

Alison Middleton

From: Michelle Crocker
Sent: Thursday, July 11, 2024 8:29 AM
To: Board of Commissioners
Cc: Clerk; hosking-gary@gmail.com
Subject: FW: FOIA Request
Attachments: Memo re OMA.pdf; MSP 75-1329-24 Report_Redacted.pdf

Dear Commissioners,

Below and attached, please find Public Comment from Gary Hosking.

Email and attachments will be posted to the website for the **Regular Session meeting on July 16, 2024.**

Have a great day.

Michelle

From: Gary Hosking <hosking.gary@gmail.com>
Sent: Wednesday, July 10, 2024 6:39 PM
To: Michelle Crocker <mcrocker@leelanau.gov>
Subject: Fwd: FOIA Request

as discussed.....

sent separate email for public comment and to be shared with BOC

Begin forwarded message:

From: Gary Hosking <hosking.gary@gmail.com>
Date: July 10, 2024 at 2:37:45 PM EDT
To: Richard Lewis <rlewis@leelanau.gov>
Subject: Fwd: FOIA Request

Richard,

Thanks for your time today.

As we discussed, please carefully review the attached OMA opinion and consider making a statement (in the minutes) acknowledging violations of a critically important law promoting open, transparent government. On your watch, following OMA for all committees, etc. will be a priority as will following the BOC's intentionally strict conflict of interest policy. These are not partisan issues.

From our Ad in the paper:

“ As it stands, the County Board has taken no steps to rectify its attorney's opinion with OMA precedent. Do committees, commissions and task forces within county government have to abide by the Open Meetings Act? And should they not, will commissioners speak out or turn a blind eye? Adoption of a policy affirming a commitment to open government would let Leelanau County constituents know where their commissioners stand. Continuing to ignore the violations will do the same.”

Thank you Richard for your consideration in this important matter. Hope we can move on and learn from these mistakes.

With respect,

Gary Hosking
847.226.1717

Begin forwarded message:

From: Katie Smielewski <ksmielewski@leelanau.gov>
Date: June 20, 2024 at 11:43:18 AM EDT
To: hosking.gary@gmail.com
Subject: FOIA Request

Gary Hosking
Via Email: hosking.gary@gmail.com

Re: Freedom of Information Act Request – Received June 20, 2024

Attached to this email, per your Freedom of Information Act request via Chief Assistant Prosecutor Chamberlain, is the MSP report and memo from the Leelanau County Prosecutor’s Office. Redactions, if any, are pursuant to:

Public Act 442 of 1976, MCL 15.243, Exemptions from Disclosure

Please let me know if you require anything further.

Katie Smielewski, FOIA Coordinator
Leelanau County Prosecutor’s Office
8527 E. Government Center Drive, Suite 202
Suttons Bay, MI 49682
O: (231) 256-9872, F: (231) 256-0133
Hours: Mon, Tues, Thurs 8 AM – 3 PM

Memo

To: Joseph Hubbell

From: Tristan Chamberlain

Date: June 11, 2024

Re: **Energy Futures Task Force - Open Meetings Act Violation**

Joseph Hubbell,

The Leelanau Board of Commissioners created the Energy Futures Taskforce (EFT) in order to “identify opportunities and facilitate implementation of energy efficiency and renewable energy within our county.” The EFT is composed of 3 county commissioners and 9 other public community representatives. No government funds or facilities may be used without authorization from the Board of Commissioners. The EFT held a meeting that not posted; community members had no notice and could not participate. The questions are whether this is a public body subject to the Open Meetings Act (OMA), and if so, what are the remedies for noncompliance.

Public Body

MCL 15.262 states, “‘Public body’ means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function.”

The EFT was created to identify and facilitate implementation of energy projects with community members. “Facilitate implementation” denotes government functions and decision making of county board resolutions. The only limitation on the EFT decision making is if county expenditures or facilities are utilized. These discussions fall under the umbrella of “decision” making as contemplated by MCL 15.262(d), and are therefore governed by the OMA.

Remedies

The OMA has three remedies for violations: 1. A decision can be invalidated; 2. Injunction or enjoin compliance; 3. Criminal prosecution. These first two remedies can be pursued by the Attorney General, Prosecuting Attorney's Office, or a community member. The third remedy is through the Attorney General or the Prosecuting Attorney.

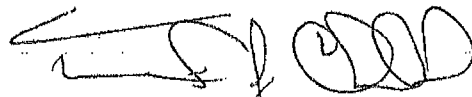
The Leelanau Prosecuting Attorney's Office has not been made aware of any decision based on the discussions of the noncompliant meeting. If a decision has been made in violation of the OMA then a remedy can be pursued by a member of the public to invalidate that decision. MCL 15.270. The injunctive relief is to compel compliance or to enjoin noncompliance with the OMA. MCL 15.271. It is the PAO's understanding that the EFT is now in compliance of the OMA.

Criminal prosecution requires an "intentional" violation. *People v. Whitney*, 578 N.W.2d 329, 340; 228 Mich.App. 230, 253 (1998). [W]e conclude that the crime of intentionally violating the OMA consists of three elements: (1) the defendant is a member of a public body, (2) the defendant actually violated the OMA in some fashion, and (3) **the defendant intended to violate the OMA.** Black's law dictionary defines "intentional" as "a thing is done with reason and purpose." It is insufficient that a person commits an intentional act, they must intend for their act to be a violation. By way of example, a person could be speeding intentionally or unintentionally and they are strictly liable for the consequence. However, an OMA violation is unlike speeding; it requires no *mens rea*, which is a criminal intent to violate the law, in order to be responsible.

Based on the information received, it appears that the chair of the EFT did not intend the violation of the OMA. In the reports, the chair stated that this was the first time he had led a taskforce, the Board of Commissioners told the EFT they did not have the authority of a committee, and the chair believed that the EFT had no decision-making authority.

Conclusion

Based on the law and the information provided, criminal prosecution is not appropriate. There is insufficient evidence to show this was an intentional violation.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke.

Tristan Chamberlain
Chief Assistant Prosecutor

MICHIGAN DEPARTMENT OF STATE POLICE

ORIGINAL INCIDENT REPORT

ORIGINAL DATE:
Tue, Apr 30, 2024

INCIDENT NO:
075-0001329-24

TIME RECEIVED:
1200

FILE CLASS:
73000

WORK UNIT:
MSP TRAVERSE CITY POST

COUNTY:
LEELANAU

COMPLAINANT:
GARY ROBERT HOSKING

TELEPHONE NO:

ADDRESS: STREET AND NO:
[REDACTED]

CITY:
[REDACTED]

STATE:
[REDACTED]

ZIP CODE:
[REDACTED]

RECEIVED
JUL 05 2024

INCIDENT STATUS:
OPEN PENDING FURTHER INTERVIEWS

LEELANAU COUNTY
PROSECUTING ATTORNEY

VIOLATION OF OPEN MEETINGS ACT

SUMMARY:

I interviewed GARY HOSKING on this date regarding a possible violation of the Open Meetings Act. GARY stated the Leelanau Energy Futures task force did not post minutes from their meetings after their first meeting and did not provide dates to the public for their meetings. GARY also stated the Board of Commissioners applied for a grant based on a recommendation from the Task Force. After the conclusion of the interview, I also spoke with Michelle Crocker, a Leelanau County court clerk for more information. This complaint is OPEN PENDING FURTHER INTERVIEWS.

VENUE:

LEELANAU COUNTY
203 CEDAR ST
LELAND, MI 49654

DATE & TIME:

ON OR AFTER: THU, OCT 05, 2023

COMPLAINANT:

NAM: GARY ROBERT HOSKING

BIR:
NBR: [REDACTED] DIR:
STR: [REDACTED]
SFX: [REDACTED]
CTY: [REDACTED] ST: [REDACTED]
TXH: [REDACTED] ZIP: [REDACTED]
TXW:
SMT:

RAC: WHITE ETH:
SEX: MALE DL: [REDACTED]
DOB: [REDACTED] SSN:
HGT: [REDACTED] SI: /
WGT: [REDACTED] FBI:
HAI: [REDACTED] MNU:
EYE: [REDACTED] PR:

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**MICHIGAN DEPARTMENT OF
STATE POLICE**

ORIGINAL INCIDENT REPORT

ORIGINAL DATE: Tue, Apr 30, 2024	INCIDENT NO: 075-0001329-24
TIME RECEIVED: 1200	FILE CLASS: 73000

INTERVIEW GARY:

I interviewed GARY HOSKING on this date an approximate time, which was recorded on my body worn camera. GARY stated the Leelanau County Energy Futures Task Force has not posted meeting dates and times and did not make their minutes available to the public. The task force posted their initial meeting and minutes but failed to do so after that initial meeting.

GARY stated the County Board of Commissioners submitted an application for a grant of about \$1 million to have solar panels installed at the County Offices. GARY advised the board applied for this grant based off a recommendation from the Energy Futures Task Force, but the meeting where the Task Force discussed this recommendation was not made available to the public. The Open Meetings Act requires that any process that equates to decision making must be conducted at an open meeting.

GARY stated the task force has posted their minutes and meeting dates after he initially started looking into this incident at the beginning of February.

PUBLIC BODY IN QUESTION:

BUSINESS NAME: LEELANAU COUNTY ENERGY FUTURES TASK FORCE
ADDRESS:
203 CEDAR ST
LELAND MI 49654

CODE: GOVERNMENT
DOT #
ICC #
MPSC #
MISC #

CONTACT COUNTY CLERK:

I contacted Michelle Crocker, a county clerk in Leelanau County about this incident after my meeting with GARY. Michelle confirmed the task force has since posted their minutes and upcoming meetings for this year. After reviewing the complaint, Michelle advised she thinks there is a possibility this task force does not fall under the requirements of the Open Meetings Act. Michelle advised she would contact one of the attorneys familiar with the Open Meetings Act for input and then recontact me in the future.

If the Leelanau County Energy Futures Task Force does not fall under the Open Meetings Act, then the task force is not guilty of any violation involving the act.

NEWS ARTICLE:

The Leelanau Enterprise newspaper posted an article on 05/09/2024 about this incident. In this article Joe DeFors, the Leelanau Energy President, stated the task force made a mistake based on confusion over whether the task force is a public body.

I will interview Joe DeFors at a later date for his statement.

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STATE POLICE**

ORIGINAL INCIDENT REPORT

ORIGINAL DATE: Tue, Apr 30, 2024	INCIDENT NO: 075-0001329-24
TIME RECEIVED: 1200	FILE CLASS: 73000

EXTERNAL DOCUMENTS:

GARY HOSKING's initial complaint that he gave to the Leelanau County Prosecutor's Office (3 pages).

IN CAR VIDEO:

N/A

BODY WORN CAMERA:

Activated.

STATUS:

OPEN PENDING FURTHER INTERVIEWS

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PRINTED: 6/5/2024 13:14

MICHIGAN DEPARTMENT OF STATE POLICE

SUPPLEMENTAL INCIDENT REPORT
0001

ORIGINAL DATE:
Tue, Apr 30, 2024

SUPPLEMENTARY DATE:
Wed, Jun 05, 2024

INCIDENT NO:
075-0001329-24

FILE CLASS:
73000

INCIDENT STATUS:
OPEN PENDING PROSECUTOR REVIEW

VIOLATION OF OPEN MEETINGS ACT

JOURNAL:

DATE	JOURNALED BY	ACTION
05-15-2024	ENTERED BY: CROFOOT, JEFFREY, 279, SERGEANT	ORIGINAL REVIEWED, PENDS FURTHER INVESTIGATION/INTERVIEWS.

SUMMARY:

I contacted JOSEPH DEFORS, the chair of the Leelanau Energy Futures Task Force, on this date at approximately 12:05 PM. In summary, JOSEPH stated he did not intend to commit any violation but takes responsibility if there was a violation. This interview is detailed further below. I have also included an email I was forwarded from the Leelanau County Clerk regarding the county attorney's statement on why he feels the task force does not fall under the Open Meetings Act.

This complaint is OPEN PENDING PROSECUTOR REVIEW.

IDENTIFICATION OF SUSPECT:

JOSEPH DEFORS was identified verbally.

CHAIR OF TASK FORCE:

NAM: JOSEPH HOWARD DEFORS

BIR:

NBR: [REDACTED]

STR: [REDACTED]

SFX: [REDACTED]

CTY: [REDACTED]

TXH: [REDACTED]

TXW: [REDACTED]

MB: [REDACTED]

SMT:

DIR: [REDACTED]

ST: [REDACTED]

ZIP: [REDACTED]

RAC: WHITE

SEX: MALE

DOB: [REDACTED]

HGT: [REDACTED]

WGT: [REDACTED]

HAI: [REDACTED]

EYE: [REDACTED]

ETH: [REDACTED]

DL: [REDACTED]

SSN: [REDACTED]

SI: /

FBI:

MNU:

PR:

EMPLOYER: LEELANAU ENERGY TASK FORCE

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MICHIGAN DEPARTMENT OF STATE POLICE

SUPPLEMENTAL INCIDENT REPORT
0001

ORIGINAL DATE: Tue, Apr 30, 2024	INCIDENT NO: 075-0001329-24
SUPPLEMENTARY DATE: Wed, Jun 05, 2024	FILE CLASS: 73000

INTERVIEW JOSEPH:

I interviewed JOSEPH DEFORS on this date at approximately 12:05 PM via telephone. This interview is recorded on my body worn camera. JOSEPH DEFORS is the "chair" of the Energy Futures Task Force. JOSEPH advised he has done a lot of volunteer work for Leelanau County but this is the first time he has led a task force or a group like this. Since the task force was created last year, all the meetings have been open to the public and they occasionally had people attend. Further, one of the members of the task force kept minutes for the meetings for their own benefit to help them stay organized.

JOSEPH stated that they initially wanted the task force to be an official committee but were denied this request as the board of commissioners wanted to see how the task force performed first before they gave them the authority of a committee. The task force was told that they weren't ready to be an official committee yet. JOSPEH advised that if they were made into an official committee, the county would have to allocate more resources towards the task force such as a paid employee who keeps track of minutes. JOSEPH also stated that the task force had no decision making authority.

JOSEPH stated they did not work very hard to make sure the minutes and meeting dates were posted on the county website. JOSEPH stated they were not trying to be secretive, it just did not occur to them that they had to post them. Once this complaint was made, they have posted minutes and meeting dates on the county's website.

EMAIL FROM COUNTY ATTORNEY:

Michelle Crocker, the Leelanau County Clerk, forwarded me an email she received from Matt Nordfjord, the county attorney. In the email, Matt advises that he believed the Energy Futures Task Force does not fall under the Open Meetings Act. Below is the text from the email (verbatim).

Hi Clerk Crocker –

Although there is no legal impediment for this task force to post meetings, take minutes and/or follow Michigan's Open Meetings Act (OMA), the task force is not a "public body" subject to the requirements of the OMA. As a result, the failure to post meetings, take minutes etc. does not violate the OMA in this fact pattern.

The Leelanau County Energy Futures Taskforce (EFT) was established by the County Board of Commissioners (BOC) as advisory body without express decision making authority. Specifically, the motion from the Board of Commissioners creating the task force did NOT delegate the exercise of governmental or propriety authority; instead, the EFT was created to "identify opportunities and facilitate implementation of energy efficiency and renewable energy within our County." However, critical to this question of whether the OMA applies, the BOC did not empower or delegate to the EFT the BOC's decision making authority, "Any projects that involve county expenditures or are in county facilities must have board [BOC] approval." (*emphasis supplied*) See motion from Approved Regular Session Minutes dated August 15, 2023 (approved 9/19/23) at page 8.

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MICHIGAN DEPARTMENT OF STATE POLICE

SUPPLEMENTAL INCIDENT REPORT 0001

ORIGINAL DATE: Tue, Apr 30, 2024	INCIDENT NO: 075-0001329-24
SUPPLEMENTARY DATE: Wed, Jun 05, 2024	FILE CLASS: 73000

I did note that the Chair indicated in the Executive Board Session minutes from August 8, 2023, "there will be meeting minutes and postings for meetings..." See discussion on page 9 of the minutes. Although not legally required based on the specific operation of the EFT, it is prudent to accomplish the purpose of the EFT for this to occur. Further, it is my understanding that the 14 member EFT includes three sitting County Commissioners. This is not a quorum of the full board and does not change the analysis regarding the advisory nature of the EFT, but this lends support to have the EFT follow the expectation expressed in the discussion on Aug. 8, 2023, to have meeting minutes and post the meetings, so that there is clarity regarding recommendations from this advisory board.

The title used for the committee is not determinative of the question of a public body; rather, the formation, tasks delegated by the BOC and actions performed by the committee determine whether the committee is a public body subject to the OMA. The term "public body" is defined in the OMA as follows:

"Public Body" means any State or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by State Constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under Section 4o of the Home Rule City Act, 1909 PA 279, MCL 117.4o. MCL 15.262(a) (emphasis added).

Once it is determined whether the entity is a public body the OMA defines the term "meeting" and "decision" as follows:

"Meeting" means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy, or any meeting of the board of a nonprofit corporation formed by a city under section 4o of the home rule city act, 1909 PA 279, MCL 117.4o. MCL 15.262(b).

"Decision" means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy. MCL 16.262(d).

There are a variety of titles used for entities created with direction from the BOC but ultimately the "public policy" determination depends on the actions. Here, the EFT an advisory body and the BOC retains the authority to approve any projects involving county funds or facilities and therefore, the BOC has not delegated governmental or proprietary authority to the EFT.

The Michigan Court of Appeals recently ratified this same principle in the case of *Pinebrook Warren, LLC v City of Warren (2022)*, which involved claims that the City of Warren's Medical Marihuana Review Committee ("Review Committee") had allegedly violated OMA by making decisions, in private meetings, about which applicants should be awarded medical marijuana provisioning center licenses. The Court of Appeals rejected

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**MICHIGAN DEPARTMENT OF
STATE POLICE**

**SUPPLEMENTAL INCIDENT REPORT
0001**

ORIGINAL DATE: Tue, Apr 30, 2024	INCIDENT NO: 075-0001329-24
SUPPLEMENTARY DATE: Wed, Jun 05, 2024	FILE CLASS: 73000

those claims for the reason that the Review Committee, although it conducted detailed evaluations of applications for licenses and identified preferred applicants, only had authority to provide recommendations to the City Council. The City Council retained sole authority, under the City licensing ordinance, to determine whether to approve or deny an application, and was not bound by the Review Committee's recommendations. In that situation, the Court held, the Review Committee was not a "public body" for purposes of OMA, and was therefore not subject to OMA's open-meeting requirements.

Please let me know if you have any questions or concerns.

Thanks,

Matt

--
Matt Nordfjord, Shareholder
Cohl, Stoker & Toskey, PC
601 N Capitol Ave.
Lansing, MI 48933
Ph: (517) 372-9000
Fax: (517) 372-1026

42C / CCH:

JOSEPH does not have a CCH. JOSEPH's 42C is attached to the PAO copy of this report.

WARRANT REQUEST:

Completed and attached to the PAO copy of this report.

BODY WORN CAMERA:

Activated and will be provided upon request.

STATUS:

OPEN PENDING PROSECUTOR REVIEW

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