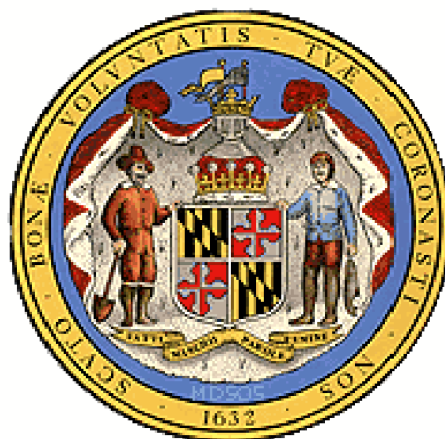


**TWENTIETH ANNUAL REPORT**  
**OF THE**  
**OPEN MEETINGS COMPLIANCE BOARD**



**BOARD MEMBERS**

**Elizabeth L. Nilson, Esquire**  
**Courtney J. McKeldin**  
**Julio A. Morales, Esquire**

**September 2012**

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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, 2011, through June 30, 2012.

**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 2011. The Attorney General's Office provides the Board with the services of counsel and administrative staff, 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). This year, the Board is particularly grateful to the Institute for Governmental Service and Research at the University of Maryland and the Attorney General's Office for jointly developing, producing, and disseminating an online class on the Open Meetings Act. This project could not have been done without the Institute's provision of its governmental, educational, and technological expertise at no

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cost to the Attorney General's Office. The Institute also plays an important role in disseminating Open Meetings Act information, at no cost to the Board, by requiring the participants in its Academy for Excellence in Local Governance certificate program to take the Academy's Open Meetings class. This year, that class was co-taught by the Frederick County Attorney and our counsel. By invitation, counsel also addressed the Board of County Commissioners of Cecil County and the Anne Arundel County Charter Review Commission.

***B. Developments during the Fiscal Year***

On May 23, 2012, the Institute for Governmental Service and Research at the University of Maryland and the Attorney General's Office launched their online course on the Open Meetings Act. The class was developed over the course of a year and was tested by a focus group composed of members of the media and public and members and staff of public bodies. Posted on the Institute's Virtual Learning Center page, it can be accessed at: <http://www.igsr.umd.edu/VLC/index.php>.

Staff continues to try to improve the open meetings information posted on the website of the Office of the Attorney General (<http://www.oag.state.md.us/Opengov/Openmeetings/index.htm>) and to simplify various procedures. The model closing statement posted on the website has been revised to emphasize the statutory requirement that public bodies state the topic to be discussed and the reason for excluding the public, as well as the citation to the applicable statutory exception. The complaint procedures have also been revised; complaints and responses may now be submitted electronically. Complaints must be accompanied by a scanned signature. Staff now sends a quarterly summary of our opinions, rather than the full text of each, to the Maryland Register. The full text is available online.

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In March 2012, our staff member Ms. Kathleen Izdebski resigned from her position at the Attorney General's Office to serve as assistant to the Hon. Robert N. McDonald at the Court of Appeals of Maryland. Until then, Ms. Izdebski docketed every complaint and response submitted to us, oversaw the production and indexing of every opinion, coordinated our activities, kept and drafted our meetings minutes, and produced every annual report. We are profoundly grateful for her friendship and the help she provided us over the years. We are fortunate that Ms. Deborah P. Spence, also of the Attorney General's Office, has taken on this work in addition to her many other responsibilities, and we appreciate the experience and professionalism she brings to it.

### ***C. Complaint and Opinion Activities***

#### **1. Statistics**

Opinions issued during fiscal year 2012: 25

Complaints received during FY 2012: 28

Complaints dismissed as not within the Board's procedures: 2

Complaints dismissed for failure to respond to Board's request for clarification: 1

Complaints filed in 2012, pending on 7/1/12: 6

#### **2. Nature of the Complaints**

**(a) Violations alleged.** The complaints received by the Board alleged numerous types of violations, including:

- failing to vote publicly on a decision to close a meeting subject to the act;
- convening a quorum of the public body in a committee meeting without giving notice of a meeting of the public body itself;
- discussing policy matters in meetings that were closed for the purpose of discussing "administrative"

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- matters not subject to the Act;
  - issuing unduly vague and conclusory minutes, closing statements, or summaries of closed-session events;
  - failing to adopt minutes promptly
  - failing to treat a committee as a public body subject to the Act when the committee meets the definition;
  - excluding the general public from a meeting by charging admission;
  - in closed sessions, exceeding the scope of the exception claimed as a basis for the closing.

**(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 and then conducting a pro forma vote in the public meeting;
- 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;
- posting an agenda that did not specify the items to be discussed

**(c) Complaints Involving the Failure to Provide Notice**

The Board issued 5 opinions in response to allegations that a public body violated §10-506 of the Act. Some complaints involved the public body's unannounced failure to use its usual method of notice, and, particularly, to use a website maintained by its parent agency or board. For example, one public body, an advisory group formed to advise a planning commission, only gave notice by mentioning its upcoming meetings at the commission's meetings or its own. A quorum of the commission attended

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one meeting and voted on a commissioner's motion. The commission usually posted its meetings on a local government website, but none of these meetings was posted. See 8 *OMCB Opinions* 76 (2012), accessible at <http://www.oag.state.md.us/Opinions/Open2012/12index.htm>.)

Various notice-related complaints alleged untimely notice, insufficient notice, or a failure to post agenda items. One complaint did not state a violation of the Act.

### **III.**

#### **Recommendations for Improvements to the Act**

##### ***A. 2012 Legislation***

The Open Meetings Act was not amended in 2012. House Bill 501 would have required the Board, in conjunction with the Office of the Attorney General, to develop an online training program on the Act for all employees, officers, or members of a public body and members of the general public. The bill did not pass. We commented on our enthusiastic support of such training, reported on the status of the online class then being developed, and noted that we are an unfunded body. We strongly recommend that public bodies develop training requirements for their members.

##### ***B. Board recommendations for the 2013 Legislative Session***

The Board recommends that State Government Article § 10-506(b), governing the content of meeting notices, be amended to additionally require that meeting notices specify the date on which the public body posted the notice.

##### ***C. Identification of issues for possible further study***

- Whether a public body should be required (1) to promptly announce, at a public meeting, its receipt of a Board opinion finding that the public body violated the Act and (2) to summarize the opinion in the minutes of that meeting.

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- Whether the Act should address the use of mobile devices by the members of a public body, during an open meeting, to privately receive communications on the public business under discussion;
  - Whether the Act should state a deadline by which a public body must give notice of a non-emergency meeting.
  - Whether the Act should require the creation of a central website on which all public bodies could post meetings notices and minutes.

#### **IV. Suggestions from the Public**

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

- that public bodies that conduct meetings by conference call provide a call-in number so that members of the public do not attend meetings at which no member of the public body is present;
- that a State agency be required to maintain a central website on which all public bodies would be required to post their meetings;
- that all public bodies be required to post meetings/minutes/closing documents online;
- that public bodies be required to acknowledge their receipt of Compliance Board opinions in open meetings;
- that online training be required “for elected and appointed government officials plus members of advisory, public bodies that fall under the Act”;

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- that the Act state "a specific length of time in which to approve meeting minutes after a public body meets";
  - that meeting notices posted online specify the date the notice was posted;
  - that public bodies comply with the Board's opinions;
  - that public bodies be prohibited from taking votes by e-mail or the circulation of documents and be required to take actions in meetings.

Respectfully submitted,

*Open Meetings Compliance Board*