



# Cannabis Control Commission Public Meeting

Remote via Teams



## Meeting Book - Cannabis Control Commission Public Meeting

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#### Call to Order & Commissioners' Comments/Updates

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#### Commission Discussion & Votes

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#### Next Meeting Date & Adjournment

December 2, 2024

In accordance with Sections 18-25 of Chapter 30A of the Massachusetts General Laws and Chapter 2 of the Acts of 2023, notice is hereby given of a meeting of the Cannabis Control Commission. The meeting will take place as noted below.

CANNABIS CONTROL COMMISSION

**December 4, 2024**

**1:00 PM**

**Remote via [Microsoft Teams\\*](#)**  
**PUBLIC MEETING AGENDA**

- I. Call to Order
- II. Commission Discussion and Vote
  1. Open Meeting Law Complaint and Public Records Request *General Counsel, Associate General Counsel*
  2. Governance Charter Mediation Sessions Records Update *General Counsel, Associate General Counsel*
  3. Governance Charter Update *Acting Chair Bruce Stebbins*
- III. Executive Session

*Closed executive session under G. L. c. 30A, § 21(a)(2) to conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel and G. L. c. 30A, § 21(a)(3) to discuss strategy with respect to collective bargaining or litigation because the open meeting may have a detrimental effect on the bargaining or litigating position of the public body.*
- IV. New Business Not Anticipated at Time of Posting
- V. Next Meeting Date
- VI. Adjournment

\*Closed captioning available



*If you need reasonable accommodations in order to participate in the meeting, contact the ADA Coordinator Debra Hilton-Creek in advance of the meeting. While the Commission will do its best to accommodate you, certain accommodations may not be available if requested immediately before the meeting.*





# OPEN MEETING LAW COMPLAINT FORM

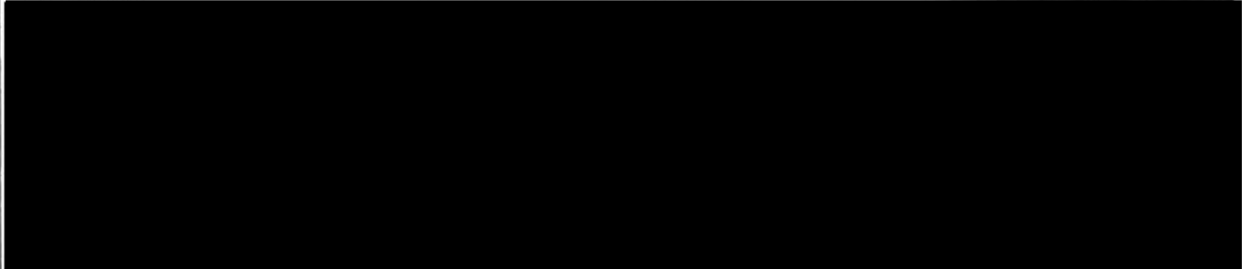
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

## Your Contact Information:

First Name: Shannon

Last Name: O'Brien



Organization or Media Affiliation (if any): \_\_\_\_\_

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):

Cannabis Control Commission

Specific person(s), if any, you allege  
committed the violation:

Date of alleged violation: Nov. 15, 2024

**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 attached document

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.

The meeting videos from all executive sessions regarding the governance charter should be immediately made public in an unredacted fashion.

**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, is considered a public record and will be available to any member of the public upon request.

**Publication to Website.** As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

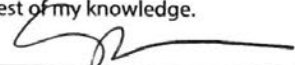
**II. Consulting With a Private Attorney.**

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](mailto: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: 

Date: Nov. 21, 2024

For Use By Public Body	For Use By AGO
Date Received by Public Body:	Date Received by AGO:

The CCC is refusing to fully release the videos of 04/24/23 Executive Session even though the purpose of these meetings is completed. The purpose of these meetings was to establish and clarify responsibility and communication between staff/Commissioners. The former Executive Director and General Counsel determined meetings could be held in secret, arguing that they were exempt from Open Meeting Law to allow a mediation to take place outside of a public meeting:

*"To meet or confer with a mediator, as defined in section 23 C of chapter 283, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or body, provided that: (a) any decision to participate in mediation shall be made in open meeting session and the parties, issues involved and purpose of the mediation shall be disclosed; and (b) no action shall be taken by any governmental body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open meeting after such notice as may be required in this section.*

This was not a "dispute" between two parties. This was not a "mediation" of a lawsuit under OML. There were internal conflicts between employees all working within a single entity, the CCC. These conversations were established to create policy and should have been held in public. The goal was to set up internal policies of operation rather than negotiating any settlement of a lawsuit or conflict with an external party. Almost every participating person has left the Commission. Not one member of the staff who participated in the "mediation" is currently working at the CCC.

Open Meeting law states it is impermissible for a public body to do a performance assessment of the executive director in executive session. Conversations about the ED's performance occurred during these meetings, but there were no conversations that occurred that would allow this to be kept secret under any exemption noted in the Open Meeting Law. There is no "privacy right" established nor does any "attorney client" privilege exist to continue to hide these tapes.

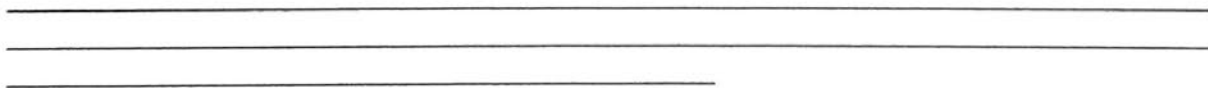
**Taken from the AG's Open Meeting guidance web page:  
May a public body perform an evaluation of an employee in executive session?**

No. Deliberations conducted for the explicit purpose of evaluating the professional competency of an individual may not occur during an executive session. See G.L. c. 30A, §21(a)(1). While conclusions drawn

from deliberations about professional competency may be part of a deliberation for another executive session purpose, the evaluation of professional competency, itself, must occur during an open session. For example, as part of the discussion in preparation for renegotiating a superintendent's contract, a school committee may wish to consider the results of an annual professional competency evaluation. The evaluation results may be considered as part of deliberations about strategy held in executive session, however only after deliberations about professional competency were held during a previously convened open session.

**Are individual evaluations completed by members of public bodies public records?**

Yes, if those evaluations are used by the public body during an open meeting. The Open Meeting Law states that "materials used in a performance evaluation of an individual bearing on his professional competence," that were created by members of a public body and used during a meeting are public records, and cannot be withheld from public disclosure. See G.L. c. 30A, §22(e). Thus, employee evaluations that members of a public body create and then use during an open meeting to evaluate an employee are public records. Comprehensive evaluations that aggregate the individual public body members' evaluations are also public records if they are used during the course of a meeting



While the time for filing an Open Meeting Law complaint about actual meetings may have passed, the Commission now has a duty to fully release these video tapes in their entirety. Commissioners even acknowledged during the meeting that these tapes would be fully public at some point in the future, and over a year and a half has passed without the CCC meeting its responsibility under the law to protect the public's right to transparency.

[https://www.youtube.com/results?search\\_query=cannabis+commission+april+24+2023](https://www.youtube.com/results?search_query=cannabis+commission+april+24+2023)



November 15, 2024

***Via Electronic Mail***

Hon. Shannon O'Brien  
shannonpobrien@yahoo.com

Re: Your Public Records Request

Dear Requestor:

The Cannabis Control Commission (Commission) writes in response to your request for records submitted on October 16, 2024 pursuant to the public records law, G. L. c.66, § 10A.

In your October 16th email, you requested the following:

“[1] All documents and communications (including but not limited to emails, text messages, Microsoft Teams messages, Slack messages, etc.) sent between Attorney Andrew Carter and Sarah Kim, General Counsel at the State Treasurer's office between June 1, 2023 and November 1, 2023.

[2] All documents and communications (including but not limited to emails, text messages, Microsoft Teams messages, Slack messages etc.) sent between Justin Shrader, former ACPO and Sarah Kim, General Counsel at the State Treasurer's office between June 1, 2023 and October 1, 2023.

[3] All disclosure filings submitted by former Executive Director Shawn Collins relevant to his duty to disclose conflicts of interest or the appearance of a conflict-of-interest pursuant G.L. 268 B. This includes dated disclosure filings Collins sent to the Cannabis Control Commissioners, his appointing authority, relevant to any search for employment he conducted in 2022 or 2023. Further this request seeks any dated disclosure filing Collins made which reports the existence any conflict or appearance of conflict in reference to any cannabis licensee. This includes but is not limited to, persons involved with cannabis retailer Greatest Hits LLC or DMA Holdings between January 2020 and September 2023.

[4] Minutes and access to recordings made during the Cannabis Commission Executive Session held April 24, 2023.”

On October 30, 2024, the Commission provided three responsive emails to your first request and the meeting minutes responsive to your fourth request. Since then, the Commission has identified one responsive record to each of your second, third, and fourth requests and subject to disclosure under G. L. c. 66, § 10 and G. L. c. 4, § 7, cl. 26. Those records are provided in the email that accompanies this letter.



The Commission has withheld one record pursuant to exemption (c) of G. L. c. 4, § 7, cl. 26 which exempts from the definition of public records, documents which contain personnel information or personal information.

Additionally, I note the Commission has redacted portions of the requested video which contain personnel or personal information, also pursuant to exemption (c).

### Exemption (c)

Exemption (c) permits the withholding of “personnel and medical files or information.” G. L. c. 4, § 7, cl. 26(c). Courts have found such records to include, but not be limited to, records relating to “core categories of personnel information at are ‘useful in making employment decisions regarding an employee.’” Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, Mass App. Ct. 1, 5 (2003). “While the precise contours of the legislative term ‘personnel [file] or information’ may require case-by-case articulation, it includes at a minimum, employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee,” and may also be withheld pursuant to exemption (c). Wakefield Teachers Ass’n v. Sch. Comm., 431 Mass. 792, 798 (2000). [O]ur Legislature determined that the “personnel [files] and information” pertaining to an individual would be absolutely exempt from disclosure. See Globe Newspaper Co. v. Police Cmm’r of Boston, 388 Mass 427, 438 (1983).

Exemption (c) also permits the withholding of “any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasions of personal privacy.” G. L. c. 4, § 7, cl. 26(c). The exemption is designed to protect personal information such as marital status, paternity, substance abuse, government assistance, family disputes, and reputation. See People for the Ethical Treatment of Animals (PETA) v. Dep’t of Agric. Res., 477 Mass. 280, 292 n.13 (2017).

Whether an invasion of privacy has occurred is determined by using a three-pronged test articulated in Champa v. Weston Public Schools, 473 Mass. 86, 96 (2015). The test requires us to consider, in part, whether disclosure would result in personal embarrassment to an individual of normal sensibilities, whether the materials sought contain intimate details of a highly personal nature, and whether the same information is available from other sources. Id.

The seriousness of the invasion of privacy listed must then be balanced with public interest in obtaining this information to determine whether the information is exempt. See People for the Ethical Treatment of Animals (PETA) v. Dep’t of Agric. Res., 477 Mass. 280, 291 (2017). The Supreme Judicial Court has acknowledged that the analysis is nuanced. Id. at 292. Thus, the test must be tailored to “case-specific relevant factors.” Globe Newspaper Co. v. Police Comm’r of Boston 419 Mass. 852, 858 (1995). The public has a recognized interest in knowing whether public servants are carrying out their duties in a law-abiding and efficient manner. Id.



### The Withheld Email

The information contained within the withheld email indeed relates to a particular employee and such information which would inform employment decisions such as employee performance, which is recognized as a core category of personnel records. The information contained in the withheld email may be considered both personnel information and personal information. Given that personnel matters are discussed privately, it may be surprising and embarrassing for an individual's personnel matter to be released and subsequently published publicly. Additionally, the release of information related to an employee's personnel matter would be certain to have an effect on reputation, one of the categories of personal information exemption (c) is designed to protect. Further, personnel matters are not discussed publicly and as such, this email which is marked "Privileged & Confidential" is not available elsewhere. Thus, release of the record would constitute an unwarranted invasion of personal privacy.

Next, we must consider whether the private interest in disclosure must yield to the public interest in obtaining the requested information. Such is the case when the public interest in disclosure substantially outweighs the seriousness of any invasion of privacy. People for the Ethical Treatment of Animals (PETA) v. Dep't of Agric. Res., 477 Mass. 280, 291 (2017). Here, the public interest would not be advanced by disclosing personnel information relating to particular employees because such disclosure would discourage the candid discussion of employee performance by management.

### The Redacted Video

As you know, the redacted video depicts the conversation which took place during an executive session meeting of the Commissioners for the purpose of establishing a governance charter to assist in the smooth operation of the Commission. Such conversations sometimes used specific examples to illustrate ideas in support of proposed edits to the working document. There are times at which the specific examples delve into employee performance in such a way that the information was considered by the Commission to constitute personnel information or otherwise personal information that would constitute an invasion of privacy. Although the facts are slightly different, the analysis in each case except for one is identical to the analysis outlined for the withheld email.

In one instance, the information is not personnel information because it pertains to a private citizen. However, the redacted information would also be embarrassing, would impact reputation, and is not available elsewhere and so it passes the Champa three-pronged test. The PETA balancing test also weighs in favor of exemption because disclosure would not let the public know whether public officials were performing their duties in a law-abiding and efficient manner.

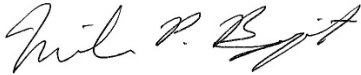


Conclusion

To the extent the records contain personnel information including any one of the following, but not limited to, individual employee discipline, promotions, demotions, terminations or other information useful in making employment decisions, we have withheld or redacted the records in accordance with exemption (c) and relevant case law as outlined above. To the extent the records contain personal information, the disclosure of which would constitute an invasion of privacy, the records have also been redacted in accordance with exemption (c) and relevant case law as outlined above.

You may appeal a response to the Supervisor of Records in accordance with G.L. c. 66, § 10A(a). You may also seek judicial review by commencing civil action in superior court pursuant to G.L. c. 66, § 10A(c).

Best regards,



Michael P. Bergquist  
Associate General Counsel



## GOVERNANCE CHARTER MEDIATION: EXECUTIVE SESSION MATERIALS

### Meeting Minutes:

- June 23, 2022
  - [Written minutes](#)
  - [Video recording \(2:12:15\)](#)
- July 28, 2022
  - [Written minutes](#)
  - [Video recording \(4:41:12\)](#)
- August 5, 2022
  - [Written minutes](#)
  - [Video recording \(4:15:10\)](#)
- September 13, 2022
  - [Written minutes](#)
  - [Video recording \(4:56:14\)](#)
- September 22, 2022
  - [Written minutes](#)
  - [Video recording \(5:00:27\)](#)
- October 7, 2022
  - [Written minutes](#)
  - [Video recording \(4:11:15\)](#)
- November 7, 2022
  - [Written minutes](#)
- November 22, 2022
  - [Written minutes](#)
- December 5, 2022
  - [Written minutes](#)
- February 15, 2023
  - [Written minutes](#)
- February 23, 2023
  - [Written minutes](#)
- March 1, 2023
  - [Written minutes](#)
- March 15, 2023



- [Written minutes](#)
- March 27, 2023
  - [Written minutes](#)
- April 24, 2023
  - [Written minutes](#)
  - [Video recording \(3:23:00\)](#)
- November 30, 2023
  - [Written minutes](#)

**Draft Governance Charter:**

- [September 27, 2024: Public Meeting Packet \(Pages 4-21\)](#)
  - Also discussed:
    - [July 11, 2024](#)
    - [August 14, 2024](#)

