



Town of Carlisle

MASSACHUSETTS 01741

Office of
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66 Westford Street
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Special Guidance Regarding File-Sharing and Collaborative Software

Guidance from Carlisle Town Counsel, September, 2020
Edited for Handbook by Town Clerk

The law has not kept up with technology and use of google drive or any other sharing platform is strongly discouraged.

The *Open Meeting Law* precludes members of a public body from deliberating outside an open meeting. The expression of an opinion on matters within the body's jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. *See Boelter v. Bd. of Selectmen of Wayland*, 479 Mass. 233 (2018) (Selectmen violated the OML when the Chair circulated a written evaluation of the Town Administrator's performance to the other Board members). OML compliance does not turn on the manner of a document's transmission. Thus, sharing a document via email is the same as posting a document on a shared google drive or Dropbox. If the document contains a member's opinions, the document cannot be circulated outside of an open meeting.

In *Boelter*, the Supreme Judicial Court created a workaround to this general prohibition. In that case, the Court stated that a document containing an opinion of a member may be shared outside an open meeting via a public posting to a municipal website in a manner that is also available to members of public and with copies at the Town Clerk's office. Therefore, a public body can use a google drive or Dropbox provided that the drive is linked to the Town's website, accessible by the public and all documents are also available for inspection at the Town's Clerk Office. No further deliberations on the document are permitted outside an open meeting.

In regard to collaborative documents, any edits to the document, whether in the body of the document or in a comment section, constitutes a deliberation in violation of the *Open Meeting Law*. Use of a collaborative editing platform may also run afoul of the *Public Records Law* and the *Records Retention Act*, which would require the Public Body to retain copies of all "versions" of the document and to make such "versions" available upon request. For these reasons, I do not recommend that public bodies (or staff) utilize collaborative editing software.



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