

8 Official Opinions of the Compliance Board 193 (2013)

- ◆ **Administrative Function** *Within Exclusion, discussion of:*
 - ◇ application of existing personnel policies
- ◆ **Notice Requirements – Method – Generally**
 - ◇ requirements applicable to open session held to conduct vote to close
- ◆ **Closed Session Procedures – Written Statement – Generally**
 - ◇ to be prepared before the closed session
- ◆ **Exceptions Permitting Closed Sessions – Personnel, §10-508(a)(1) – within exception, discussion of**
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June 3, 2013

*Re: Board of Trustees of Frederick Community College
(Courtney Mabeus, Frederick News Post, Complainant)*

We have considered the well-documented complaint of Courtney Mabeus, of the Frederick News-Post, that the Board of Trustees of Frederick Community College (“FCC”) violated the Open Meetings Act (the “Act”) by meeting on January 3, 2013 after having given notice only to FCC’s faculty and staff.

All agree that the FCC Board, a public body subject to the Act, held the meeting to discuss a personnel matter involving FCC’s president. The meeting was scheduled on December 27 and held on January 3. On January 4, the News-Post published an article that cited a statement by FCC’s spokesman that the president had been replaced.

Our first step in addressing a complaint against a public body is to consider whether the Act applies to the meeting in question, as our authority only extends to violations of the Act. *See* State Government Article (“SG”) § 10-502.4(a). The Act does not apply when a public body is carrying out an “administrative function,” as defined by the Act, in a meeting called only for that purpose. *See* SG §§ 10-503(a) (1), 10-502 (b)(1). Thus, if the FCC Board was only carrying out an administrative function at its January 3 meeting, we have no authority to address the complaint.

The administrative function includes various tasks, including the administration of a public body's rules or regulations, and it excludes others, none of which appears to be implicated here. SG § 10-502 (b) (1) and (2). In interpreting that amorphously-worded exclusion to the Act, we have stated that "the discussion of whether to dismiss [a particular] employee" is administrative in nature when it "involve[s] the application of [the public body's] existing personnel policies." 1 *OMCB Opinions* 166, 167 (1996). Whether the FCC Board was merely administering "existing personnel policies" on January 3 is not clear. We therefore address the complaint conditionally.

If the Act applied to this meeting, FCC's Board violated the Act by failing to give "reasonable advance notice" to the public, as required by State Government Article ("SG") § 10-506. It further appears, if the Act applied, that the FCC Board violated the Act by failing to follow the procedures required of a public body that wishes to close a meeting under one of the statutory exceptions to the requirement that public bodies conduct their business in the open. See SG §§ 10-508(a), (d) (exceptions and procedures to be followed by presiding officer before closing a meeting), 10-505 (open session requirement, subject to exceptions). As it appears that the FCC Board only met to discuss an individual employee under its jurisdiction, the FCC could properly have closed the meeting under the "personnel matters" exception provided by SG § 10-508(a)(1).

We refer the FCC Board and staff to our recent summary of the notice and closing procedures that a public body must follow when its only substantive discussion will be in a closed session. See 8 *OMCB Opinions* 150, 150-59 (2013), <http://www.oag.state.md.us/Opinions/Open2012/8omcb150.pdf> (addressing a meeting that was convened to discuss an employee and receive legal advice and had been posted only as "closed"). Particularly, the notice of a meeting that will be closed under one of the exceptions stated in SG § 10-508 must specify that the public body will meet in an open session for the purpose of voting to close the session, as the public is entitled to observe the vote and to be informed of the reason for the closed session. *Id.* (addressing the requirements of SG § 10-508(d) and 10-506).

We turn briefly to the phrase "executive session," used in the limited notice that the FCC Board gave. The posting of an "executive session" alone does not comply with the Act if the FCC Board uses the term in the general parliamentary sense of "secret proceedings," see Robert's Rules of Order Newly Revised, § 9, p. 92 (2000), because the vote to close the session must be public and because the Act requires the public body to describe a session as "closed" when it will be closed. SG § 10-506(b)(3). If the FCC Board instead intended to use the term "executive" as once used in the Act to mean "administrative," the newer term should be used.

In conclusion, the FCC Board did not comply with the notice and closing procedure provisions of the Act if the Act applied to the January 3 meeting. If, on the other hand, the FCC Board met only to administer an

existing personnel policy, the Act did not apply to the meeting, and the FCC Board did not violate it.

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