

## 8 Official Opinions of the Compliance Board 182 (2013)

- ◆ **Closed Session Procedures –General**
  - ◇ Procedures, summarized
- ◆ **Closed Session Procedures – Written Statement**
  - ◇ Practices in violation
    - Failure to prepare written statement before closing the meeting
      - ◆ failure to provide information required by Act
- ◆ **Minutes – Closed Session Statement – Generally**
  - ◇ Summary of a closed session should meet elements of the exception claimed as a basis for closing
- ◆ **Minutes-Closed Session Statement – Practices permitted**
  - ◇ Not disclosing names of individual personnel discussed in meeting closed for that purpose
  - ◇ Not disclosing real property discussed in meeting closed to discuss the acquisition of that property
- ◆ **Minutes- Generally – Practices in violation**
  - ◇ Failure to provide information required by Act
- ◆ **Notice Requirements- Applicability**
  - ◇ Failure to provide: violation.
- ◆ **Notice Requirements- Content**
  - ◇ Notice to convey that public may observe the public body’s vote to close a meeting under §10-508

\*Topic headings correspond to those in the Opinions Index (2010 edition) at <http://www.oag.state.md.us/opengov/openmeetings/appf.pdf>

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May 20, 2013

*Re: Town of Centreville Town Council  
(Sveinn R. Storm, Complainant)*

We have considered the complaint of Sveinn R. Storm (“Complainant”) that the Town Council (“Council”) of Centreville violated the Open Meetings Act (the “Act”) by making inadequate disclosures about the topics discussed at twelve meetings.

First, we will state the rules that apply when a public body decides to exclude the public from a meeting at which it will conduct business subject

to the Act. We will then apply each rule to each meeting and state our conclusions as we go along.

**THE RULES APPLICABLE TO CLOSED MEETINGS**

- The public body must give notice of a public meeting and of the fact that it expects to conduct all or part of the business of the meeting in closed session. The Act does not require the public body either to include an agenda with the notice or to state, in the notice, the reason for closing.<sup>1</sup> Many public bodies do so as a courtesy to the public.
- At the public meeting, the presiding officer must perform two tasks before closing the meeting: 1) conduct a recorded vote on a motion to close the session; and 2) “make a written statement,” often called a “closing statement.”<sup>2</sup>
- The closing statement must disclose three items of information: the citation to the section of the Act that authorizes the exclusion of the public (the statutory “exception”); a description of the topic to be discussed; and a statement of the reason for excluding the public. The presiding officer should disclose as much information as he or she can without compromising the confidentiality of the session. Mere repetition of the words of the statutory exception is almost always insufficient. The disclosures should establish the applicability of the claimed exception.<sup>3</sup>
- The closing statement is to be available immediately to a member of the public who requests it.<sup>4</sup> Therefore, if the presiding officer takes the closing statement into the closed session to use as a reminder of the permissible scope of the discussion and as a place to

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<sup>1</sup> State Government Article (“SG”) § 10-506.

<sup>2</sup> SG § 10-508(d).

<sup>3</sup> *Id.*

<sup>4</sup> See 5 *OMCB Opinions* 184, 187 (2007) (“Generally, a statement should be made available as soon as it has been completed. Anyone in the audience who wants to see it has a right to do so during the public portion of the meeting.”) (accessible at <http://www.oag.state.md.us/Opengov/Openmeetings/board.htm>).

record actions taken in the closed session (a practice we recommend), a copy should be left with staff outside of the meeting.

- The discussion in the closed session must fall within the scope of the exception that was listed on the closing statement.<sup>5</sup> By way of examples, the discussion in a session closed to discuss personnel matters pertaining to individual employees may not stray into staffing levels, recruitment methods, or department reorganizations,<sup>6</sup> and the exception for discussions about acquisition of real property does not extend to the sale or management of the public body's own real property.<sup>7</sup> As a general matter, the exceptions do not shield discussions about prospective contracts; the Act instead contains exceptions for specific types of contracts—for example, collective bargaining agreements and ongoing procurement matters.<sup>8</sup>

- The public body must keep minutes of the closed meeting. In most cases, the minutes will remain sealed until the public body votes to unseal them. The Compliance Board may inspect them but will keep them confidential.<sup>9</sup>

- The public body must disclose, in the minutes of either its next public meeting or the public meeting held that day, four items: 1) the time, place, and purpose of the closed session; 2) each member's vote on the motion to close the session; 3) the statutory exception claimed as a basis for excluding the public; and 4) a list of the topics discussed, persons present, and actions taken in the closed session.<sup>10</sup> A closed-session summary that merely repeats the words of the statutory exception only provides the third item.

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<sup>5</sup> SG § 10-508(a).

<sup>6</sup> See, e.g., 7 OMCB Opinions 125, 126-27 (2011).

<sup>7</sup> See, e.g., 7 OMCB Opinions 208 (2011).

<sup>8</sup> SG § 10-508 (a) (9), (14).

<sup>9</sup> SG § § 10-509(c) (4); 10-502.5(c) (2) (iii).

<sup>10</sup> SG § 10-509(c) (2).

**THE RULES, APPLIED**

1. Notice. The caption of each notice provided to us announces a “Town Council Closed Session,” and the text states that the Council “will hold a closed session.” The agenda posted on the notice then lists a citizen comment period before the “Motion to go into Closed Session.” As the Act requires that the public be given notice of open sessions, the Council must instead give notice of the public meeting and add the information that it will be closed after the vote on the motion to close. *See* State Government Article (“SG”) § 10-506 and 10-508(d) (conditioning the holding of a closed session on a vote to close “before” the session); *see also* 8 *OMCB Opinions* 150, 155-58 (2013) (suggesting language for notices of meetings that will mostly be closed).<sup>11</sup> We encourage the Council to clarify its notice so that the public understands that it may witness the vote to close.

The minutes of the February 21, 2013 meeting contain an “Announcement of Closed Session” which discloses that a closed session was held on February 15. The minutes state that the February 15 meeting “was inadvertently not advertised. The Council regrets this oversight.” The Council’s failure to give any notice of a meeting subject to the Act violated the Act. We recommend to members of a public body that they satisfy themselves, either before or at the outset of a meeting, that reasonable advance notice has been given.

2. Closing Statements. In six events, the Council complied with the Act; in six, it did not.

*April 19, May 17, June 7, July 12, July 17, and August 16, 2012 meetings.* The Council did apparently not make written statements for these closed meetings. The meeting notices for the April 19 and May 17 meetings indicate, variously, that those meetings would be closed to discuss personnel issues and property acquisition and to consult with counsel to obtain legal advice, but there is no written statement to establish that the Council voted to close on those grounds. In any event, the notices do not contain the other information required by SG § 10-508(d)(2)(ii). The failure to generate a complete written statement is a violation of the Act.

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<sup>11</sup>Our opinions are posted by volume at <http://www.oag.state.md.us/Opengov/Openmeetings/board.htm>.

*May 3 and September 18, 2012; January 2, January 9, February 7, and February 21, 2013 meetings.* Most of these closing statements, completed by the presiding officer on the model form provided as an appendix to the Open Meetings Manual,<sup>12</sup> comply with SG § 10-508(d)(2)(ii). The February 21, 2013 statement, however, cites the statutory exceptions and then contains no information on the reason for closing the meeting and topics to be discussed. Although the form was later filled in on what topics were discussed, the presiding officer must specify them before the public body meets in closed session. 7 *OMCB Opinions* 112, 114 (2011) (explaining the insufficiency of “after-the-fact justifications” for closing a meeting).

The January 9, 2013 statement provides adequate information on the personnel and legal advice exceptions checked. For the “real estate acquisition” exception, however, the statement discloses only “Discussions regarding acquisition of real property.” Repetition of the words of the statute does not usually suffice as a description of the topic to be discussed and reason for closing. We recognize that, in some cases, the disclosure of the property or public use in question compromises the confidentiality of the discussion. We cannot determine whether the Council could have disclosed more about this particular acquisition.

3. The applicability of the claimed exceptions to the discussions. Some of the open-session minutes contain closed-session summaries that do not establish clearly that the discussion stayed within the bounds of the claimed exception. For example, the May 3, 2012 minutes refer to a closed-session discussion of “Police Department Personnel Matters,” and the July 12, 2013 minutes refer to a closed-session discussion of “Personnel Appointments and Transitions.” If the discussion involved personnel policies, for example, as opposed to personnel matters involving a specific individual’s attributes or performance, the exception did not apply.

By contrast, the closed-session summary of the January 2, 2013 meeting demonstrates the applicability of the exception: it specifies that the Council took disciplinary actions and made a hiring decision with respect to certain Town employees. The January 9, 2013 minutes also establish that the exception applied: they list a discussion of the “performance of one or

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<sup>12</sup> The form can be found at <http://www.oag.state.md.us/Opengov/Openmeetings/AppC.pdf>.

more Town personnel.” A public body need not disclose the names of the individuals whom its members discuss in a meeting closed under this exception.

As explained above, the Act also does not require a public body to identify the real property that is the subject of a meeting closed to discuss the acquisition of real property for a public purpose.

4. The adequacy of the disclosures, in the minutes of the next open meeting, of the events of the closed sessions. As with the disclosures on closing statements, a closed-session summary that merely repeats the words of the statutory exception is insufficient. The February 21, 2013 minutes contain summaries of closed meetings on February 15, 19, and 21. Each properly discloses the persons present, the exceptions claimed, and the votes to close, but only the February 21 summary discloses the topics discussed and actions taken. That summary complies with SG § 10-509(c) (2); the other two do not. The summaries of the July 12, 2012 and August 16 closed sessions also omit the topics discussed and actions taken. The April 19, 2012 summary discloses the topics discussed, but, as discussed above, not all topics are described in enough detail to satisfy a member of the public that the claimed exception applies. Additionally, the Council’s citation to the authority for closing the meeting should cite the specific exception that provides the authority.

## **CONCLUSION**

In conclusion, the Council often did not provide the required disclosures about the closed sessions it held during 2012 and the early part of 2012, and, as it acknowledged, it failed to give any notice for one meeting. Nonetheless, the Council was not required to identify either the individuals it discussed in the meetings it closed under the “personnel” exception or the real property it discussed in the meetings it closed to discuss the acquisition of real property for a public purpose. We encourage the Town to review its disclosure practices in light of the rules listed here and to view the disclosure requirements as a mechanism by which a public body may assure the public of the legality of a closed session.

Open Meetings Compliance Board

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