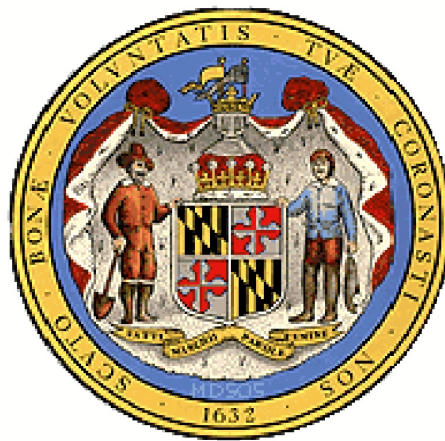


**EIGHTEENTH ANNUAL REPORT**  
**OF THE**  
**OPEN MEETINGS COMPLIANCE BOARD**



**BOARD MEMBERS**

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**October 2010**

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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, 2009, through June 30, 2010.

**I**

**Activities of the Board**

**A. *Financial and Support Activities***

No funds were specifically appropriated for the Compliance Board in the Budget Bill for fiscal year 2010. The Attorney General's Office has borne the incidental costs of copying and mailing Board-related documents. The Board is grateful to the Attorney General's Office for this assistance.

Indeed, the Board wishes to acknowledge more generally the ongoing support of the Attorney General's Office, especially the informed and dedicated involvement of Assistant Attorney General William Varga, who has provided the Board with essential advice and guidance. In addition, all of the recordkeeping and other clerical and administrative support for the Board are provided, with outstanding professionalism, by Ms. Kathleen Izdebski, of the Opinions and Advice Division of the Attorney General's Office. The cost to the Board would have been significant had it been required to obtain these support services elsewhere.

**B. *Complaints and Opinions***

From July 1, 2009 through June 30, 2010, the Compliance Board received 25 complaints alleging violations of the Open Meetings Act. Many of the complaints alleged more than one violation. Nine complaints were pending on June 30, 2010; the opinions in response were issued later. Nine opinions were issued this fiscal year about complaints received prior to July 1, 2009.

Table 1 below indicates the categories of complainants.

<b>TYPE OF COMPLAINANTS</b>	
<b>Type</b>	<b>Number</b>
Citizens	11
Government Officials	1
News Media	11

Table 1\*

As Table 2 indicates, entities at every level of government were involved with complaints.

<b>COMPLAINTS BY TYPE OF ENTITY</b>	
<b>Jurisdiction</b>	<b>Number</b>
State	7
County	7
Local School Board	2
Municipality	7

Table 2\*

During the reporting period, the Board issued 17 opinions. In 13 of these, the Board found one or more violations of the Act. Violations tended to concern the Act's procedural requirements such as procedures for closing a meeting and its requirements for preparing minutes. There are occasions where the record does not allow us to reach a definitive conclusion. All of the Board's opinions are available at this Internet location: <http://www.oag.state.md.us/Opengov/Openmeetings/board.htm>.<sup>1</sup>

As we have previously observed, although it is impossible to estimate the incidence of unreported violations, the Compliance Board believes that the low number of known violations reflects overall compliance with the law by public bodies

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<sup>1</sup> We thank the Attorney General's Office for its maintenance of the Board's web page, which is an important source of information about the Open Meetings Act generally and about the Compliance Board's procedures.

\* Certain complaints reflected more than a single complainant or government entity.

at all levels of government. This conclusion is further supported by the fact that only a handful of Open Meetings Act issues have been brought to court. Overall compliance is undoubtedly furthered by the ongoing educational efforts of the Academy for Excellence in Local Governance, the Maryland Association of Counties, the Maryland Municipal League, and the Office of the Attorney General. The continued interest of the press in asserting rights under the Act also has a salutary deterrent effect.

The Act calls upon us to discuss in particular "complaints concerning the reasonableness of the notice provided for meetings." §10-502.4(e)(2)(iii). In general, notice issues have not been a focus of complaints, probably because the Act is quite flexible in allowing a range of notice methods. That is, the Act allows notice to be given by "any ... reasonable method," including posting at a public location near the site of the meeting or, as of July 1, 2007, on an Internet website. Thus, the General Assembly left considerable discretion to each public body as to the method of public notice. As long as a public body posts the notice or takes one of the other steps set out in the law in a timely manner, the Board will not find a violation of the notice requirement. Public bodies do face notice problems, however, when they call a meeting on short notice, delay a previously scheduled meeting, or decide to open a meeting that had previously been scheduled as a closed meeting. The Compliance Board's guidance is that the public should be told of unexpected scheduling developments as soon as practicable, by whatever means are feasible under the circumstances. Issues about notice were discussed in the following opinions: 6 *OMCB Opinions* 164 (2009), 6 *OMCB Opinions* 196 (2009), 7 *OMCB Opinions* 18 (2010), and 7 *OMCB Opinions* 21 (2010).

## II

### **Legislative Recommendations**

#### ***2010 Legislation***

Last year, Delegate Dan Morhaim introduced legislation on behalf of the Open Meetings Compliance Board that modified the notice provisions of the Open Meetings Act and limited the period during which a complaint could be filed with the Board. (House Bill 211 (2010)).

As to the Act's notice provisions, in last year's report, we noted that many public bodies were relying on their websites to advise the public about upcoming meetings - - an option not available when the Act was first enacted. However, a public body could deviate from this practice, and post notice of a particular meeting

on a bulletin board and still technically comply with the Act. Of course, notice in this manner would be meaningless to a member of the public accustomed to relying on the website.

As we noted last year, regular reliance on a website is perhaps the most effective means of providing notice. However, we also recognized that not every public body is able to maintain a website. Thus, we recommended that the Act be amended, replacing the list of options by which the Act's notice requirement could be satisfied, and requiring that a public body provide notice on a website that it relies on to communicate with the public. However, if the public body did not regularly maintain a website, we recommended requiring that notice be posted at a convenient location accessible to the public and regularly used by the public body for posting notices. The proposed language made clear that a public body could provide additional notice by any other method it deemed appropriate. Finally, we recommended that a notice reflect the date it was posted.

We recommended the one-year limitations period, recognizing that the Act requires a public body to maintain records required under the Act for a one-year period and that, as a practical matter, little is gained by evaluating meetings that occurred more than a year earlier.

The Health and Government Operations Committee amended the notice provisions of the bill to require that notice be (1) provided on a website if it regularly used a website to communicate with the public or had access to a website that could be used for this purpose and (2) be posted at an accessible location. The amendments also made clear that one method of providing optional additional notice was through representatives of the news media who regularly report on sessions of the public body or the government of which the public body was part. (*See* House Bill 211 (2010), third reader.)

The amended bill passed the House of Delegates, but died in the Senate when it was not reported to the floor until late in the Session. Thus, this year, we recommend that the General Assembly enact a bill similar to House Bill 211 (2010) as it passed the House.

### ***Recommendation from the Public***

The Compliance Board received a letter from Mr. John Medlin requesting that the Board recommend that § 10-510(d) of the State Government Article be amended in order that only a plaintiff would be eligible for attorney fees. Under current law, a court may “assess against any party reasonable counsel fees and other litigation expenses that the party who prevails in the action incurred[.]” In Mr. Medlin's view,

the current law is a deterrent to individuals filing an action under the Open Meetings Act and his proposed change might be more transparent government. The Compliance Board is not aware of any Open Meetings Act litigation where a court ordered a plaintiff to pay a governmental entity's attorney fees. Thus, the Board declines to take any position on this issue.