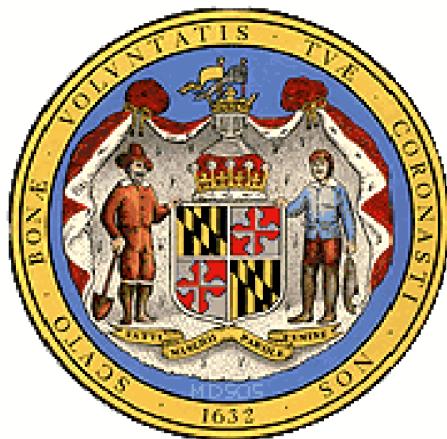


**TWENTY-FIRST ANNUAL REPORT
OF THE
OPEN MEETINGS COMPLIANCE BOARD**



BOARD MEMBERS

**ELIZABETH L. NILSON, ESQUIRE
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SEPTEMBER 2013

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Pursuant to §10-502.4(e) of the State Government Article, the Open Meetings Compliance Board submits this annual report, covering the period July 1, 2012, through June 30, 2013.

I.
ACTIVITIES OF THE BOARD

A. *Financial and Support Activities*

No funds have ever been specifically appropriated for the Compliance Board in the Budget Bill, and none were for fiscal year 2013. The Attorney General's Office provides the Board with the services of staff and counsel, posts the Board's opinions and other Open Meetings Act materials on its website, and bears the incidental costs of copying and mailing Board-related documents. The Board could not fulfill its statutory duties without this support.

One of the Board's unfunded duties is to "develop and conduct educational programs on the requirements of the open meetings law for the staffs and attorneys of: public bodies; the Maryland Municipal League; and the Maryland Association of Counties." See State Government Article § 10-502.4(d) (internal numbering omitted). The Board is grateful to the Institute for Governmental Service and Research at the University of Maryland and the Attorney General's Office for maintaining, at no cost to the Board, the online class on the Open Meetings Act that those entities jointly released in May 2012. Training on the Open Meetings Act was also available for local government officials and employees through the certificate program offered by the Academy for Excellence in Local Governance, now a program of the School of Public Policy at the University of Maryland. This year, the Academy's Open Meetings class was offered at the annual conferences of the Maryland Municipal League and the Local Government Insurance Trust. By invitation, counsel also addressed the Joint Committee on Transparency and Open Government, the annual meeting of the Maryland Municipal Clerks Association, and a meeting of the department heads and mid-management

employees of Carroll County.

B. Developments during the Fiscal Year

Neither the membership of the Board nor the staffing provided by the Office of the Attorney General changed during the year. We are fortunate to have the assistance of our Administrator, Ms. Deborah P. Spence, who manages our docket and produces our opinions, of Fritz Schantz, who posts our opinions and other information on the Attorney General's website, and of the assistant attorneys general who provide support as needed. The number of the complaints and the comprehensive nature of some of them made the second half of the year unusually busy for us and the staff.

Legislative developments are described in Part III, below.

C. Complaint and Opinion Activities

1. Statistics

- Total number of submitted complaints resolved during FY 2013: 32

Opinions issued during FY 2013: 24

Complaints by different complainants consolidated: 5

Complaints dismissed as not within the Board's authority: 3

Complaints submitted in FY 2013, pending on 7/1/13: 4

- Total number of complaints about prospective violation, resolved informally under State Government Article, § 10-502.6: 1
- Number of different complainants in resolved matters: 21 (includes 7 media complainants)

(Note: Some complaints pertained to numerous meetings over the course of a year or more; two complaints, in particular, involved multiple meetings by multiple committees of the same parent public body. The number of complaints thus does not reflect the number of meetings and public bodies complained of.)

2. Nature of the Complaints

(a) Violations alleged. As shown by the summary included as an appendix to this report, the complaints received by the Board alleged numerous types of violations, including:

- convening a quorum of the public body to discuss public business without giving any notice;
- giving notice by an obscure means and failing to retain a copy;
- giving notice of a meeting to the public body's known constituency but not to the general public;
- closing a meeting for the stated purpose of discussing "administrative" matters not subject to the Act and then discussing policy matters;
- issuing unduly vague and conclusory minutes, closing statements, or summaries of closed-session events, or not preparing those documents at all;
- failing to adopt minutes promptly;
- in closed sessions, exceeding the scope of the exception claimed as a basis for the closing;
- permitting a participant in a hearing to order an observer to stop videotaping it;
- posting as "closed" a meeting that was required to be convened openly so that the public could observe the vote to close it
- meeting at a location that was closed to the public

(b) Allegations Not Stating Violations.

Complaints received by the Board also alleged numerous acts beyond the Board's authority, including:

- using sequential e-mails or other forms of non-contemporaneous written communication to decide a matter;
- failing to produce documents requested under the Public Information Act;
- failing to permit a person to speak in a meeting;
- failing to post minutes online, or to post them promptly, or to provide copies by e-mail or mail;

- failing to hold public comment sessions on a proposed measure;
- as to a private association, failing to meet publicly

(c) Complaints Involving the Failure to Provide Notice

The Board issued 7 opinions in response to specific allegations that a public body violated §10-506 of the Act. The notice-related complaints included allegations of an alleged lack of notice, untimely notice, insufficient notice, a failure to retain written notice, and notice that stated that the meeting would be closed when, in fact, the public body had to first conduct a public vote to exclude the public. Although most of the responses submitted by the public bodies established violations, one public body produced copies of the written notice it had published, by its usual method, reasonably in advance of the meeting, with the required information. In one case, it appeared that the public body had no staff assigned to the task of posting its notices.

It appears to us that the most serious notice problems may arise from public bodies' decisions to treat their meetings as entirely excluded from the Act, and thus from the notice requirement, under the administrative function exclusion. It is difficult for us to gauge the extent to which the exclusion is misapplied, because members of the public often do not know that these so-called "administrative" meetings have occurred. Further, even a public body that discloses its closed administrative sessions might not have kept full minutes, so we are often cannot determine whether the discussion fell within the exclusion. See, e.g. 8 *OMCB Opinions* 89 (2012) posted at <http://www.oag.state.md.us/Opinions/Open2012/8omcb89.pdf> (describing the members' recollections of the event as related to counsel, who was not there). It thus may be that there have been more violations of the notice provisions than are reflected in our opinions.

III.
Recommendations for Improvements to the Act***A. 2013 Legislation***

The Open Meetings Act was amended in 2013 when the Governor signed House Bills 139 and 331 and Senate Bill 230. House Bill 139 requires each public body to designate at least one employee, officer, or member to

receive training on the requirements of the Act. The public body must submit the designee's name to us, and the requirement may be satisfied by taking the online course or one of the Academy for Excellence in Local Governance courses. We commented on our enthusiastic support of more training and noted that we are an unfunded body. The Office of the Attorney General has posted information on the requirement at <http://www.oag.state.md.us/Opengov/Openmeetings/training.htm>.

House Bill 331 made three types of changes to the Act. First, effective October 1, 2013, circuit court judges will have the discretion to admit Compliance Board opinions into evidence in actions brought under the Act. Under current law, our opinions were inadmissible in those actions. Second, a public body that we have found to have violated the Act must summarize the opinion at its next public meeting, and the members must sign a copy of the opinion and return the copy to the Compliance Board. Third, the legislation changes the provisions for the penalty that a circuit court may impose. We supported the bill.

Senate Bill 230 amended the Act's definition of a "public body" to include entities that created by a memorandum of understanding between the State Department of Education and a majority of the county boards of education. We did not take a position on the bill. Also before the General Assembly was legislation that would have given the Office of the Attorney General and the States' Attorneys the authority to enforce the Act as to both past and prospective violations and that would have changed the penalty provisions in various ways. Although we support the idea of stronger enforcement of the Act, we urged careful study of how the enforcement mechanism should be structured and cautioned against making major changes without examining the Act as a whole. The legislation did not pass. Our position on all the legislative proposals is stated in the minutes of our January 29, 2013 meeting at <http://www.oag.state.md.us/Opengov/Openmeetings/Min012913.pdf>.

B. Board recommendations for the 2014 Legislative Session

The Board does not expect to propose legislation this year.

IV.
Suggestions from the Public

Members of the public variously suggested that the Act be amended to:

- define the administrative function exclusion more narrowly;
- require public bodies to complete the “compliance checklist” attached to the Open Meetings Act Manual and retain it for inspection;
- prohibit public bodies from taking votes by e-mail or the circulation of documents and require that actions be taken in meetings.

Appendix
Open Meetings Compliance Board*
Summary of Opinions

8 Official Opinions of the Compliance Board 89 (2012)

Carroll County Commissioners

Cornelius Ridgely, Complainant

July 5, 2012

Topics discussed: Administrative function (various topics); adequacy of notice (specification that open session will precede closed session; meeting location; cancellation of session subject to the Act)

8 Official Opinions of the Compliance Board 95 (2012)

Maryland State Board of Education

Gary W. Bauer on behalf of Maryland Association of Boards of Education

July 23, 2012

Topics discussed: Allegation that discussion in closed session did not pertain to the exceptions under which the session was closed.

8 Official Opinions of the Compliance Board 99 (2012)

Board of County Commissioners of Washington County

Craig O'Donnell, Kent County News, Complainant

July 23, 2012

Topics discussed: Procedures for closing a meeting (adequacy of written statement); scope of exception for the discussion of the relocation of a business to the county; required elements of a closed-session summary; required basis of a complaint.

8 Official Opinions of the Compliance Board 103 (2012)

Board of County Commissioners of Carroll County

Cornelius M. Ridgely and Bonnie Grady, Complainants

August 3, 2012

Topics discussed: Allegation that public body deliberated through circulation of documents; definition of "meeting."

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8 Official Opinions of the Compliance Board 107 (2012)

Maryland Transportation Authority

Craig O'Donnell, Kent County News, Complainant

August 3, 2012

Topics discussed: Administrative function (oversight of audit staff without discussion of policy matters); public body (effect of fact that one committee is a public body on a committee that is not a public body).

8 Official Opinions of the Compliance Board 111 (2012)

Northeast Maryland Waste Disposal Authority

Michele J. Fluss

September 24, 2012

Topics discussed: methods of giving notice of meetings; meeting by conference call; meeting location; timely preparation and adoption of minutes

8 Official Opinions of the Compliance Board 115 (2012)

Maryland State Board of Morticians and Funeral Directors

James J. Doyle, Esquire

September 26, 2012

Topics discussed: quasi-judicial and administrative function exclusions (claims proceedings)

8 Official Opinions of the Compliance Board 118 (2012)

Pines Community Improvement Association, Inc.

Ann Meade Daniel

September 26, 2012

Topics discussed: definition of public body (not met by privately - created and privately - governed association)

8 Official Opinions of the Compliance Board 120 (2012)

Board of Commissioners of Charles County

Lee Platt

October 9, 2012

Topics discussed: meeting closed under personnel exception (appointments of volunteers to commissions)

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8 Official Opinions of the Compliance Board 122 (2012)

Town of Betterton

Craig O'Donnell

November 7, 2012

Topics discussed: reporting requirements applicable to closed meetings; adequacy of minutes

8 Official Opinions of the Compliance Board 125 (2013)

Northeast Maryland Waste Disposal Authority

Michele J. Fluss, Complainant

January 24, 2013

Topics discussed: Notice; adoption of minutes by e-mail

8 Official Opinions of the Compliance Board 128 (2013)

Prince George's County Council, Sitting as the District Council

Susan Gervasi, Complainant

February 1, 2013

Topics discussed: Application of videotaping rules; management of meeting

8 Official Opinions of the Compliance Board 135 (2013)

Kent County Property Tax Assessment Appeals Board

Craig O'Donnell, Complainant

February 1, 2013

Topics discussed: Quasi-judicial and administrative exclusions from Act

8 Official Opinions of the Compliance Board 137 (2013)

University System of Maryland Board of Regents

Ralph Jaffe, Craig O'Donnell, Complainants

February 26, 2013

Topics discussed: Notice; closed session procedures; procurement exception; confidential commercial information exception; business relocation exception; minutes

8 Official Opinions of the Compliance Board 150 (2013)

Board of Regents of Morgan State University

Ralph Jaffe, Craig O'Donnell, Complainants

March 4, 2013

Topics discussed: Notice; minutes; personnel exception

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8 Official Opinions of the Compliance Board 161 (2013)

Carroll County Commissioners

S. Wayne Carter, Jr., Complainant

March 29, 2013

Topic discussed: Legality of closing a meeting to receive legal advice from outside counsel

8 Official Opinions of the Compliance Board 166 (2013)

University System of Maryland Board of Regents

Craig O'Donnell, Complainant

April 8, 2013

Topics discussed: Procedures to be followed before closing a meeting; scope of the exceptions that permit a public body to close a meeting to discuss personnel matters and confidential personal information

8 Official Opinions of the Compliance Board 170 (2013)

Baltimore County Council

Ralph Jaffe, Complainant

May 13, 2013

Topics discussed: Dismissal of complaints that do not allege any violation of the Open Meetings Act; lack of requirement in Act that public bodies hold meetings to receive public comment

8 Official Opinions of the Compliance Board 173 (2013)

Maryland State Water Quality Advisory Committee

Michele J. Fluss, Complainant

May 15, 2013

Topics discussed: Timely adoption of minutes; provision of draft minutes

8 Official Opinions of the Compliance Board 176 (2013)

Maryland State Board of Elections

Craig O'Donnell, Complainant

May 15, 2013

Topics discussed: Timely adoption of minutes; closed-session minutes

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8 Official Opinions of the Compliance Board 180 (2013)

University System of Maryland Board of Regents

Craig O'Donnell, Complainant

May 15, 2013

Topics discussed: Timely adoption of minutes; provision of draft minutes; adoption of minutes in open session

8 Official Opinions of the Compliance Board 182 (2013)

Town of Centreville Town Council

Sveinn R. Storm, Complainant

May 20, 2013

Topics discussed: Steps to be followed before closing a meeting; level of detail required in written statement of the basis for closing and in the summary of the closed session; notice requirement; provision to public of opportunity to observe vote to close

8 Official Opinions of the Compliance Board 188 (2013)

Baltimore City Automated Traffic Violation Enforcement System Task Force

Louis Wilen, Eugene Simmers, Thomas Barrett, Complainants

May 20, 2013

Topics discussed: Notice requirement; retention of copy of written notice; level of detail required in minutes; requirement that meeting be held in location open to the public; steps that help newly-formed public bodies comply with the Open Meetings Act

8 Official Opinions of the Compliance Board 193 (2013)

Board of Trustees of Frederick Community College

Courtney Mabeus, Complainant

June 3, 2013

Topics discussed: Applicability of administrative exclusion to discussion involving the administration of existing personnel policies; notice and closed-session requirements when Act applies

*The full text of these opinions can be found at <http://www.oag.state.md.us/Opengov/Openmeetings/index.htm>