

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

SCOTT HOVSEPIAN, JEANNE CARROLL, and
DONALD CAISEY,

Plaintiffs,

v.

MASSACHUSETTS PEACE OFFICER
STANDARDS AND TRAINING COMMISSION,

Defendant.

Civil Action No. _____

**VERIFIED COMPLAINT PURSUANT TO MASS. GEN. L. CH. 30A, §23(F),
FOR VIOLATION OF OPEN MEETING LAW**

INTRODUCTION

The Massachusetts Peace Officer Standards and Training Commission (“POST Commission” or the “Commission”) was established pursuant to the criminal justice reform legislation signed into law in the closing hours of 2020. The Commission, part of the Executive Branch, is charged with creating a mandatory certification process for police officers, as well as processes for decertification, suspension of certification, or reprimand.

The proponents of the reform legislation assured the public that it would enhance transparency and accountability in the administration of justice and law enforcement. Ironically and unfortunately, the opposite has been true. The POST Commission has been conducting much of its critical work in secret, and in violation of the Open Meeting Law, Gen. L. ch. 30A, §18, et seq. It has established subcommittees (which it calls “sub-sets” or “working groups”) of Commission members to perform, in secret, initial and essential work on the Commission’s most

important tasks. The subcommittees have communicated, met, deliberated, and generated work product related to, among other things, officer qualification, certification, and discipline. They have done nearly all this work, indispensable and mandated by statute, in secret – without notice to the public or public involvement. In addition to undermining the promises of transparency and accountability, this secrecy violates the Open Meeting Law. The law imposes notice, public participation, and record-keeping requirements on the POST Commission as a whole, but also on the subcommittees established by the Commission. The Open Meeting Law specifically applies to “subcommittees” or “any multiple-member body created to advise or make recommendations to a public body.” Mass. Gen. L. ch. 30A, § 18; 940 CMR 29.02. By failing – and now refusing – to comply with these requirements, the Commission has violated and continues to violate the Open Meeting Law.

Plaintiffs – law enforcement officers subject to the regulatory oversight of the POST Commission and representatives of thousands of other police officers across the Commonwealth who also are subject to the Commission’s authority – bring this action pursuant to Mass. Gen. L. ch. 30A, § 23, to stop the flouting of the Open Meeting Law, and to invalidate the rules, regulation, and policies of the POST Commission that are the product of the violation of the law – including, in the first instance, an Orwellian questionnaire, created in secret and without public notice or comment, that uses vague, undefined terms by which the Commission seeks to intrude into the private lives of public employees who risk their lives to protect others, and to judge whether these public servants can continue to work. Plaintiffs seek determinations, declarations, and orders, as appropriate, that (i) the so-called “sub-sets” established by the POST Commission were and are “subcommittees” of the POST Commission, and, as such, were and are “public bodies,” as set forth in Mass. Gen. L. ch. 30A, §18, and, as such, were and are required to comply with the Open

Meeting Law, Mass. Gen. L. ch. 30A, §§18-25; (ii) the sub-sets of the POST Commission were and are in violation of the Open Meeting Law because they failed and fail to provide public notice of their meetings and of the communications (oral and email) that qualify as “meetings” at least 48 hours prior to such meetings, as required by Mass. Gen. L. ch. 30A, § 20(b); (iii) the sub-sets of the POST Commission were and are in violation of the Open Meeting Law because they failed and fail to allow members of the public attend the meetings of the sub-sets and failed and fail to permit members of the public record open sessions of their meetings, as required by Mass. Gen. L. ch. 30A, § 20(a) and 20(f); (iv) the sub-sets of the POST Commission were and are in violation of the Open Meeting Law because they failed and fail to create and maintain detailed and accurate minutes of all meetings of the sub-sets, as required by Mass. Gen. L. ch. 30A, § 22(a); (v) the sub-sets of the POST Commission were and are in violation of the Open Meeting Law because they refused and refuse to provide the minutes, records, or other materials created or maintained by the sub-sets, including the two currently active sub-sets, notwithstanding that these documents are “public records” under Mass. Gen. L. ch. 30A, § 22(e); (vi) the sub-sets of the POST Commission henceforth must provide public notice of all meetings and communications that qualify as “meetings” and allow public access thereto as required by Mass. Gen. L. ch. 30A, § 20(b), and Mass. Gen. L. ch. 30A, § 20(a); (vii) because the meetings, deliberations, and decisions and/or recommendations reached by the sub-sets of the POST Commission occurred in violation of the Open Meeting Law, they are null and void, and any action and/or decision based thereon is by the same token null and void; (viii) the minutes, records, or other materials created or maintained by the sub-sets, including the two currently active sub-sets, of the POST Commission are “public records” pursuant to Mass. Gen. L. ch. 30A, § 22(e), and, thus, must be provided to Plaintiffs

forthwith; and (ix) for such other and further relief as is required due to the Commission's violations of the Open Meeting Law.

These violations have denied Plaintiffs and the public at large the right to meaningfully participate in the development and implementation of the single most meaningful piece of criminal justice legislation in decades.

PARTIES

1. Plaintiff Scott Hovsepian lives and is a registered voter in Waltham, Massachusetts. Mr. Hovsepian is a patrol officer with the Waltham Police Department. Officer Hovsepian is the President of the Massachusetts Coalition of Police ("MassCOP"), the largest law enforcement union in Massachusetts, with nearly 5,000 members from over 200 towns and cities across the Commonwealth. MassCOP's mission is to promote the welfare of the Commonwealth's police officers.

2. Plaintiff Jeanne Carroll lives and is a registered voter in Boston, Massachusetts. Ms. Carroll is a sergeant with the Boston Police Department. Sergeant Carroll is the President of the Boston Police Superior Officers Federation, which represents all sworn supervisors at the rank of sergeant, lieutenant, and captain, excepting those rated as detective, within the Boston Police Department.

3. Plaintiff Donald Caisey lives and is a registered voter in Boston, Massachusetts. Mr. Caisey is a detective with the Boston Police Department. Detective Caisey is the President of the Boston Police Detectives Benevolent Society ("BPDBS"). The BPDBS represents the detectives and superior detectives in the Boston Police Department.

4. Defendant, the Peace Officer Standards and Training Commission ("POST Commission" or the "Commission") is a commission within the Executive Branch of the

government of the Commonwealth. It was established as part of the criminal justice reform enacted in Chapter 253 of the Acts of 2020. The Commission is a “public body” as defined in Mass. Gen. L. ch. 30A, §18. The Commission’s offices are located at 100 Cambridge Street, 14th Floor, Boston, MA 02114. According to its website, the Commission is “charged with creating a mandatory certification process for police officers, as well as processes for decertification, suspension of certification, or reprimand in the event of certain misconduct.”

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Mass. Gen. L. ch. 30A, § 23(f), and Mass. Gen. L. ch. 231A, § 1.

6. Venue is appropriate pursuant to Mass. Gen. L. ch. 30A, § 23(f).

FACTUAL BACKGROUND

7. On January 14, 2022, John E. Nelson, Vice President of MassCOP, emailed a public records request (the “Request”) to the POST Commission. A copy of the Request is attached hereto as Exhibit 1.

8. MassCOP requested that the POST Commission provide a single category of documents:

Any and all agendas, minutes, audio/video recordings, attendance lists, emails and/or correspondence, relating to sub-committee or working group meetings involving attendance by any commissioner since inception of the POST Commission.

9. On February 1, 2022, the POST Commission responded, asserting that it would and could not produce records, and inviting MassCOP “to clarify and narrow the scope of [MassCOP’s] request for multiple reasons.” A copy of the response is attached hereto as Exhibit 2.

10. MassCOP understood the Commission to be claiming that it could not comply because MassCOP's request was unclear and too broad.

11. This claim, in addition to being internally inconsistent, was (at best) incorrect. MassCOP had asked only for (1) common types of records (e.g., agendas), (2) relating to meetings (of any type) of POST Commission sub-committees or working groups, (3) at which discussion of POST Commission matters occurred. The request was targeted.

12. And the request was clear. It indisputably contained a "reasonable description of the requested record[s]" in accordance with 950 CMR 32.06(1)(b).

13. Indeed, contrary to its claim of vagueness, the POST Commission understood what was sought, for it also asserted that a review of the requested documents would be difficult because "arguably responsive documents" would be withheld under the exemptions set forth in Mass. Gen. L. ch. 4, § 7, cl. 26.

14. The Commission went on to invoke roughly ten different exemptions to the definition of public records.

15. The Commission did not explain how it could simultaneously claim not to know what records were sought and claim that requested records were covered by multiple exemptions.

16. The Commission also objected (with no basis in law) that MassCOP's request would divert Commission personnel from "other important and time-sensitive public duties."

17. In response to the POST Commission's refusal to produce even a single record, MassCOP submitted to the Supervisor of Records of the Division of Public Records, a petition pursuant to Mass. Gen. L. ch. 66, § 10, appealing the Commission's response. A copy of the appeal is attached hereto as Exhibit 3.

18. In the appeal, MassCOP noted that the Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. Mass. Gen. L. ch. 66, § 10A(d); 950 C.M.R. 32.03(4).

19. MassCOP noted that the term “public records” is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. Mass. Gen. L. ch. 4, § 7, cl. 26.

20. MassCOP noted that, the Commission’s claims to the contrary notwithstanding, MassCOP’s request was clear and focused.

21. MassCOP noted that a records custodian bears the burden of demonstrating the application of an exemption in order to withhold a requested record. Mass. Gen. L. ch. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); *see also Dist. Attorney for the Norfolk Dist. v. Flatley*, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption).

22. MassCOP noted that to meet the specificity requirement, a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

23. MassCOP noted that the POST Commission’s invocation of exemptions was inappropriate because it had failed first to identify records and then invoke and explain the applicability of the exemptions, and instead had invoked in blanket fashion.

24. MassCOP also noted that there is no provision within the Public Records Law or the regulations thereunder or any decision applying or construing them that permits a public agency to refuse to comply on the basis that it has other important things to do – as the POST Commission had done.

25. The Supervisor of Records acknowledged receipt of MassCOP's petition and indicated that she had appointed Manza Arthur, Esq., to review the matter. A copy of the Supervisor's letter is attached hereto as Exhibit 4.

26. On February 17, 2022, the Commission, by its outside counsel, sent MassCOP (copying the Supervisor of Records) a further response to MassCOP's records request. A copy of the February 17 further response is attached hereto as Exhibit 5.

27. The Commission stated that it interpreted MassCOP's request to "inquire as to the attendance at meetings of sub-sets of the POST Commission that undertook particular substantive projects for the Commission, and not to include small groups of Commissioners who have met on a few occasions with individuals and groups ... interested in the work of the Commission or with other state agencies or outside attorneys as part of the standing up of the operations Commission..." and that "[i]n any event, none of those meetings has ever been attended by more than three Commissioners, which is well below the POST Commission's quorum of seven."

28. The Commission said that there had "been five sets of meetings relating to the Commission's drafting and approval of guidelines or regulations" and that "none of those meetings ha[d] ever been attended by more than the three Commissioners assigned to work on such projects."

29. The Commission provided details with regard to these sets of meeting:

- a) "[M]eetings of three Commissioners (Bluestone, Luma, and Wynn) in the spring of 2021 to collect research and prepare a draft of the guidelines for age-appropriate de-escalation tactics for minor children called for in Section 119 of Chapter 253 of the Acts of 2020, and approved by the Commission on June 20, 2021."
- b) "Three Commissioners (Kazarosian, West, and Wynn) prepared a draft for review by the Commission of Use of Force Regulations and met with the MPTC to prepare an agreed-to draft that was approved by the commission and the MPTC."
- c) "[T]wo sets of meetings between certain MPTC personnel and certain Commission personnel relating to two categories of certification of Law Enforcement Officers."

- d) “[T]he POST Commission is represented at ongoing meetings relating to the recertification of Law Enforcement Officers by Commissioners Bluestone, West, and Wynn.”
- e) “In the context of [Anderson & Kreiger drafting regulations], the law firm took input from Chair Hinkle and Commissioners Kazarosian and Wynn at a single meeting and from Chair Hinkle on other occasions.”

30. The reference to the (alleged) fact that none of the meetings purportedly was attended by more than three commissioners was a transparent attempt to position the activities of the so-called sub-sets as outside the requirements of the Open Meeting Law.

31. The POST Commission also asserted that there were no agendas, meetings, or recordings of or related to any of the described meetings and deliberations and, thus, produced, and offered to produce **not a single document**.

32. Frustrated by the Commission’s continued obstructionism, on February 21, 2022, MassCOP wrote Attorney Arthur. A copy of the letter to Attorney Arthur is attached hereto as Exhibit 6.

33. MassCOP complained that the Commission had distorted MassCOP’s records request, claiming it called for only agendas, minutes, recordings, and the like. MassCOP pointed out that the request also had sought “attendance lists, emails and/or correspondence” relating to the meetings the existence of which the Commission now had admitted. MassCOP complained that the Commission had not denied that such records exist, and that it was inconceivable that – given the number of meetings and the important, complex, and substantive issues that were their subject – there were no attendance lists, emails, or other correspondence relating to the meetings.

34. MassCOP asked Attorney Arthur to direct the POST Commission to produce all records relating to the meetings of (or involving) sub-sets of the POST Commission that had been described in the Commission’s correspondence.

35. By letter dated February 23, 2022, the Supervisor of Records directed the POST Commission to “clarify whether it possesses additional records, particularly ‘attendance lists, emails and/or correspondence’ relating to the meetings [of the sub-sets].” She ordered the Commission to provide MassCOP “with a response to the request, provided in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) business days.” A copy of the Supervisor’s February 23, 2022 letter is attached hereto as Exhibit 7.

36. The POST Commission ignored the Supervisor’s 10-day deadline, prompting MassCOP to write the Supervisor again, on March 14, to complain. A copy of this letter is attached hereto as Exhibit 8.

37. The POST Commission finally provided a response on April 1, 2022, over three weeks after the deadline under the law and imposed by the Supervisor of Public Records. A copy of the overdue response, a letter from the Commission’s outside counsel, is attached hereto as Exhibit 9.

38. The April 1 response confirmed that the POST Commission has been operating in violation of the Open Meeting Law.

39. The POST Commission admitted that it had established “five sub-sets of the Commission that have undertaken substantive projects.”

40. It asserted that three of the so-called sub-sets had completed their projects, which were “the development of guidelines for age appropriate de-escalation tactics for minor children, the issuance of regulations regarding the use of force by law enforcement offices, and the articulation of certification standards for law enforcement officers graduating from police academies after December 1, 2021.”

41. These projects involved, apparently, the groundwork for three of the critical tasks that have been assigned, statutorily, to the POST Commission.

42. The Commission stated that the other two so-called sub-sets have been and are working on standards for “recertification of law enforcement officers and the promulgation of regulations governing complaints, internal investigations and adjudicatory proceedings.”

43. The projects likewise relate to critical tasks assigned, by statute, to the POST Commission.

44. The two active so-called sub-sets have been and are working on developing standards relating to how and whether police officers will be recertified (and permitted to keep their jobs) and to the process for discipline of existing law enforcement officers.

45. From all that appears, and or example, the work of the former sub-set – again, all behind closed doors – has been very substantive and very influential in respect to full Commission decisions and action. Upon information and belief, the former has developed a questionnaire that may be administered to officers seeking recertification. The questions are extraordinarily invasive, largely irrelevant, and offensive, and could and likely would chill officers’ exercise of First Amendment rights, among others. Upon information and belief, the full Commission has essentially rubber-stamped the questionnaire.

46. The subjects on which the two active so-called sub-sets have been and are working are of critical concern to law enforcement officers, including Plaintiffs: Their jobs – and more – are at stake.

47. In its untimely response, the POST Commission refused to provide to MassCOP records relating to the two active “sub-sets,” claiming they are subject to the “deliberative process exemption” set forth in Mass. Gen. L. ch. 4, § 7 (26)(d). The Commission thus took the position

that the records are “intra-agency memoranda or letters relating to policy positions being developed by the agency.”

48. On April 6, 2022, MassCOP, by counsel, wrote the POST Commission concerning the so-called “sub-sets.” A copy of the April 6 letter is attached hereto as Exhibit 10.

49. MassCOP observed that the POST Commission had revealed in recent correspondence to MassCOP and recent comments during public POST Commission meetings, the existence of the “sub-sets,” and had confirmed that the work of the “sub-sets” had included deliberating concerning and preparing drafts of regulations, guidelines, and standards in furtherance of the POST Commission’s statutory charge.

50. MassCOP observed that the “sub-sets” undoubtedly had communicated and continued to communicate amongst themselves about, and had met and continue to meet concerning, the projects they were and have been assigned. MassCOP observed that the sub-sets created by the POST Commission thus had deliberated and continued to deliberate concerning projects that are matters that are within the POST Commission’s jurisdiction.

51. MassCOP pointed out that the POST Commission “sub-sets” thus had violated and were continuing to violate the Open Meeting Law:

- They have had, and continue to have, “meetings,” as defined by the Open Meeting Law (i.e., actual meetings and communications).
- Public notice of the physical (or virtual) meetings of the “sub-sets” and of the communications that qualify as “meetings” was never provided. The meetings have not been open to the public.

- The oral and email (and perhaps other) communications among and involving members of the “sub-sets,” which are “meetings” under the statutory definition, have not been open to the public.
- Records relating to the activities of the “sub-sets” have not been open to the public, and, indeed, the Commission had asserted that some of these records would not be produced based on the deliberative process exemption. (Clearly, if sub-sets are generating documents subject to the deliberative process exemption, they are engaged in deliberations as the term is defined by the Open Meeting Law.)
- Further, the sub-sets have not kept minutes of their meetings.
- And, despite the Open Meeting Law’s directive that documents used in connection with meetings are public records, it was not until April 1, 2022, that the POST Commission had agreed to produce some – and only some – of the sub-sets’ records.

52. MassCOP observed that the Open Meeting Law is designed to ensure transparency in the operations of government, and that it is difficult, if not impossible, to conceive of subjects as to which transparency is more critical than the subjects addressed by the POST Commission and its sub-sets.

53. MassCOP demanded that the POST Commission cease and desist from violating the Open Meeting Law and confirm within seven calendar days that either (1) the so-called “sub-sets” had been shut down permanently, or (2) the so-called “sub-sets,” from the date of the letter forward would strictly adhere to the Open Meeting Law and the regulations thereunder.

54. The Commission, by outside counsel, responded on April 12, 2002. The Commission again showed MassCOP the back of its hand: The Commission’s outside counsel

simply asserted that, “We are confident that at all times the Commission has fully complied with the requirements of the Open Meeting Law . . . and will continue to do so.” Counsel did not favor MassCOP with a substantive response. A copy of the April 12 letter is attached hereto as Exhibit 11.

THE OPEN MEETING LAW

55. The Open Meeting Law was enacted “to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based.” *See, e.g., District Attorney for N. Dist. v. Sch. Comm. of Wayland*, 455 Mass. 561, 563 (2009).

56. In furtherance of this goal, § 20 of the Open Meeting Law requires that “all meetings of a public body shall be open to the public.” Mass. Gen. L. ch. 30A, § 20.

57. The terms “meetings” and “public body” are broadly defined by the Open Meeting Law and the regulations and case law thereunder. Mass. Gen. L. ch. 30A, § 18.

58. A “meeting” is “a deliberation by a public body with respect to any matter within the body’s jurisdiction,” with limited exceptions that are not applicable. Mass. Gen. L. ch. 30A, §18.

59. A “deliberation” is defined to include “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction...” Mass. Gen. L. ch. 30A, §18.

60. A “quorum” is defined as “a simple majority of the members of the public body.” Mass. Gen. L. ch. 30A, § 18.

61. And a “public body” is defined as “a multi-member board, commission, committee, **or subcommittee** within the executive or legislative branch or within any county, district, city,

region, or town, **however created, elected, appointed or otherwise constituted, established to serve a public purpose....**” Mass. Gen. L. ch. 30A, § 18 (emphasis added).

62. A “subcommittee” includes “any multiple-member body created to advise or make recommendations to a public body.” Mass. Gen. L. ch. 30A, § 18.

63. The Open Meeting Law requires that all “public bodies” provide public notice of their “meetings” at least 48 hours prior to such meetings and that the notice must include “date, time and place of such meeting and a listing of topics that the chair reasonable anticipates will be discussed at the meeting.” Mass. Gen. L. ch. 30A, § 20.

64. The Open Meeting Law also requires that public bodies permit the public to attend their meetings (save for properly-convened executive sessions) and permit members of the public to record open sessions of their meetings. Mass. Gen. L. ch. 30A, § 20(a), 20(f).

65. Moreover, the Open Meeting Law requires that public bodies create and maintain detailed and accurate minutes of all meetings. Mass. Gen. L. ch. 30A, § 22(a).

66. And it requires that “minutes of any open session, the notes, recordings or other material used in the preparation of such minutes and all documents and exhibits used at this session, shall be public records in their entirety **and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4.**” Mass. Gen. L. ch. 30A, § 22(e).

THE POST COMMISSION’S VIOLATIONS OF THE OPEN MEETING LAW

67. The POST Commission and its “sub-sets” have violated and continue to violate the Open Meeting Law, as the “sub-sets” are public bodies that have had, and continue to have, “meetings” as defined by the Open Meeting Law (i.e., actual meetings and communications)

without providing public notice of the physical (or virtual) meetings and of the communications that qualify as “meetings.” Mass. Gen. L. ch. 30A, § 18; Mass. Gen. L. ch. 30A, § 20(b).

68. In asserting that the sub-sets are generating documents subject to the deliberative process exemption, the POST Commission admits that the sub-sets have and are engaged in “deliberations,” as the term is defined in the Open Meeting Law. Mass. Gen. L. ch. 30A, § 18.

69. The POST Commission and its “sub-sets” have violated and continue to violate the Open Meeting Law, as the meetings of the “sub-sets” have not been open to the public and have been and remain closed to the public. Mass. Gen. L. ch. 30A, § 20(a) and 20(f).

70. The POST Commission and its “sub-sets” have violated and continue to violate the Open Meeting Law, as the oral and email (and perhaps other) communications among and involving members of the “sub-sets,” which constitute “meetings” under the statutory definition, Mass. Gen. L. ch. 30A, § 18, have not been open to the public.

71. The POST Commission and its “sub-sets” have violated and continue to violate the Open Meeting Law, as records relating to the activities of the sub-sets have not been open to the public, and as stated in the POST Commission’s April 1, 2022 letter, are being withheld on the basis of the “deliberative provides exemption,” despite the Open Meeting Law’s mandate that such records are “public records” and “are **not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4.**” Mass. Gen. L. ch. 30A, § 22(e).

72. The POST Commission and its sub-sets have violated and continue to violate the Open Meeting Law, as the sub-sets have not kept minutes of their meetings as required by the Open Meeting Law. Mass. Gen. L. ch. 30A, § 22(a).

73. Any contention by the POST Commission that the sub-sets of the Commission are not required to comply with the Open Meeting Law because none comprises a quorum of the Commission would be erroneous.

74. The Open Meeting Law's requirements apply to the activities of all public bodies, including "subcommittees," which are defined to "include any multiple-member body created to advise or make recommendations to a public body." Mass. Gen. L. ch. 30A, § 18; 940 CMR 29.02 (definition of public body).

75. The groups termed "sub-sets" by the POST Commission were, and are, multiple member bodies established to advise and make recommendations to the full Commission, and have advised and made recommendations to the full Commission.

76. The POST Commission has admitted that the "sub-sets" are multiple member bodies established to advise and make recommendations to the full Commission, and that the sub-sets have advised and made recommendations to the full Commission.

77. Each "sub-set" of the POST Commission is a "subcommittee," and thus constitutes a "public body," as defined in Mass. Gen. L. ch. 30A, § 18, as the "sub-sets" are all (1) multiple member bodies; (2) existing within government by being made up primarily, if not entirely, of the members of the Commission, and being functionally within the Executive Branch; and (3) serving a public purpose as their members have delegated authority on substantive projects relating to the POST Commission and public policy. Mass. Gen. L. ch. 30A, § 18.

78. The "sub-sets" fall squarely within the statutory definition of "subcommittee," pursuant to Mass. Gen. L. ch. 30A, § 18, and as such were and are required to comply with the Open Meeting Law. *See, e.g., Attorney General Open Meeting Law Determination OML 2021-95 (Concord Transportation Advisory Committee subject to Open Meeting Law); OML 2018-131*

(working group established by Harvard School Building Committee subject to Open Meeting Law); OML 2017-36 (task force subject to Open Meeting Law); *Nigro v. Conservation Commission of Canton*, 7 Mass. App. 433 (1984) (subcommittee required to comply with Open Meeting Law).

79. Since the sub-sets of the POST Commission meet the definition of “public body” under the Open Meeting Law, they have violated and continue to violate the following provisions of the Open Meeting Law:

Mass. Gen. L. ch. 30A, § 20(b), by failing to provide public notice of their meetings and of the communications (oral and email) that qualify as “meetings” at least 48 hours prior to such meeting.

Mass. Gen. L. ch. 30A, § 20(a) and 20(f), by failing to allow members of the public attend the meetings of the sub-sets and to permit members of the public to record open sessions of their meetings.

Mass. Gen. L. ch. 30A, § 22(a), by failing to create and maintain detailed and accurate minutes of all meetings of the sub-sets.

Mass. Gen. L. ch. 30A, § 22(e), by refusing to provide the minutes of any open session, the notes, recordings, or other material used in the preparation of such minutes, and all documents and exhibits used at each session, which constitute public records in their entirety.

COUNT I

(Violation of Open Meeting Law, Mass. Gen. L. ch. 30A, §§18-25)

80. Plaintiffs incorporate the allegations continued in the preceding paragraphs as if set forth at length herein.

81. The “sub-sets” established by the POST Commission were and/or are multiple member bodies established to advise and to make recommendations to the full POST Commission.

82. The sub-sets established by the POST Commission have advised and made recommendations to the full POST Commission and plan to provide further advice and make further recommendations.

83. As such, the sub-sets are subcommittees, as defined under the Open Meeting Law.

84. As subcommittees under the Open Meeting Law definition, the sub-sets are “public bodies,” as defined under the Open Meeting Law.

85. As public bodies under the Open Meeting Law, the sub-sets are subject to the public notice and other requirements of the Open Meeting Law.

86. The “sub-sets” and Commission have violated the Open Meeting Law’s requirement to provide advance public notice of meetings and of communications (oral and email) that qualify as “meetings.”

87. The “sub-sets” and Commission have violated the requirement that they allow members of the public to attend their meetings permit members of the public to record their meetings.

88. The “sub-sets” and Commission have violated the requirement that they create and maintain detailed and accurate minutes of all meetings.

89. And the sub-sets and Commission have violated the requirement that they treat minutes, notes, recordings, or other material used in the preparation of such minutes and all documents and exhibits used at sessions, as public records.

90. Accordingly, Plaintiffs seek relief, including all relief prescribed in Mass. Gen. L. ch. 30A, § 23(c) and (f).

COUNT II

(Declaratory Judgment, Mass. Gen. L. ch. 231A, §§ 1-9)

91. Plaintiffs incorporate the allegations continued in the preceding paragraphs as if set forth at length herein.

92. There exist an actual and justiciable controversy between Plaintiffs and the POST Commission concerning the POST Commission's past and future compliance with the Open Meeting Law in respect to its establishment of and the operation of "sub-sets," as described above.

93. Plaintiffs contend that the POST Commission has violated and continues to violate the Open Meeting Law in multiple respects in relation to the so-called "sub-sets."

94. The POST Commission contends that it has not violated, is not violating, and will not violate the Open Meeting Law.

95. Accordingly, pursuant to Mass. Gen. L. ch. 231A, § 1, Plaintiffs seek a declaration that:

a. The "sub-sets" created by the POST Commission constitute "subcommittees" of the POST Commission, and as such are "public bodies," as set forth in Mass. Gen. L. ch. 30A, §18, and therefore are required to comply with the Open Meeting Law, Mass. Gen. L. ch. 30A, §§18-25;

b. The sub-sets of the POST Commission have violated and continue to violate the Open Meeting Law due to the failure to provide public notice of meetings and of communications (oral and email) that qualify as "meetings" at least 48 hours prior to such meetings, pursuant to Mass. Gen. L. ch. 30A, § 20(b);

c. The sub-sets of the POST Commission have violated and continue to violate the Open Meeting Law by failing to allow members of the public attend the meetings of the sub-sets and record open sessions of their meetings, pursuant to Mass. Gen. L. ch. 30A, § 20(a) and 20(f);

d. The sub-sets of the POST Commission have violated and continue to violate the Open Meeting Law by failing to create and maintain detailed and accurate minutes of all meetings of the sub-sets, pursuant to Mass. Gen. L. ch. 30A, § 22(a);

e. The sub-sets of the POST Commission have violated and continue to violate the Open Meeting Law by refusing to provide the minutes, records, or other materials created or maintained by the sub-sets, including the two currently active sub-sets, which minutes, records, and other materials constitute "public records," pursuant to Mass. Gen. L. ch. 30A, § 22(e);

f. The sub-sets of the POST Commission henceforth must provide public notice of all meetings and communications that qualify as "meetings" and allow

public access thereto, pursuant to Mass. Gen. L. ch. 30A, § 20(b), and Mass. Gen. L. ch. 30A, § 20(a);

g. All of the meetings, deliberations, and resulting decisions and/or recommendations reached by the sub-sets of the POST Commission are the product of behavior in violation of the Open Meeting Law and, as such, any action taken or decision made by the sub-sets or the Commission based on the work of the sub-sets is null and void; and

h. The minutes, records or other materials created or maintained by the sub-sets, including the two currently active sub-sets, of the POST Commission are “public records,” pursuant to the Open Meeting Law, Mass. Gen. L. ch. 30A, § 22(e), and, thus, must be provided to Plaintiffs promptly in response to their public records request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request a hearing pursuant to Mass. Gen. L. ch. 30A, § 23(f), and based on the evidence and argument presented at same:

1. On Count I, a determination that the POST Commission has violated the Open Meeting Law in the ways described above, and, based on such determination, an order, pursuant to Mass. Gen. L. ch. 30A, § 23(c) and (f), that (a) the POST Commission shall immediately and in the future comply with the Open Meeting Law, (b) the members of the POST Commission and their agents shall (if necessary) attend training on the Open Meeting Law, (c) all actions taken based on work product, advice, or recommendations of the so-called sub-sets that was generated in violation of the Open Meeting Law are null and void, (d) to the extent intentional violations are found, the POST Commission shall pay a civil penalty of no more than \$1,000, and (e) all records of the so-called sub-sets shall be provided to Plaintiffs forthwith.
2. On Count II, a declaratory judgment that
 - a. The “sub-sets” created by the POST Commission constitute “subcommittees” of the POST Commission, and as such are “public bodies,” as set forth in Mass. Gen. L. ch. 30A, §18, and therefore are required to comply with the Open Meeting Law, Mass. Gen. L. ch. 30A, §§18-25;
 - b. The sub-sets of the POST Commission have violated and continue to violate the Open Meeting Law due to the failure to provide public notice of meetings and of communications (oral and email) that qualify as “meetings” at least 48 hours prior to such meetings, pursuant to Mass. Gen. L. ch. 30A, § 20(b);
 - c. The sub-sets of the POST Commission have violated and continue to violate the Open Meeting Law by failing to allow members of the public attend the

meetings of the sub-sets and record open sessions of their meetings, pursuant to Mass. Gen. L. ch. 30A, § 20(a) and 20(f);

d. The sub-sets of the POST Commission have violated and continue to violate the Open Meeting Law by failing to create and maintain detailed and accurate minutes of all meetings of the sub-sets, pursuant to Mass. Gen. L. ch. 30A, § 22(a);

e. The sub-sets of the POST Commission have violated and continue to violate the Open Meeting Law by refusing to provide the minutes, records, or other materials created or maintained by the sub-sets, including the two currently active sub-sets, which minutes, records, and other materials constitute “public records,” pursuant to Mass. Gen. L. ch. 30A, § 22(e);

f. The sub-sets of the POST Commission henceforth must provide public notice of all meetings and communications that qualify as “meetings” and allow public access thereto, pursuant to Mass. Gen. L. ch. 30A, § 20(b), and Mass. Gen. L. ch. 30A, § 20(a);

g. All of the meetings, deliberations, and resulting decisions and/or recommendations reached by the sub-sets of the POST Commission are the product of behavior in violation of the Open Meeting Law and, as such, any action taken or decision made by the sub-sets or based on the work of the sub-sets is null and void; and

h. The minutes, records or other materials created or maintained by the sub-sets, including the two currently-active sub-sets, of the POST Commission are “public records,” pursuant to the Open Meeting Law, Mass. Gen. L. ch. 30A, § 22(e), and, thus, must be provided to Plaintiffs promptly in response to their public records request.

3. Such other and further relief as is appropriate and just.

VERIFICATION

I, Scott Hovsepian, declare as follows:

1. I am one of the plaintiffs in this case.
2. Upon information and belief, I verify that the factual statements in this Complaint are true.

/s/Scott Hovsepian
Scott Hovsepian

April 27, 2022

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By their Attorneys,



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