the requirements of either POL § 103-a(g) or § 106(3).

From the minutes that are available on the Water Board website, the board generally makes a motion at its meetings to approve the minutes from the meeting immediately prior. This practice is not required by the OML but is common among public bodies. The Committee has advised that "unapproved" or "draft" minutes may be marked as such, but still must be made available to the public within the timeframes required by POL § 106(3). See [OML-AO-5400](#).

Thank you for your inquiry.

Sincerely,

*s/ Miguel-Carlo Bautista*  
Excelsior Fellow