

TWENTY-THIRD ANNUAL REPORT
OF THE
OPEN MEETINGS COMPLIANCE BOARD



BOARD MEMBERS

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OF THE
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Pursuant to §3-204(e) of the General Provisions Article, the Open Meetings Compliance Board submits this annual report for the period running from July 1, 2014, through June 30, 2015. Parts I and III of this report summarize the activities of the prior Board. The current chair, Jonathan A. Hodgson, Esq., was appointed on August 14, 2015, and Ms. Grasmick and Ms. Ishak were appointed on June 22, 2015.

I.
ACTIVITIES OF THE BOARD

A. *Financial and Support Activities*

The Attorney General's Office provides the Board with the services of counsel and the administrator, 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, as no funds have ever been specifically appropriated for its operations and none were for fiscal year 2015.

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 General Provisions Article § 13-204(d) (internal numbering omitted). The Board expresses its gratitude to the Institute for Governmental Service and Research at the University of Maryland and the Attorney General's Office for maintaining and updating, at no cost to the Board, the online class on the Open Meetings Act that those entities jointly released in May 2012. That class is available to the public at no charge.

Training on the Open Meetings Act was provided to local government officials and employees through the certificate program offered by the Academy for Excellence in Local Governance, a program of the School of Public Policy at the University of Maryland. This fiscal year, the Academy's Open Meetings class was offered at conferences of the Maryland Association of Counties and the Maryland Municipal League. Those classes were co-taught by Frederick County Attorney John S. Mathias and our counsel. By invitation, counsel also addressed the Maryland Association of Soil Conservation Districts.

During this fiscal year, the online course and other training materials were revised to reflect the recodification of the Act from the State Government Article to the General Provisions Article, the index to the Board's opinions was reorganized, and the Open Meetings webpage on the Attorney General's website was reformatted. Staff also responded to requests under the Public Information Act. As time permitted, staff worked on a new version of the Open Meetings Manual.

B. Developments during the Fiscal Year - Changes in Board Membership

The membership of the Board changed entirely for the second time in two years with the expiration of the recess appointments of former members Wanda Martinez, Esq. and Mamata S. Poch, Esq. and Chair Monica J. Johnson, Esq. They began their tenure with an unusually high volume of complaints, and we appreciate their service to the public.

The staffing provided by the Office of the Attorney General did not change during the year. We thank our Administrator, Ms. Deborah P. Spence, who manages our docket, maintains our records, and produces our opinions, Fritz Schantz, who posts our opinions and other information on the Attorney General's website, and the assistant attorneys general who provide support as needed.

Legislative developments are described in Part II, below.

C. *Complaint and Opinion Activities***1. Statistics**

- Total number of new complaints submitted during FY 2015: 34
- Complaints pending from FY 2014: 8
- Opinions issued during FY 2015: 27
- FY 2015 complaints consolidated: 3
- FY 2015 complaints dismissed as not within the Board's authority or as moot: 2
- Complaints that were submitted in FY 2015, still pending on 7/1/15: 10

(Note: Some complaints pertained to numerous meetings over the course of a year or more, and multiple complaints were submitted as to six public bodies. The number of complaints thus does not reflect the number of meetings and public bodies complained of.)

2. Nature of the Complaints

The nature of the complaints addressed by the Board is reflected in the quarterly summaries included in Part III of this report.

3. Complaints Involving the Failure to Provide Notice of a Meeting

As shown by the quarterly summaries attached to this report, the Board issued fourteen opinions in response to specific allegations that a public body violated the Act's provisions on notice. Three public bodies violated the Act by failing to give any notice of a meeting. The other matters involved questions as to adequacy, timeliness, or content of various public bodies' notices.

4. Publication of opinions issued during the fiscal year

The Board's opinions for the 2015 fiscal year appear in Volume 9, pages 125 – 242. They are posted at <http://www.oag.state.md.us/Opengov/Openmeetings/board.htm>. The quarterly summaries that appear in Part IV were published in the Maryland Register.

II.

LEGISLATION - 2015 SESSION AND BOARD RECOMMENDATIONS

A. *Legislation proposed in 2015*

During the General Assembly's session, the Board's input was sought on House Bill 264, which would have made certain General Assembly subcommittees expressly subject to the Act, and House Bill 583, which would have required public bodies to make meeting agendas available at least 24 hours before their meetings. On February 25, 2015, the Compliance Board met by teleconference to discuss both bills and hear from the bills' sponsor. The minutes of the February 25 meeting are posted at http://www.oag.state.md.us/Opengov/Openmeetings/Min2_25_2015.pdf.

House Bill 1251, introduced after the Compliance Board's meeting, would have required all employees, officials, and members of each public body to take training on the Act and to do so within a certain time. The bill also would have required the members of the General Assembly to take in-person training to be conducted by the Office of the Attorney General. It did not pass.

Although no Open Meetings Act legislation was passed in the 2015 session, an amendment to the Public Information Act ("PIA") is germane to this Board. *See* 2015 Laws of Maryland, Chapter 135. The law, effective October 1, 2015, creates a new PIA Compliance Board. An uncodified provision will require the Office of the Attorney General, "in consultation with the Maryland Association of Counties, the Maryland Municipal League, and stakeholders from the [records] custodian, news media, and open

government communities” to submit an interim and a final report on “its findings and recommendations” as to various matters, including “the merits and feasibility of merging” the PIA Compliance Board with this Board. The interim report is due on or before December 31, 2016, and the final report is due on or before December 31, 2017.

B. Board recommendations for the 2016 Legislative Session

The Board is not proposing any amendments to the Act at this time.

III.

QUARTERLY SUMMARIES OF OPINIONS ISSUED FROM JULY 1, 2014 – JUNE 30, 2015

The following summaries were submitted to the Maryland Register and are attached to this report:

Opinions Issued from July 1 – September 30, 2014

Opinions Issued from October 1 – December 31, 2014

Opinions Issued from January 1 – March 31, 2015

Opinions Issued from April 1 – June 30, 2015

**Open Meetings Compliance Board
Summary of Opinions Issued from July 1 – September 30, 2014***

9 Official Opinions of the Compliance Board 125 (2014)

Morgan State University Board of Regents Executive Committee (Eric White, Complainant)

May 19, 2014

Topics discussed: Use of website as sole method of giving notice of meeting called on short notice

9 Official Opinions of the Compliance Board 127 (2014)

Town Council of the Town of Chevy Chase (Miriam Schoenbaum, Complainant)

July 23, 2014

Topics discussed: Public body's announcement of violation found by Compliance Board in previous opinion; applicability of "legal advice" and "potential litigation" exceptions to meeting that was closed for discussions with counsel and lobbyists about advocating the position that the public body had previously reached publicly; sealed minutes requirement

9 Official Opinions of the Compliance Board 132 (2014)

Maryland Health Benefit Exchange (Craig O' Donnell, Complainant)

July 30, 2014

Topics discussed: Sufficiency of written statement prepared before closing the meeting; requirement that closing statement reflect all of the statutory bases for closing the session; scope of "personnel" and "procurement" exceptions; adequacy of closed-session summary phrased in ways not clear to the general public

9 Official Opinions of the Compliance Board 141 (2014)

City of Crisfield, (David R. Marquis, Complainant)

August 6, 2014

Topics discussed: Pre-requisites to closing a meeting (public vote to close; preparation of written statement); sufficiency of notice when the need to close part of the meeting was not anticipated until shortly beforehand

9 Official Opinions of the Compliance Board 146 (2014)

City of Gaithersburg (Merceda D. Gooding, Complainant)

August 11, 2014

Topics discussed: Adequacy of notice given by three methods; adequacy of adoption of minutes; lack of authority to address alleged violations of other laws

9 Official Opinions of the Compliance Board 149 (2014)

Montgomery County Board of Education (Danuta Wilson, Complainant)

August 15, 2014

Topics discussed: Whether committee created by school board president was a "public body" subject to the Act; whether quorum of the school board held a meeting subject to the Act

9 Official Opinions of the Compliance Board 151 (2014)

Mayor and Common Council of the City of Westminster (Craig O' Donnell, Complainant)

August 18, 2014

Topics discussed: Requirement that events of closed session be disclosed in minutes of next open session; applicability of "administrative function" exclusion to discussion about the staging of work under an existing contract; status of standing committees created by resolution as public bodies subject to the Act; lack of requirement in the Act that public bodies continue to post cancellation notices past the date of the canceled meeting

9 Official Opinions of the Compliance Board 156 (2014)

September 10, 2014

Montgomery County Commission on Common Ownership Communities (Gordon Klang, Complainant)

Topics discussed: Sufficiency of notice that meeting will be closed when need for closing not reasonably anticipated until shortly before the meeting; scope of "legal advice" exception; requirement that minutes of closed sessions be kept

9 Official Opinions of the Compliance Board 160 (2014)
Maryland Health Benefit Exchange (Craig O' Donnell, Complainant)
September 18, 2014

Topics discussed: Methods of adopting closed-session minutes; scope of procurement, "other law," and real property exceptions; requirement that summary of closed session be adopted as part of minutes of next open session

9 Official Opinions of the Compliance Board 165 (2014)
Chevy Chase Town Council (Jacob Bardin, Complainant)
September 29, 2014

Topics discussed: Applicability of "legal advice" and "potential litigation" exceptions to meeting that was closed for discussions with counsel and lobbyists about advocating the position that the public body had previously reached publicly. *See 9 OMCB Opinions 127 (July 23, 2014).*

9 Official Opinions of the Compliance Board 167 (2014)
Chestertown Mayor and Town Council (Craig O' Donnell, Complainant)
September 29, 2014

Topics discussed: Adequacy of written statement prepared before closing the meeting; inapplicability of "legal advice" exception to a meeting not attended by legal counsel; applicability of "personnel exception" to discussion about the manager of a facility but not to staffing needs and other matters relating to the facility; requirement that closed-session discussions must fall within the topics and statutory exceptions claimed beforehand on the closing statement.

*The full text of these opinions can be found at <http://www.oag.state.md.us/Opengov/Openmeetings/index.htm>. A summary of the opinions issued in Fiscal Year 2014 is attached to the Compliance Board's Annual Report, which is posted at http://www.oag.state.md.us/Opengov/Openmeetings/22Annual_Report_FY2014.pdf.

Open Meetings Compliance Board
Summary of Opinions Issued from October 1 – December 31, 2014*

9 Official Opinions of the Compliance Board 171 (2014)

Anne Arundel County Board of Education (Janis Sartucci and Colin Murphy, Complainants)

November 3, 2014

Topics discussed: Applicability of Act to budget discussions

9 Official Opinions of the Compliance Board 175 (2014)

Prince George's County Telecommunications Transmission Facility Coordinating Committee (Janis Z. Sartucci, Complainant)

November 19, 2014

Topics discussed: Requirements that minutes be kept, that copy of notice be retained, and that notice of meetings be given by the public body; insufficiency of meeting notice given by entity appearing before the public body

9 Official Opinions of the Compliance Board 178 (2014)

Board of Commissioners of the Housing Authority of Prince George's County (David Prater and Sabina Wear, Complainants)

December 10, 2014

Topic discussed: Failure to provide notice of meeting

9 Official Opinions of the Compliance Board 180 (2014)

Mayor and City Council of Town of Rock Hall and Ethics Commission of Rock Hall (Grenville B. Whitman, Complainant)

December 10, 2014

Topics discussed: Violation of Act by meeting in closed session without making the required disclosures; requirement that meeting notice make clear that the public may observe the public body's vote to meet in closed session; permissibility of making the post-session disclosures in the minutes of the open meeting that was closed; applicability of Act to various functions that an ethics commission might perform

9 Official Opinions of the Compliance Board 186 (2014)

Mayor and City Council of Town of Rock Hall (Susan A. Francis, Complainant)

December 22, 2014

Topics discussed: Applicability of Act to every stage of the deliberative process; inability of Compliance Board to assess whether sequentially-held discussions were intended as an "evasive device"; limits of "legal advice" exception to the Act's open-meeting requirement; inapplicability of any exception to a closed meeting when the public body has not closed the meeting properly; authority of Compliance Board to address complaint when the same violation has been alleged in an action in circuit court; inability of Compliance Board to resolve questions of fact

9 Official Opinions of the Compliance Board 195 (2014)

Annapolis Exploration Committee (Mary and William Powell, Complainants)

December 22, 2014

Topics discussed: Failure of task force to comply with the Act's notice, open-meeting, and minutes requirements; advisability of designating a new member, officer or employee to take training on the Act's requirements when the prior designee's service to the public body ends; advisability of assigning staff to task forces, when possible, or else providing newly-created task forces with guidance on open meetings

*The full text of these opinions can be found at <http://www.oag.state.md.us/Opengov/Openmeetings/index.htm>, through the link for "Opinions." A summary of the opinions issued in Fiscal Year 2014 is attached to the Compliance Board's Annual Report, which is posted at http://www.oag.state.md.us/Opengov/Openmeetings/22Annual_Report_FY2014.pdf.

**Open Meetings Compliance Board
Summary of Opinions Issued from January 1 – March 31, 2015***

9 Official Opinions of the Compliance Board 199 (2015)

Montgomery County Board of Education (Janis Zink Sartucci, Complainant)

January 5, 2015

Topics discussed: Notice (timeliness, or not, of website notice posted on the morning of the meeting); access to minutes (lack of requirement in Open Meetings Act that public bodies post minutes online); Compliance Board complaint procedures (lack of authority to dismiss complaints as untimely; inability to declare generally that a notice violation was “cured” by later events).

9 Official Opinions of the Compliance Board 203 (2015)

Chesapeake Regional Information Systems for Our Patients, Inc. (Craig O’Donnell, Complainant)

February 3, 2015

Topics discussed: Definition of “public body” subject to the Open Meetings Act (not met by privately-incorporated and privately-controlled entity).

9 Official Opinions of the Compliance Board 206 (2015)

State Ethics Commission (N. Lynn Board, Esq., City of Gaithersburg, & Elissa D. Levan, Esq., City of Westminster, Complainants) (consolidated complaints)

February 3, 2015

Topics discussed: Administrative function exclusion (application of *Dyer v. Board of Education*, 216 Md. App. 530 (2014)); methods of giving notice; permissible contents of notice (advance notice of date and probable location of meeting with alert to check website for details within a week of the meeting); access to documents used at the meeting (lack of requirement in Open Meetings Act that public bodies waive attorney-client privilege); closed-session procedures and summary; contents of minutes.

9 Official Opinions of the Compliance Board 216 (2015)

Maryland Council on Open Data (Michele Fluss, Complainant)

March 10, 2015

Topic discussed: Notice (requirement that it be given).

9 Official Opinions of the Compliance Board 216 (2015)

Prince George’s County Board of Education (Craig O’Donnell, Complainant)

March 23, 2015

Topics discussed: Minutes (request for copies subject to Public Information Act, not the Open Meetings Act; minutes generally to be provided upon request when request is made in person); complaint process (threat of Open Meetings Act complaint not to be used to induce public body to respond to PIA request more quickly); complaints (extraneous matter a distraction from relevant issues and to be avoided); complainants (no requirement that complainant have “standing”); training requirement (training to be done in one of the ways specified by the Act).

9 Official Opinions of the Compliance Board 226 (2015)

Maryland Health Benefit Exchange (Craig O’Donnell, Complainant)

March 23, 2015

Topics discussed: Minutes (public body’s decision to have counsel review draft minutes not governed by Open Meetings Act; closed-session summaries permissibly included in the minutes of either the next open session or the minutes of the session that was closed); Compliance Board (no authority to address the way in public bodies post minutes online).

*The full text of these opinions can be found at <http://www.oag.state.md.us/Opengov/Openmeetings/index.htm>, through the link for “Opinions.” A summary of the opinions issued in Fiscal Year 2014 is attached to the Compliance Board’s Annual Report, which is posted at http://www.oag.state.md.us/Opengov/Openmeetings/22Annual_Report_FY2014.pdf.

Open Meetings Compliance Board
Summary of Opinions Issued from April 1 - June 30, 2015

9 Official Opinions of the Compliance Board 230 (2015)

Morgan State University (Eric White, Complainant)

April 9, 2015

Topics discussed: Definition of “public body” (definition does not include individual officers and employees); notice (posting 6-10 days in advance was reasonable under the circumstances); minutes (adoption within 18 days of meeting was timely)

9 Official Opinions of the Compliance Board 232 (2015)

Mayor & Board of Commissioners of Rising Sun (Roger Lamb, Complainant)

April 9, 2015

Topics discussed: Notice (town not required to post agenda online); open meetings (Open Meetings Act does not entitle the public to comment at meetings); minutes (Act does not require public bodies to post minutes online, but practices should be consistent)

9 Official Opinions of the Compliance Board 234 (2015)

Baltimore County Board of Education (Ann Miller, Complainant)

April 13, 2015

Topics discussed: Definition of “public body” (definition does not apply to county executive); definition of “meeting” (as defined by the Act, “meeting” does not include conferences attended by fewer than a quorum of the public body, absent circumstances such as those in *Community and Labor United v. Baltimore City Board of Elections*, 377 Md. 183 (2003)); “administrative function” exclusion (exclusion does not extend to formulation of recommendations on size of budget); definition of “advisory function” (definition includes formulation of recommendations); training requirement (public body that timely chose a designee who took the training within the statutory deadline did not substantially violate the Act by failing to submit the designee’s name to the Compliance Board on time)

9 Official Opinions of the Compliance Board 239 (2015)

Wicomico County Council (Phil David, The Daily Times, Complainant)

April 14, 2015

Topic discussed: Definition of “public business” (briefing on purpose of site visit would constitute public business); “definition of “meeting” (site visits attended by members in groups not creating a quorum of the public body were not “meetings” subject to the Act, so long as the groups did not interact); Compliance Board opinions (Board unable to determine whether quorum of public body considered public business during introductory remarks to site visit; if in doubt, public body should assume that the Act applies)

*The full text of these opinions can be found at <http://www.oag.state.md.us/Opengov/Openmeetings/index.htm>, through the link for “Opinions.”