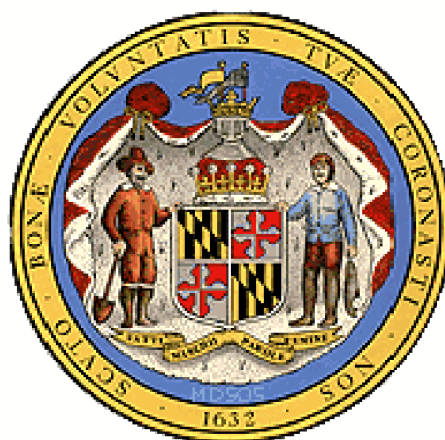


TWENTY-FOURTH ANNUAL REPORT
OF THE
OPEN MEETINGS COMPLIANCE BOARD



BOARD MEMBERS

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SEPTEMBER 2016

**TWENTY-FOURTH ANNUAL REPORT
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Pursuant to §3-204(e) of the General Provisions Article (“GP”), the Open Meetings Compliance Board submits this annual report for the period running from July 1, 2015, through June 30, 2016. In this report, we describe our activities, state the number and nature of our opinions, and discuss complaints that a public body has not given notice. We also state whether legislative improvements are needed. *Id.*

INTRODUCTION

As detailed below, the Compliance Board’s primary function is to issue advisory opinions in response to complaints that public bodies have violated the Act. The Compliance Board also recommends improvements to the Act when needed and, in conjunction with the Office of the Attorney General, conducts educational programs for the staffs and attorneys of public bodies, the Maryland Municipal League, and the Maryland Association of Counties. GP § 3-204.

The Compliance Board is comprised of three members who serve without compensation; at least one must be an attorney. GP §§ 3-202. The current members were appointed by the Governor in the Summer of 2015 and confirmed by the Senate in 2016; all are attorneys. The Compliance Board does not have its own budget and is staffed by the Office of the Attorney General.

I.

ACTIVITIES OF THE BOARD

A. Number of Complaints Received and Opinions Issued

The Compliance Board's docket was unusually heavy this year. As shown in the statistics below, the Compliance Board received 41 complaints during the 2016 fiscal year and issued 32 opinions in that period. Fifteen complaints were filed in March and April 2016 alone. The docket also included 10 matters that had been filed during the fiscal year and were then carried over from the two-month gap between the end of the prior members' service and the appointment of the current members.

Docket for FY 2016

| | |
|-------------------------------------|------|
| Complaints pending on July 1, 2015: | 10 |
| Complaints received during FY 2016: | 41 |
| Total docket as of July 1, 2016: | = 51 |

Status of docket as of July 1, 2016

| | |
|---|----|
| Opinions issued in FY 2016: | 32 |
| Complaints consolidated with others: | 5 |
| Complaints dismissed as not within authority: | 5 |
| Prospective complaints, handled without opinions: | 3 |
| Complaints still pending on 7/1/16: | 6 |

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

We addressed notice issues in 11 opinions where the complained-of entity was indisputably a public body subject to the Act. The violations that we found mostly fell into two broad categories: the wording of notices and the inconsistent management of multiple methods of giving notice. The first category of violations involved incorrect wording on notices of meetings that were to be closed immediately after the public body's vote to close the meeting under GP § 3-305. Specifically, the public bodies in question posted those

meetings as “Closed,” when, in fact, the Act requires that the public body vote publicly to exclude the public. The practical result of that fairly common error is that the public does not come to the meeting to observe the vote and does not necessarily know what the public body will discuss behind closed doors. The second category of cases were often occasioned by a public body’s failure to update its standing notices on a website, or to update all of the locations on a website where it posted its meetings, or to use its website consistently for all meetings. Less frequent, but more substantial, violations involved the failure of the public body to give any notice at all. In one case, the public body had been holding “pre-meetings” without inviting the public, 9 *OMCB Opinions* 273 (2015), and in another, 9 *OMCB Opinions* 268 (2015), a new public body met without giving notice at all.

Notice issues also arise when a complainant alleges that a group is subject to the Act and has met without complying with any provision of the Act. We addressed such allegations in 8 opinions. In one opinion we found that the entity was a public body and had not complied with any provision of the Act, including the notice requirement. The other seven involved groups who were not subject to the Act. The same issue arises when a public body has met to perform a function that arguably lies within an exclusion to the Act—usually, the administrative function exclusion—and has not complied with any provision of the Act. As illustrated by 10 *OMCB Opinions* 62 (2016) and 10 *OMCB Opinions* 31 (2016), sometimes the exclusion applied and, sometimes, it did not.

C. Nature of the complaints, generally

Unusually, five of this year’s opinions involved meeting logistics such as the permissibility of meeting in a building where visitors must sign in and the adequacy of the public body’s meeting space, overflow space, or parking lot. Other complaints raised issues as to whether the complained-of entity or individuals were a “public body” subject to the Act, whether the administrative function exclusion applied, and whether a public

body had included the required information in its minutes or closed-session disclosures. Several complaints questioned the permissibility of closing a meeting to discuss the evaluation or continued employment of an employee of the public body. We also addressed the exchange of emails among a quorum on public business. The topics addressed in this year's opinions can be found in the quarterly summaries in Part III, below.

It has been suggested that we include in our Annual Report a list of public bodies whose practices we have addressed in more than one opinion. The Compliance Board has not done so in the past because the number of opinions issued as to any one public body is not usually informative, by itself, about larger trends. This year, four public bodies were the subject of multiple opinions.

One public body, the Heroin and Opioid Task Force, was the subject of three opinions, each addressing a complaint by the same member of the public. In the first opinion about that newly-created, and now defunct, entity, we found substantial notice violations (no notice was given); in the second, we did not find any violations; in the third, we again found violations, including violations involving belated and haphazardly-posted notice. 9 *OMCB Opinions* 268 (2015); 9 *OMCB Opinions* 304 (2015); 10 *OMCB Opinions* 1 (2016). The task force stated that it had been created on an urgent basis and had no staff of its own. *Id.* at 2. The Howard County Board of Education was the subject of two opinions. In the first opinion, we found no violation; in the second, we found violations regarding the posting of notice for a meeting that the public body closed under an exception to the Act. 10 *OMCB Opinions* 40 (2016); 10 *OMCB Opinions* 57 (2016). The City of Rockville was the subject of two opinions. In 9 *OMCB Opinions* 243 (2015), we found that the City had not correctly worded the notice of a closed meeting in 2013; in 10 *OMCB Opinions* 22 (2016), we found violations regarding the adoption of minutes. The Housing Authority of Prince George's County was the subject of two opinions: 9 *OMCB Opinions* 273 (2015), in which we found a notice violation despite advice we had given in 2014, and

10 *OMCB Opinions* 70 (2016), in which we did not find a violation but gave advice on the consistent use of online notices.

D. Financial, Support, and Educational 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 2016.

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 § 3-204(d) (internal numbering omitted). The Institute for Governmental Service and Research at the University of Maryland, currently without charging for its services, hosts, maintains, and performs updates to the online class that many public bodies now rely on to comply with the Act's training requirement. We greatly appreciate the service that the Institute renders to the public in creating the online class, in conjunction with the Office of the Attorney General, and in making it continuously available. The online class remains available to the public at no charge, and it will be updated shortly to reflect the 2016 amendments to the Act.

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. Counsel

also taught in the Academy's graduate program for local officials.

Finally, the Office of the Attorney General issued a new Open Meetings Act Manual as well as a less-detailed "quick guide" designed to give members of the public and the media information on issues that arise frequently. Those materials are posted at <http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx>. They, too, will be revised soon to reflect the 2016 amendments to the Act.

E. Publication of opinions issued during the fiscal year

The Board's opinions for the 2016 fiscal year appear in Volume 9, pages 10, pages 243 through 316 and Volume 10, pages 1 through 73. Both volumes are posted at <http://www.marylandattorneygeneral.gov/Pages/OpenGov/OpenMeetings/index.aspx>. Quarterly summaries are published in the Maryland Register. They can also be found in Part IV of this report.

II.

LEGISLATION - 2016 SESSION AND BOARD RECOMMENDATIONS

A. Legislation proposed and enacted in 2016

On February 12, 2016, we met in Annapolis to consider whether to take a position on the seven bills that had been introduced in the General Assembly as of that date. The bills that would have most affected the Compliance Board's function contained provisions that would have granted us the authority to issue binding orders and/or fines. After identifying a number of concerns, including due process, effectiveness, and practicability issues, we decided to oppose the grant of such powers to the Compliance Board as it is currently set up.

The minutes of the meeting describe our discussions and specify the positions that

we decided to take on all the various proposed amendments. The minutes are posted at: http://www.marylandattorneygeneral.gov/OpenGov%20Documents/Openmeetings/Min2_25_2015.pdf The Chair conveyed our positions to the appropriate committees.

Two laws enacted in 2016 amended the Act. Both will take effect on October 1, 2016. Chapter 255 adds a new GP § 3.302.1 to the Act's notice provisions. Generally, it will require public bodies to make their meeting agendas available to the public either when they post their meeting notices or, otherwise, as soon as practicable after the agenda has been determined but at least 24 hours before the meeting. Chapter 330 substantively changed GP § 3-306 by requiring public bodies to retain their meeting minutes and recordings for at least five years, instead of one, and by requiring public bodies, "to the extent practicable," to post their minutes or recordings online. The law also deleted the Act's references to "tape" recordings and "written" minutes in GP §§ 3-206 and 3-306.

B. Board recommendations for the 2017 Legislative Session

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

III.

QUARTERLY SUMMARIES OF OPINIONS ISSUED FROM JULY 1, 2015 – JUNE 30, 2016

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

Opinions Issued from July 1 – September 30, 2015

Opinions Issued from October 1 – December 31, 2015

Opinions Issued from January 1 – March 31, 2016

Opinions Issued from April 1 – June 30, 2016

**Open Meetings Compliance Board
Summary of Opinions Issued from July 1 – September 30, 2015**

9 Official Opinions of the Compliance Board 243 (2015)

**Mayor and Council of Rockville (Ann M. Wallas, Association of Administrative Municipal Employees, Complainants)
July 8, 2015**

Topics discussed: Notice (required contents when the meeting will be closed immediately after it is convened); scope of “legal advice” exception.

9 Official Opinions of the Compliance Board 246 (2015)

**Garrett County Development Corporation (Michael Bell & others, Complainants)
July 30, 2015**

Topic discussed: Definition of “public body” (as applied to development corporation no longer subject to county’s governance)

9 Official Opinions of the Compliance Board 256 (2015)

**Frederick County Historic Preservation Commission (Kimberly Mellon, Complainant)
August 20, 2015**

Topics discussed: Notice (advice on use of standing notices, timing); minutes (need to generate written minutes when technology for alternative methods fails)

9 Official Opinions of the Compliance Board 259 (2015)

**Mayor & Common Council of the Town of University Park (Judd O. Nelson and others, Complainants)
August 20, 2015**

Topics discussed: Definition of “meeting” as applied to email communications (guidance on electronic communications among a quorum); minutes (timeliness of adoption when public body cannot agree on content)

9 Official Opinions of the Compliance Board 268 (2015)

**Re: Heroin and Opioid Task Force (Michele J. Fluss, Complainant)
August 24, 2015**

Topics discussed: Notice (general requirement); minutes (adoption and accuracy); timeliness of new public body’s designation of trainee

9 Official Opinions of the Compliance Board 271 (2015)

**Re: Town Commission, Town of Barclay (William E. Wallace, Complainant)
September 18, 2015**

Topics discussed: Inability of Compliance Board to resolve disputes of fact (contradictory versions of whether commissioners discussed public business after they adjourned a public meeting)

9 Official Opinions of the Compliance Board 273 (2015)

**Re: Board of Commissioners, Housing Authority of Prince George’s County (consolidated complaints) (Sabrina B. Wear, Esq. and Alexa E. Bertinelli, Esq., Complainants)
August 12, 2016**

Topics discussed: Notice (timeliness); notice and open meeting requirements (impermissibility of “pre-meetings” and “special meetings” held without notice); complaint procedures (requirement that public bodies respond to Open Meetings Act complaints)

9 Official Opinions of the Compliance Board 279 (2015)

**Re: Citizens’ Advisory Board – Traffic Issues, Montgomery County Police Department (Ronald W. Ely and Thomas Barrett, Complainants)
August 12, 2016**

Topic discussed: Definition of “public body” (as applied to committee created by merit system employee several steps removed from executive authority)

*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.”

Open Meetings Compliance Board
Summary of Opinions Issued from October 1 – December 31, 2015

9 Official Opinions of the Compliance Board 283 (2015)

Re: Frederick County Board of Appeals (Douglas S. Kaplan, Complainant)

October 2, 2015

Topics discussed: Applicability of Open Meetings Act when the public body called a recess in the middle of deliberating on a matter, retired from public view, and returned to open session with a consensus on that matter

9 Official Opinions of the Compliance Board 290 (2015)

Re: Mayor and Council of Pocomoke City (Deborah A. Jeon, Complainant, on behalf of the ACLU of Maryland, Stephen Janis, and The Real News Network, Complainants) (consolidated)

October 19, 2015

Topics discussed: Impermissibility of excluding press in order to admit members of the public; applicability of administrative function exclusion to some personnel matters

9 Official Opinions of the Compliance Board 296 (2015)

Re: Handgun Permit Review Board, (Byron C. Black, Esq., on behalf of Daniel J. Carlin-Weber, and Brook Powers, Complainants) (consolidated)

October 19, 2015

Topics discussed: Open-meeting logistics (generally, permissibility of asking public to comply with the public body's usual security procedures, of asking public to indicate interest in attending the meeting so that adequate seating can be arranged, and of not providing parking); scope of quasi-judicial function exclusion

9 Official Opinions of the Compliance Board 302 (2015)

Re: Maryland Department of Natural Resources, (Carl Kirk, Complainant)

October 21, 2015

Topics discussed: Definition of "public body"; inapplicability of Act to agency employees holding settlement conference for permit applicant and protestants

9 Official Opinions of the Compliance Board 304 (2015)

Re: Heroin and Opioid Task Force (Michele J. Fluss, Complainant)

October 30, 2015

Topics discussed: Public body's discretion as to method of complying with training requirement; desirability of limiting complaints to events that the Compliance Board has not already addressed

9 Official Opinions of the Compliance Board 307 (2015)

Re: Montgomery County Board of Elections, (Paul M. Bessel, Complainant)

December 3, 2015

Topics discussed: Applicability of common law rules for calculating a "quorum" when the Act's definition is silent on some details; general permissibility of delegating to counsel the public body's response to an Open Meetings Act complaint; elements of a useful response

9 Official Opinions of the Compliance Board 314 (2015)

Re: University of Maryland College Park Facilities Naming Committee, (Colin Byrd, Complainant)

December 10, 2015

Topics discussed: Definition of "public body"; inapplicability of Act to committee created by college president but not comprised of at least two members of the public

*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."

Open Meetings Compliance Board

Summary of Opinions Issued from January 1 – March 31, 2016*

10 Official Opinions of the Compliance Board 1 (2016)

Heroin and Opioid Emergency Task Force (Michele J. Fluss, Complainant)

January 5, 2015

Topics discussed: Timeliness of notice; access to meeting space; adoption of minutes; acknowledgment of violation

10 Official Opinions of the Compliance Board 4 (2016)

Washington Suburban Sanitary Commission (Peter Karpoff, Complainant)

March 8, 2016

Topics discussed: Closing statements; closed session summaries

10 Official Opinions of the Compliance Board 9 (2016)

Maryland Bicycle and Pedestrian Advisory Committee (Michael E. Jackson, Complainant)

March 8, 2016

Topics discussed: Timeliness of notice; timeliness of minutes

10 Official Opinions of the Compliance Board 12 (2016)

Maryland Health Benefits Exchange Compliance & Ethics Committee (Craig O'Donnell, Complainant)

March 29, 2016

Topics discussed: "Public body" definition; administrative function exclusion; applicability of all open meeting requirements.

*The Compliance Board's opinions are now posted at <https://www.oag.state.md.us/Opengov/Openmeetings/index.htm>.

Open Meetings Compliance Board

Summary of Opinions Issued from April 1 – June 30, 2016*

10 Official Opinions of the Compliance Board 18 (2016)

Maryland Racing Commission (Eric Rockel, Complainant)

April 27, 2016

Topics discussed: Adequacy of meeting space; telephone poll

10 Official Opinions of the Compliance Board 22 (2016)

Mayor and City Council of Rockville and Board of Supervisors of Elections (Max A. Balgooy, Complainant)

May 2, 2016

Topics discussed: Administrative function exclusion (formulation of procedures and policies, not within the exclusion; conduct of election, within the exclusion); use of website for notice, generally; notice for last-minute meetings; adoption of minutes of meeting held jointly with another public body; timeliness of adoption of minutes

10 Official Opinions of the Compliance Board 31 (2016)

Talbot County Council (Deborah A. Jeon, Richard Potter, Complainants)

May 4, 2016

Topic discussed: Administrative function exclusion (not within the exclusion, decision on placement of monument, when not addressed by pre-existing policy)

10 Official Opinions of the Compliance Board 35 (2016)

Queen Anne's County Board of Education (David Brown, Bryan Holocker, Angela Price, for The Bay Times, Complainants)

May 9, 2016

Topics discussed: Closed session requirements (notice of open meeting, public vote, written statement with the reason for closing, complete summary with the reason for closing)

10 Official Opinions of the Compliance Board 40 (2016)

Board of Education Howard County (Colleen Morris, Complainant)

May 19, 2016

Topic discussed: Accommodation of overflow crowd

10 Official Opinions of the Compliance Board 46 (2016)

Project Review and Oversight Committee of the Baltimore Development Corporation (Joanna Sullivan for Baltimore Business Journal, Fern Shen, for Baltimore Brew, and Triff Alatzas, for the Baltimore Sun, Complainants)

May 23, 2016

Topics discussed: Closed session requirements (written statement with the reason for closing); public securities marketing exception (not applicable to discussions about the project proposed for financing)

10 Official Opinions of the Compliance Board 51 (2016)

Prince George's County Public Schools Student Safety Task Force (Colin Byrd, Complainant)
May 31, 2016

Topic discussed: Definition of "public body" (not met by task force appointed by chief executive officer of school system)

10 Official Opinions of the Compliance Board 54 (2016)

Maryland Statewide Independent Living Council (Katie Collins-Ihrke, Complainant)
June 10, 2016

Topics discussed: Notice (timeliness of notice posted on website)

10 Official Opinions of the Compliance Board 57 (2016)

Howard County Board of Education (Craig O'Donnell, Complainant)
June 10, 2016

Topics discussed: Closed session requirements (post-session summary); administrative function exclusion (school board's performance evaluation of superintendent, within the exclusion) quasi-legislative function (discussion of employment contract); personnel exception (contract for specific individual); notice (notice of open meeting required for public meeting held for vote to close); closed session requirements (written statement with the reason for closing).

10 Official Opinions of the Compliance Board 62 (2016)

City Of Hyattsville Code Compliance Committee (Nina S. Faye, Complainant)
June 10, 2016

Topic discussed: Administrative function exclusion (within the exclusion, discussion of new date for canceled meeting and choice of member to ensure that notice is given)

10 Official Opinions of the Compliance Board 64 (2016)

Prince George's County House Delegation (Craig O'Donnell, Complainant)
June 23, 2016

Topic discussed: Caucus meeting attended by quorum of county delegation members who did not conduct delegation business (under particular circumstances, not a meeting of the delegation)

10 Official Opinions of the Compliance Board 67 (2016)

Rock Creek Forest Childcare Selection Committee (John Cumings, Complainant)
June 30, 2016

Topics addressed: Definition of "public body" (met by committee created pursuant to county executive regulation); administrative function exclusion (not within the exclusion, process of selecting contractor); quasi-legislative function (process of approving contract).

10 Official Opinions of the Compliance Board 70 (2016)

Board of Commissioners, Housing Authority of Prince George's County (Sabrina Wear, Esq., for Maryland Legal Aid, Complainant)

Topics addressed: Definition of "meeting" (not met when quorum did not attend the event); notice methods (when several methods are used, public body to use them all consistently or else tell the public which method is consistently updated)