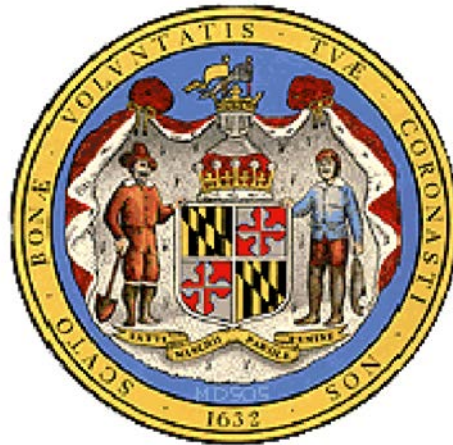


TWENTY-SECOND ANNUAL REPORT
OF THE
OPEN MEETINGS COMPLIANCE BOARD



BOARD MEMBERS

MONICA J. JOHNSON, ESQ.
WANDA MARTINEZ, ESQ.
MAMATA S. POCH, ESQ.

SEPTEMBER 2014

**TWENTY SECOND ANNUAL REPORT
OF THE
OPEN MEETINGS COMPLIANCE BOARD**

Pursuant to §10-502.4(e) of the State Government Article, the Open Meetings Compliance Board submits this annual report for the period running from July 1, 2013, through June 30, 2014. As the current members of the Compliance Board were appointed near the very end of that period, this report mainly covers the activities of the prior Board.

**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 2014. 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). The Board is continuously grateful 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. Training on the Open Meetings Act was also available for local government officials and employees through the certificate program offered by the Academy for Excellence in Local Governance, now 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. By invitation, counsel also addressed the University of Maryland Board of Regents.

An added function this year was occasioned by the enactment of a new requirement that each public body submit to the Board the name of the member, officer, or employee whom the public body had designated to receive training on the requirements of the Act. Public bodies were made aware of this requirement through the outreach efforts of the Attorney General's Office, the Maryland Association of Counties, and the Maryland Municipal League. The Board's Administrator has received a large number of designations.

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

The membership of the Board changed entirely in 2014 with the appointment of three new members, including a new Chair. Past Chair Elizabeth L. Nilson participated in every opinion issued by the Board since March 2008, conducted the Board's meetings, conveyed the Compliance Board's opinion on legislation to members of the General Assembly, and directed the Board's work. Past member Courtney J. McKeldin served on the Board since its beginning, in 1992. The breadth and volume of the matters on which she deliberated during her 22 years of service on this volunteer Board are reflected in the nine volumes of the opinions that the Board issued during her membership and in the summaries, in the annual reports, of the Board's legislative recommendations over the years. The Board and the public benefited greatly from their intelligence, judiciousness,

and dedication to the principle of open government, and we express great appreciation for their public service.

We also acknowledge the work of the Board's first Chair, Walter Sondheim Jr., who served until his death in 2007, and of members Tyler G. Webb, who served from 1992 to September, 2008, and Julio A. Morales, Esq., who served at a particularly busy time for the Board and participated in opinions issued from October 2008 to July 2013.

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. Staff have begun revising the training materials to conform to the recodification of the Act into the new General Provisions Article.

Legislative developments are described in Part III, below.

C. Complaint and Opinion Activities

1. Statistics

- Total number of submitted complaints resolved during FY 2014: 24
 - Opinions issued during FY 2014: 19
 - Complaints by different complainants consolidated: 2
 - Complaints dismissed as not within the Board's authority: 2
 - Complaint withdrawn: 1
- Complaints that were submitted in FY 2014 and still pending on 7/1/14: 7
- Total number of complaints submitted in FY 2014: 32
- Number of different complainants in resolved matters: 20 (includes 6 media complainants)

(Note: Some complaints pertained to numerous meetings over the course of a year or more; two complaints, in particular, involved multiple meetings by multiple committees of the same parent public body. The number of complaints thus does not reflect the number of meetings and public bodies complained of.)

2. Nature of the Complaints

(a) **Violations alleged.** As shown by the summary in Part IV of this report, the complaints received by the Board alleged numerous types of violations, including:

- convening a quorum of the public body to discuss public business without giving any notice;
- giving notice by an obscure means and failing to retain a copy;
- giving notice of a meeting to the public body's known constituency but not to the general public;
- closing a meeting for the stated purpose of discussing "administrative" matters not subject to the Act and then discussing policy matters;
- issuing unduly vague and conclusory minutes, closing statements, or summaries of closed-session events, or not preparing those documents at all;
- failing to adopt minutes promptly;
- in closed sessions, exceeding the scope of the exception claimed as a basis for the closing;
- permitting a participant in a hearing to order an observer to stop videotaping it;
- posting as "closed" a meeting that was required to be convened openly so that the public could observe the vote to close it; and

- meeting at a location that was closed to the public

(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;
- 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;
- failing to hold public comment sessions on a proposed measure;
- as to a group of State employees and a private association, neither subject to the Act, not meeting publicly

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

The Board issued seven opinions in response to specific allegations that a public body failed to provide the proper notice. The notice-related complaints included allegations of an alleged lack of notice, untimely notice, insufficient notice, a failure to retain written notice, or notice that stated that the meeting would be closed when, in fact, the public body had to first conduct a public vote to exclude the public. In three matters, notice problems arose when a gathering at which fewer than a quorum of the members of a public body expected to discuss public business was joined at the last minute by an additional member. In those matters, the group nonetheless continued to discuss public business. It is hoped that the new training requirement will reduce the volume of such complaints.

3. Publication of opinions issued during the fiscal year

The Board's opinions for the 2014 fiscal year appear in Volume 9, pages 1 - 124, posted at <http://www.oag.state.md.us/Opengov/Openmeetings/board.htm>. A summary appears in Part IV, below.

II. LEGISLATION

A. *Legislation enacted in 2014*

Effective October 1, 2014, the Open Meetings Act will no longer be codified in the State Government Article of the Maryland Code. Instead, it will appear as Title 3 of the new General Provisions Article, which will also contain other laws applicable to both local governments and the State government.

As part of the Budget Reconciliation and Financing Act of 2014, the Joint Committee on Transparency and Open Government has been combined with the Joint Advisory Committee on Legislative Data Systems. The new committee is named the "Joint Committee on Legislative Information Technology and Open Government."

During the session, the Compliance Board's input was sought on two proposals: first, a proposal to require public bodies to post meeting agendas with their notices; and, second, a proposal to refer Public Information Act fee disputes to the Compliance Board or a volunteer board modeled after it. On the notice provision, the Compliance Board's chair expressed the concern that public bodies might delay giving notice until their agendas were ready. The bill was amended to reflect that concern and then to require summer study. It did not pass. As to the fee dispute proposals, concerns were expressed about the ability of an unfunded volunteer board to handle the volume of complaints that might be expected in light of the experience of other states with such mechanisms. House Bill 658, enacted as Chapter 102 of the 2014 Laws of Maryland, referred the matter of Public Information Act appeals to the Joint Committee for summer study.

B. Suggestions from the outgoing Board

In the last opinion issued by the outgoing Board, it noted, for our consideration, two aspects of the Act that confuse public bodies: first, the applicability of the administrative function exclusion to meetings to discuss personnel actions pertaining to individual employees, and, second, the permissibility of taking an action in a session closed to receive legal advice. *See 9 OMCB Opinions 110,124 (2014).*

C. Board recommendations for the 2014 Legislative Session

As set forth in Section III below, the Board is not proposing any amendments to the Act at this time.

III. SUGGESTIONS FROM THE PUBLIC

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

- address the permissibility of using text messaging and social media to discuss public business;
- amend the mandatory training provision to require presiding officers to take the training
- require public bodies to give notice of the fact that they have unsealed minutes of closed meetings;
- amend the Act to require the automatic unsealing of closed-session minutes on topics other than the investment of public moneys and issuance of bonds
- as was proposed in the 2014 Session, amend the Act to require public bodies to publish meeting agendas before each meeting

The Board discussed each proposal at its annual meeting. The Board decided that the regulation of the conduct of public business through electronic means was a complex

issue that could not be addressed without a concrete proposal and careful thought; that it was too early to address whether there is any need to amend the mandatory training requirement, which took effect in 2013; that whether closed-session minutes should be made automatically available to the public at some specified time depended on the content of the particular minutes; that the Board would consider, after receiving information from public bodies on the matter, the proposal that public bodies announce the unsealing of minutes; and that the Board will consider whether, and what, position to take on any legislation to require the posting of agendas before meetings, after it sees the language of the legislation.

IV.

SUMMARY OF OPINIONS ISSUED FROM JULY 1, 2013 – JUNE 30, 2014

9 Official Opinions of the Compliance Board 1 (2013)

University of Maryland Board of Regents

Craig O'Donnell, Complainant

July 9, 2013

Topics discussed: Requirement that advisory and quasi-legislative functions be performed in open session; limits of administrative function exclusion; closed-session procedures; timely adoption of minutes; notice

9 Official Opinions of the Compliance Board 15 (2013)

Board of Finance of Baltimore City

Stephen Janis and Melissa Roeder (Fox 45),

Luke Broadwater (Baltimore Sun), Complainants

July 25, 2013

Topics discussed: Disclosures to be made before a meeting is closed under the Open Meetings Act; limits of the “business location” and “public securities” exceptions in State Government Article § 10-508(a)(4) and (a)(6)

9 Official Opinions of the Compliance Board 29 (2013)

Town Council, Town of Hurlock

Reverend Charles T. Cephas, Complainant

August 9, 2013

Topics discussed: Applicability of administrative function exclusion to council's appointment to vacancy on the council; disclosure requirements for closed sessions; discussion in closed session of matters not within the claimed exception

9 Official Opinions of the Compliance Board 37 (2013)

Coastal and Watershed Resources Advisory Committee

Michele J. Fluss, Complainant

August 8, 2013

Topics discussed: Notice requirements

9 Official Opinions of the Compliance Board 40 (2013)
Board of County Commissioners of Frederick County
Catherine Forrence and Kimberly Melon, Complainants
August 16, 2013

Topics discussed: Definition of a “meeting” subject to the Open Meetings Act; notice requirements

9 Official Opinions of the Compliance Board 44 (2013)
Mayor and Council, City of Rockville
Joseph Jordan, Complainant
September 13, 2013

Topics discussed: Applicability of “legal advice” and “potential litigation” exceptions in State Government Article § 10-508(a) (7) and (a)(8)

9 Official Opinions of the Compliance Board 46 (2013)
Baltimore Development Corporation
Kevin Litten (Baltimore Business Journal), Complainant
October 1, 2013

Topics discussed: Content of closed session disclosures; public access to written closing statement at time of closing; provision of written statement to Compliance Board when member of public objects; applicability of “business relocation” exception

9 Official Opinions of the Compliance Board 53 (2013)
Department of Budget and Management Senior Procurement Advisory Group
Gary Goldberg, Complainant
October 9, 2013

Topics discussed: Definition of “public body,” as applied to a group of State employees attending information sessions; limitation of Compliance Board authority to entities subject to the Open Meetings Act; dismissal of complaint

9 Official Opinions of the Compliance Board 55 (2013)
Board of County Commissioners of Frederick County
Kimberly Mellon, Complainant
November 5, 2013

Topics discussed: Applicability of Open Meetings Act only when public body “meets”; limitation of Compliance Board authority to meetings subject to the Act; dismissal of complaint

9 Official Opinions of the Compliance Board 57 (2013)

Mayor and Town Council of Rock Hall

**Susan Francis, Robert Willis and Grenville B. Whitman, Complainants
(consolidated complaints)**

November 6, 2013

Topics discussed: Consistency of written disclosures prepared before a closed session with the public body’s oral statements about the reason for the closing; notice requirements applicable to a closed session when it can be reasonably anticipated; limitation of “personnel” exception to matters involving individuals, as opposed to matters involving municipal governance; permissible location of closed session

9 Official Opinions of the Compliance Board 71 (2013)

University of Maryland Board of Regents

Craig O’Donnell, Complainant

November 18, 2013

Topics discussed: Adequacy of pre- and post-closed-session disclosures; applicability of “collective bargaining” exception to discussions held before ratification of agreement; applicability of “procurement” exception to award of naming rights when done by procurement process and disclosure would prejudice public body’s ability to participate in competitive process; inapplicability of “real property acquisition” exception to discussions about selling the public body’s land; applicability of “personal information” exception to discussion about personal history of candidates for public honor; adequacy of open session minutes; use of vague or specialized terms that do not convey information to the general public

9 Official Opinions of the Compliance Board 78 (2013)

Board of County Commissioners of Frederick County

Courtney Mabeus (Frederick News Post) and Sonja Sperlich, Complainants

November 19, 2013

Topics discussed: Applicability of “legal advice” and “pending or potential litigation” exceptions; applicability of “administrative function” exclusion to issuance of check to implement actions already taken publicly

9 Official Opinions of the Compliance Board 80 (2013)

Board of Education of Calvert County

Nick Myers, Complainant

December 10, 2013

Topics discussed: Definition of “public body,” as applied to a redistricting group convened by a school superintendent; limitation of Compliance Board authority to entities subject to the Open Meetings Act; dismissal of complaint

9 Official Opinions of the Compliance Board 83 (2013)**Mayor and City Council, Cambridge****Charles McFadden, Complainant****December 10, 2013**

Topics discussed: Definition of “public body”; inability of Compliance Board to resolve complaint when method of creation of committee, and thus applicability of the Open Meetings Act is unclear; attendance of quorum of Council at committee meetings as meeting of Council itself; sufficiency of notice and minutes

9 Official Opinions of the Compliance Board 92 (2014)**Chestertown Waterfront Task Force****Craig O’Donnell, Kent County News, Complainant****January 13, 2014**

Topics discussed: Definition of “public body” under the Open Meetings Act (task force created by town council’s resolution); definition of “advisory function” for purposes of determining whether a meeting is subject to the Open Meetings Act; requirement that public bodies keep minutes of meetings subject to the Open Meetings Act.

9 Official Opinions of the Compliance Board 94 (2014)**Chestertown Town Council****Craig O’Donnell, Kent County News, Complainant****February 27, 2014**

Topics discussed: Occurrence of a public body’s “meeting” for purposes of the Open Meetings Act when the event was organized by another entity (attendance by a quorum of the public body’s members and their use of the event to discuss public business); definition of “public body” under the Open Meetings Act (generally, entities created by memoranda of understanding adopted by resolution); disclosure requirements applicable to meetings closed under the Open Meetings Act.

9 Official Opinions of the Compliance Board 99 (2014)**Chevy Chase Town Council****Ronit A. Dancis, Complainant****March 20, 2014**

Topics discussed: Conditions set by the Open Meetings Act on public body’s right to close a meeting under the Act’s exceptions (notice of an open meeting, preparation of written statement of pertinent exception, reason to close, and topics to be discussed, public vote to close, disclosures in minutes of subsequent open session); applicability of exception for procurement matters (presentation of law firms’ competing proposals in matter on which public body had already decided its position); applicability of exception for potential litigation (discussion of legal options in same matter).

9 Official Opinions of the Compliance Board 103 (2014)

Carroll County Board of Commissioners

Linda Pallay, Complainant

May 13, 2014

Topics Discussed: Notice requirements; discussion by quorum of public body at event noticed as an event held by less than a quorum; inapplicability of Open Meetings Act to committee appointed by one member when it did not fall within the Act's definition of "public body"

9 Official Opinions of the Compliance Board 110 (2014)

Maryland Health Benefit Exchange

Craig O'Donnell, Complainant

May 19, 2014

Topics Discussed: Notice requirements (use of website alone insufficient for last-minute notice); closed-session disclosure requirements; applicability of the exceptions that permit closed-session discussions of certain procurement and litigation matters

The full opinions are posted at <http://www.oag.state.md.us/Opengov/Openmeetings/board.htm>.

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