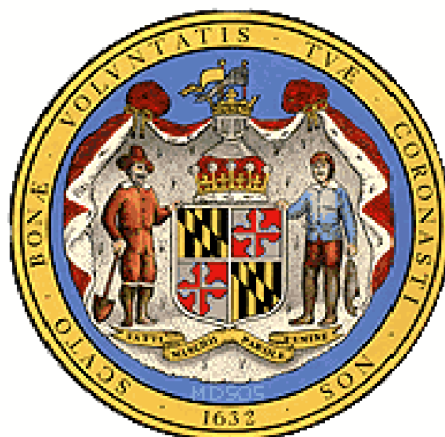


THIRTY-FIRST ANNUAL REPORT
OF THE
OPEN MEETINGS COMPLIANCE BOARD



BOARD MEMBERS

LYNN MARSHALL, ESQ., CHAIR
RUNAKO KUMBULA ALLSOPP, ESQ.
JACOB ALTSHULER, ESQ.

SEPTEMBER 22, 2023

**THIRTY-FIRST ANNUAL REPORT
OF THE
OPEN MEETINGS COMPLIANCE BOARD**

The Open Meetings Compliance Board submits this annual report for the period running from July 1, 2022, through June 30, 2023 (“FY 2023”), in accordance with § 3-204(e) of the General Provisions Article (“GP”) of the Maryland Code. In this report, we discuss our activities and the opinions we issued this year, the number and nature of the complaints we received (highlighting those that alleged a failure to provide reasonable notice of a meeting), and the types of violations of the Open Meetings Act (the “Act”) that we found. We also provide summaries of our opinions, identifying each public body that violated a provision of the Act, and describe open meetings legislation that the General Assembly proposed and adopted during the 2023 legislative session.

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. An additional function, in conjunction with the Office of the Attorney General, is conducting educational programs for the staffs and attorneys of public bodies, the Maryland Municipal League, the Maryland Association of Counties, and the Maryland Association of Boards of Education. GP § 3-204.

The Compliance Board was established as an independent State board of three members who are appointed by the Governor and serve without compensation. At least one member must be an attorney admitted to the Maryland bar. All three of the Board’s current members—Runako Kumbula Allsopp, Jacob Altshuler, and Lynn Marshall (who serves as chair)—are attorneys.

The Compliance Board has no budget and no staff of its own. The Office of the Attorney General provides counsel and administrative support, as required by statute, and posts the Compliance Board’s opinions on the Open Meetings webpage of the Attorney General’s website. However, the Compliance Board is an independent body and is not a part of the Office of the Attorney General.

I.

ACTIVITIES OF THE BOARD

A. *Complaint Statistics*

1. Complaints received and opinions issued

From July 1, 2022, to June 30, 2023, we received **forty** written complaints—seventeen fewer than last year—concerning **thirty-two** separate entities. **One** complaint was withdrawn. **Five** complaints will carry over to the next fiscal year. **One** complaint

alleged a prospective violation. *See* GP § 3-212 (setting forth the process for a complaint alleging that a future meeting, required to be open under the Act, will be closed).¹

This fiscal year, we issued **thirty-four** opinions, fourteen fewer than last year. **Two** opinions involved the consolidation of two complaints into one. **Three** opinions involved complaints that were filed the previous fiscal year. In **seventeen** opinions, we found violations, in varying degrees of seriousness, by more than **fourteen** separate public bodies.² In **ten** opinions, we found no violation. In **four** opinions, we lacked sufficient information to determine whether a violation had occurred. In **three** opinions, we found that some allegations did not state a violation of the Act but other allegations could not be resolved, because we lacked sufficient information.

Several bodies drew multiple complaints, though not all of these complaints resulted in a finding of a violation. For example, the Montgomery County Board of Education was the subject of two Compliance Board opinions, only one of which involved findings of violations. The Maryland 529 Board, the District Heights City Commission, the Charles County Board of Commissioners, the Town Council of Berwyn Heights, the Prince George’s County Fire Commission, and Takoma Park’s Sustainable Maryland Committee were each the subject of two complaints. Four complaints—filed by two complainants—alleged violations by the Berlin Council.

The complaint docket was as follows:

Docketed complaints from FY 2022, still pending on July 1, 2023:	3
Complaints received during FY 2023	40
Total complaints on the docket for FY 2023:	43
Complaints consolidated	4 to 2
Complaints dismissed without an opinion.....	0
Complaints withdrawn.....	1
Complaints alleging a prospective violation	1
Total matters to address:	41
Opinions issued in FY 2023:	34
Reports on complaints alleging a prospective violation.....	1

¹ Counsel for the Compliance Board contacted the attorney for the public body, who denied that the body had plans to convene in closed session as alleged by the complainant. Pursuant to § 3-212, Board counsel submitted a report to the Board, which did not issue an opinion addressing this matter.

² Sixteen of these opinions involved violations by fourteen separate bodies. The seventeenth opinion, 16 *OMCB Opinions* 163 (2022), involved allegations of violations by “60 Boards, Committees and Commissions that fall under the purview of the Office of the County Executive in Montgomery County.” Due to the exceptionally large number of bodies involved, we focused on the types of alleged violations rather than going through every allegation and response related to each of the sixty bodies. Although we found that several bodies had, in fact, violated the Act, we did not determine precisely how many of the sixty bodies committed violations.

Complaints still pending on July 1, 2023: 5

2. *The provisions violated*

We issued seventeen opinions in which we found violations of one or more provisions of the Act. Last year, we issued twenty-five opinions finding one or more violations.

Of all the matters we considered in FY 2023, sixteen involved alleged violations of GP § 3-302, which requires reasonable notice of a meeting or its cancellation. We found violations in five matters. We provide more details below in Section I.B, beginning on page 5.

The other most common types of violations involved failures to satisfy the Act's requirements related to minutes and agendas, the procedure for closing a meeting to the public, and the general obligation, absent exceptions spelled out in the law, to conduct public business in meetings open to all members of the public who wish to observe.

In seven opinions we found violations of the Act's requirements relating to minutes. *See* GP §§ 3-104, 3-306. In four of those opinions, we found a violation of the requirement to prepare minutes as soon as practicable after a meeting.³ In two opinions, we found failures to include content required by the Act.⁴ In one opinion, we found that a public body had failed to post minutes online to the extent practicable.⁵ And in one opinion, we found that a public body had violated GP § 3-306(d), which provides that minutes of a body's open sessions "are public records and shall be open to public inspection during ordinary business hours."⁶

In five opinions, we found one or more violations of the Act's general requirement, absent exceptions spelled out in the law, that a public body's meetings be open to all members of the public who wish to observe. *See* GP § 3-301 (providing that, "[e]xcept as otherwise expressly provided in [the Act], a public body shall meet in open session"), § 3-303(a) (providing that, "[w]henever a public body meets in open session, the general public is entitled to attend"). Twice, we found a violation based on a public body's failure to provide notice that a quorum of the body would be present at another entity's meeting about a topic that was sure to come before the public body for consideration.⁷ Twice, we found

³ *See* 16 *OMCB Opinions* 178 (2022) (involving delays ranging from four months to nearly three-and-a-half years), 16 *OMCB Opinions* 203 (2022) (involving delays of 13 and 16 weeks), 17 *OMCB Opinions* 24 (2023) (involving delays of more than nine months), 17 *OMCB Opinions* 79 (2023) (involving a delay of three months, without any special circumstance to justify the delay).

⁴ *See* 16 *OMCB Opinions* 97 (2022) (involving a failure to include "a record of the vote of each member as to closing the session," as required by GP § 3-306(c)(2)) and 16 *OMCB Opinions* 203 (2022) (involving a failure to include who was present during a closed session, as required by GP § 3-104).

⁵ *See* 16 *OMCB Opinions* 163 (2022).

⁶ *See* 17 *OMCB Opinions* 47 (2023).

⁷ *See* 16 *OMCB Opinions* 185 (2022) and 17 *OMCB Opinions* 39 (2023).

that public bodies improperly invoked provisions of GP § 3-305 (permitting certain discussions to take place in closed session) and, thus, improperly excluded the public from discussions that should have taken place in the open.⁸ In one opinion, we found that public bodies violated the Act's openness requirement by failing to provide information to the public about how to access virtual meetings.⁹ And in one opinion, we found that a public body violated the Act when members exchanged text messages among themselves during a meeting.¹⁰

In three opinions, we found one or more violations of the Act's agenda requirements. Two of those opinions involved failures to make agendas available to the public in a timely manner.¹¹ In one opinion, we found a violation based on the public body's failure to prepare any agenda.¹² And in one opinion, we found a violation based on a public body's failure to include in an agenda a known item of business.¹³

In two opinions, we found failures to satisfy the Act's procedural requirements for closing a meeting to the public. *See* GP § 3-305(d). One opinion involved the failure of a public body to provide sufficient detail in a required written disclosure before entering closed session.¹⁴ The other opinion involved a public body's failure to provide the Compliance Board a copy of the body's written closing statement after someone objected to the body's vote to enter closed session.¹⁵

Finally, in two opinions, we found a violation of the Act based on a public body's failure to retain a meeting notice, as required by GP § 3-302(d).¹⁶

⁸ *See* 17 *OMCB Opinions* 28 (2023) (involving the improper invocation of the procurement exception of GP § 3-305(b)(14)) and 17 *OMCB Opinions* 73 (2023) (involving the improper invocation of the "personnel matters" exception of GP § 3-305(b)(1)).

⁹ 16 *OMCB Opinions* 163 (2022).

¹⁰ *See* 16 *OMCB Opinions* 185 (2022).

¹¹ *See* 16 *OMCB Opinions* 163 (2022) and 17 *OMCB Opinions* 24 (2023).

¹² *See* 16 *OMCB Opinions* 163 (2022).

¹³ *See* 16 *OMCB Opinions* 212 (2022).

¹⁴ *See* 16 *OMCB Opinions* 224 (2022).

¹⁵ *See* 17 *OMCB Opinions* 18 (2023).

¹⁶ *See* 16 *OMCB Opinions* 163 (2022) and 16 *OMCB Opinions* 182 (2022).

3. *The complainants*

In FY 2023, thirty-eight different complainants alleged violations of the Act.¹⁷ These complainants included companies, an industry association, and several current or former government officials. Six complainants each filed two or more complaints.

4. *The entities alleged to have violated the Act*

The complaints that we received in FY 2023 concerned thirty-two different entities. In five opinions, we determined that an entity accused of violating the Act was not actually a public body subject to the Act's requirements.¹⁸ The other opinions that we issued in FY 2023 involved state agencies, county or municipal boards or commissions, and local school boards. Local legislative bodies were the focus of twelve complaints that we received and local school boards were the focus of five complaints.

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

Pursuant to GP § 3-204(e)(2)(iii), we highlight here, and in the opinion summaries below in Part III, those “complaints that reasonable notice of a meeting was not given.” As already noted, *see above* page 3, sixteen matters alleged violations of GP § 3-302, which requires reasonable notice of a meeting or its cancellation. We found violations in five matters. These violations involved a failure to provide any notice whatsoever,¹⁹ a failure to provide notice by one of the public body's usual methods,²⁰ a failure to indicate in a meeting notice that the public body would meet in open session before voting to enter closed session,²¹ and failures to provide notice that a quorum of a public body would be present at another entity's meeting about a topic that was sure to come before the public body for consideration.²²

In six other matters, complainants alleged a failure to provide adequate advance notice of a meeting, but we found no violation.²³

In one opinion, we concluded that a public body did not violate GP § 3-302 by

¹⁷ Sometimes a single complaint was signed by more than one complainant.

¹⁸ See 16 OMCB Opinions 170 (2022), 16 OMCB Opinions 175 (2022), 16 OMCB Opinions 229 (2022), 17 OMCB Opinions 13 (2023), and 17 OMCB Opinions 73 (2023).

¹⁹ 16 OMCB Opinions 163 (2022).

²⁰ See 17 OMCB Opinions 24 (2023).

²¹ See 17 OMCB Opinions 42 (2023).

²² See 16 OMCB Opinions 185 (2022) and 17 OMCB Opinions 39 (2023).

²³ See 16 OMCB Opinions 178 (2022), 16 OMCB Opinions 192 (2022), 17 OMCB Opinions 18 (2023), 17 OMCB Opinions 47 (2023), 17 OMCB Opinions 61 (2023), and 17 OMCB Opinions 79 (2023).

gathering without notice to the public, because the gathering was not a “meeting” subject to the Act; but, in the same opinion, we were unable to conclude whether another gathering on a different date was a “meeting” for which the public body was obligated to provide notice.²⁴

In the remaining four matters, we could not determine whether the public body had violated GP § 3-302. In one matter it was not clear, based on the limited facts before us, whether a meeting had occurred and, thus, whether the public body had been required to provide notice.²⁵ In another, the public body’s failure to retain notices left us unable to determine whether the body had provided reasonable advance notice of a meeting.²⁶ In the third matter, there was a dispute of fact about when the public body had provided notice of a meeting,²⁷ and in the fourth, we lacked enough information about what, if any, extra steps a public body took to provide notice of a meeting called on short notice.²⁸

C. Conclusions from the Statistics – Overview of the Year

The issues that we addressed this year are listed in the topic descriptions in the opinion summaries in Part III, below. As we have noted in previous annual reports, one must view our statistics in perspective. The overall number of complaints, and of those in which we found a violation, remains small in proportion to the total number of public bodies statewide.

This year saw a significant decrease in the number of opinions we issued (thirty-four) from the previous year, which was exceptionally busy and produced forty-eight opinions, the most since at least Fiscal Year 2013. The number of opinions that we issued this fiscal year is more in line with our annual tallies for the past decade, when (with the exception of last fiscal year) we issued between 19 and 37 opinions annually. As we indicated in our last annual report, last year’s increase was largely attributable to COVID-19, as many complaints focused on practices that public bodies adopted in light of the pandemic, or raised concerns about meetings involving controversial topics of discussion related to the pandemic (such as masking policies and other COVID-19 protocols). This year, by comparison, COVID-19 came up in only two opinions. *See 16 OMCB Opinions 163 (2022)* (involving public bodies that conceded certain violations of the Act due to COVID-19); *16 OMCB Opinions 173 (2022)* (concluding that a public body, which, early in the pandemic switched to virtual meetings and used a conference-calling service to connect a member of the public who did not have a cell phone, was not required to continue providing that service when the body switched to hybrid meetings that the public could

²⁴ *See 17 OMCB Opinions 57 (2023).*

²⁵ *See 17 OMCB Opinions 71 (2023).*

²⁶ *See 16 OMCB Opinions 182 (2022).*

²⁷ *See 17 OMCB Opinions (2023).*

²⁸ *See 16 OMCB Opinions (2022).*

attend in person and continued to allow members of the public to observe by internet or by calling in).

Of the thirty-four opinions we issued, we found violations in half. As noted above, the most common type of violation (found in seven opinions) involved some deficiency related to meeting minutes—the failure to prepare or post them timely, the failure to provide enough details, or the failure to permit public inspection of minutes during ordinary business hours. Five opinions found violations of the Act’s requirement to provide reasonable advance notice. Three opinions involved violations of the Act’s agenda requirements, and three involved violations of the general requirement, absent exceptions spelled out in the Act, that a public body’s meetings be open to all members of the public who wish to observe.

D. Financial Support and Educational Activities

The Attorney General’s Office provides the Board with staff support, posts the Board’s opinions and other Open Meetings Act materials on its website, and bears the incidental costs associated with administering the Board’s work. The Board could not fulfill its statutory duties without this support, as no funds have ever been specifically appropriated for its operations.

The Institute for Governmental Service and Research at the University of Maryland hosts, maintains, and performs updates to the online class that many public bodies rely on to comply with the Act’s training requirement. We thank the Institute for its service to the public in creating the online class, in conjunction with the Office of the Attorney General, and in making it continuously available to the general public, currently at no charge to the public for access, and, to date, without charging for its services.²⁹ The online training was most recently updated July 1, 2023, to reflect a change to the Act that took effect that day. (That change is discussed below in Section II.A.)

E. Publication of Opinions Issued During the Fiscal Year

The Board’s opinions for the 2023 fiscal year are posted at <http://www.marylandattorneygeneral.gov/Pages/OpenGov/OpenMeetings/index.aspx>, in Volume 16, beginning on page 163, and in Volume 17, pages 1 through 82. The table of contents for each volume lists each opinion, along with the name of the public body and notations of any provisions that we found violated. Summaries appear in Part III of this report.

²⁹ The online class is posted at https://www.igsr.umd.edu/VLC/OMA/class_oma_title.php.

II. LEGISLATION

A. Legislation proposed and enacted in 2023

The General Assembly made only two minor amendments to the Open Meetings Act during the 2023 legislative session. First, the Maryland State Agency Transparency Act of 2023 (House Bill 58 and Senate Bill 35) added the State Ethics Commission to the list of agencies subject to § 3-307 of the Act, effective July 1, 2023. 2023 Md. Laws, chs. 149, 150. Second, Senate Bill 162 made the Maryland Aviation Commission subject to GP § 3-307, effective October 1, 2023. 2023 Md. Las, ch. 564. Section 3-307, which applies only to specifically enumerated entities,³⁰ imposes certain obligations related to agendas, posting information online, livestreaming, and minutes, above and beyond those requirements that apply to all public bodies.

B. Board recommendations for the 2024 Legislative Session

The Board does not recommend any legislative study or action at this time.

³⁰ In addition to the State Ethics Commission and Maryland Aviation Commission, the following entities are subject to § 3-307: The Board of Directors of the Bainbridge Development Corporation, the Canal Place Preservation and Development Authority, the Maryland 911 Board, the Board of Directors of the Maryland Agricultural and Resource-Based Industry Corporation, the Board of Directors of the Maryland Clean Energy Center, the Board of Directors of the Maryland Economic Development Corporation, the Board of Directors of the Maryland Environmental Service, the Maryland Food Center Authority, the Maryland Health and Higher Educational Facilities Authority, the Maryland Industrial Development Financing Authority, the Maryland Stadium Authority, the Maryland Transportation Authority, the Northeast Maryland Waste Disposal Authority, the Public Service Commission, the State Board of Elections, the Maryland Technology Development Corporation, and the Historic St. Mary's Commission. See GP § 3-307(a).

III.

SUMMARIES OF OPINIONS ISSUED FROM JULY 1, 2022 – JUNE 30, 2023³¹

July 1 - September 30, 2022

16 OMCB Opinions 163 (2022)**Sixty Boards, Committees, and Commissions of Montgomery County**

Topics discussed: The Act's requirements for notice, agendas, providing access information for virtual meetings, and minutes.

Opinion: The Compliance Board found that many of the Complainant's assertions failed to allege a violation of the Act, and the record lacked sufficient details in several other instances to determine whether a violation had occurred. But the Compliance Board found that several of the bodies violated the Act by failing to provide reasonable advance notice of meetings, by failing to retain notices, by failing to make agendas available to the public or failing to do so in a timely manner, and by failing to prepare minutes or post them online when it was practicable to do so.

Violations: GP §§ 3-302(a) & (d), 3-302.1, 3-303, 3-306

16 OMCB Opinions 170 (2022)**Friends of the Library, Montgomery County**

Topics discussed: The Act's definition of "public body"

Opinion: The Compliance Board found that the submissions did not establish that Friends of the Library, a private non-profit organization, was a public body subject to the Act.

Violation: None

16 OMCB Opinions 173 (2022)**Council of the Town of La Plata**

Topics discussed: Whether a public body was required to provide a local dial-in number for telephone access to meetings when the body also allowed members of the public to attend in person and observe meetings by a live internet stream

Opinion: In 2020, in response to the COVID-19 pandemic, the Council started having virtual meetings, accessible by internet or phone. The Complainant did not have internet access, and dialing into the meetings required him to make a long-distance phone call. The Town, through a conference-calling service, arranged for a phone call to be made to the Complainant before meetings and connected him to the meeting line, allowing him to avoid making long-distance calls. In February 2022, the Council shifted to a "hybrid meeting" approach: The Council met in person, and those who wished to observe could do so in

³¹ The opinions summarized here are posted on the Open Meetings webpage on the website of the Office of the Attorney General. See <https://www.marylandattorneygeneral.gov/Pages/OpenGov/OpenMeetings/index.aspx>.

person, via the internet, or by phone. The Town told the Complainant that it would no longer call to connect him to the meetings, and the Complainant—who could not, for health reasons, attend meetings in person—alleged that this change in protocol violated the Act. The Compliance Board found no violation, reasoning that the Council had done nothing to prevent the Complainant from attending its meetings and had offered the public several options for meaningfully observing the Council’s proceedings.

Violation: None

16 OMCB Opinions 175 (2022)

Language Access Subcommittee of the Maryland Judicial Council

Topic discussed: The Act’s definition of “public body”

Opinion: The Compliance Board found that the Language Access Subcommittee of the Maryland Judicial Council was not subject to the Act, because it did not satisfy the Act’s definition of “public body” found in GP § 3-101(h).

Violation: None

October 1 – December 31, 2022

16 OMCB Opinions 178 (2022)

Hyattsville Educational Facilities Task Force

Topics discussed: The Act’s requirements for providing notice of meetings and preparing minutes

Opinion: The Compliance Board found that the Task Force did not violate the Act’s notice requirements in rescheduling a meeting on short notice because nothing in the record indicated that the body deliberately delayed setting the date, and the body provided notice by several methods, including posting to a website and public calendar and sending notice by text and email messaging services. The Task Force conceded that it failed to prepare minutes as soon as practicable, as the Act requires, when it took between four months and three-and-a-half years to prepare some sets of minutes.

Violation: GP § 3-306(b)(1)

16 OMCB Opinions 182 (2022)

District Heights City Commission

Topics discussed: The Act’s requirements for providing notice of meetings, retaining meeting notices, and making agendas available to the public

Opinion: The Compliance Board was unable to determine whether the City Commission violated the Act’s requirement to provide reasonable advance notice of a meeting when it was unclear whether: (1) the Commission deviated from its usual method of giving notice

on the City’s website and provided notice only through the website NextDoor, and (2), if so, what other methods the Commission may have employed to provide notice of the meeting. The Compliance Board did, however, find that the City Commission violated the Act’s requirement to retain meeting notices for at least one year (a statutory period that has since been expanded to three years). The Compliance Board did not find a violation of the Act based on the City Commission not posting an agenda online, which is not required for most public bodies; but the Compliance Board could not determine whether the City Commission otherwise violated the Act’s agenda requirement, because the record did not make clear what methods, if any, the Commission used to make agendas available to the public.

Violation: GP § 3-302(d)

16 OMCB Opinions 185 (2022)

Mayor and Town Council of Sykesville, and Sykesville Planning Commission

Topics discussed: When the attendance of a quorum of a public body at another entity’s gathering is a “meeting” of the public body subject to the Act, whether side conversations among members of a public body during a meeting violate the Act

Opinion: A quorum of the Town Council of Sykesville was present at two meetings of the Sykesville Planning Commission when the Commission was discussing a zoning matter that the Council would later be voting on. Because the receipt of information was part of a step in the process for a matter certain to come before the Council for a vote, the Compliance Board concluded that those gatherings were meetings of the Council and should have been described as such in meeting notices. The Compliance Board did not have enough information to decide whether members of the Planning Commission improperly engaged in side conversations that violated the Act by depriving the public (and other members of the Commission) the opportunity to fully observe the Commission’s deliberations. Texting among members of the Council, however, violated the Act’s requirement that public bodies generally meet in open session and permit any member of the general public to attend.

Violations: GP §§ 3-301, 3-302, 3-303(a)

16 OMCB Opinions 192 (2022)

Mayor and Council of the Town of Berwyn Heights

Topics discussed: The Act’s requirements for providing notice of meetings and making agendas available to the public

Opinion: The Compliance Board found no violation of the Act’s notice requirements when the Town Council scheduled a meeting on short notice in response to a recent storm and provided notice by various methods, including by posting on the Town website, social media, and the front window of Town Hall, and by sending notice via email. The Compliance Board also found no violation of the Act’s agenda requirement, which generally requires a public body to make an agenda available to the public at least 24 hours

in advance of a meeting, because that requirement does not apply to a meeting “scheduled in response to an emergency, a natural disaster, or any other unanticipated situation.” The Compliance Board clarified that only public bodies subject to GP § 3-307 must include supporting documents with agendas. Finally, the Compliance Board found that an allegation that the Council was “abusing . . . executive sessions to discuss items that . . . should be happening out in a public meeting” was too vague for the Compliance Board to resolve.

Violation: None

16 OMCB Opinions 197 (2022)

Board of Trustees of the Frederick Classical Charter School

Topics discussed: The Act’s requirements for agendas, minutes, and meeting in closed session; the limits of the Compliance Board’s authority

Opinion: The Compliance Board found that descriptions of agenda items were sufficiently detailed to satisfy the Act’s minimal requirements. The Compliance Board lacked sufficient information, however, to determine whether the Board of Trustees violated the Act’s requirement to disclose, on an agenda, whether the body intends to enter closed session: If the need to enter closed session did not arise until after the agenda was made available to the public, the Board of Trustees did not violate GP § 3-302.1(a)(1)(ii). The Compliance Board also lacked sufficient information to determine whether the Board of Trustees complied with the Act’s requirement that at least one member of the body be trained on the Act’s requirements before the body meets in closed session. Finally, the Compliance Board found that the Board of Trustees violated GP § 3-306(c)(2) by failing to include in a set of minutes a record of the vote of each member as to closing a session to the public.

Violation: GP § 3-306(c)(2)

16 OMCB Opinions 203 (2022)

Maryland 529 Board

Topics discussed: The Act’s requirements for notice and post-meeting disclosures; the administrative function exclusion

Opinion: The Compliance Board was unable to determine whether the Maryland 529 Board provided reasonable advance notice of a meeting called under urgent circumstances, as it was not clear whether the 529 Board took “extra efforts to notify the public.” The Compliance Board found that the 529 Board properly invoked the administrative function exemption to the Act when the 529 Board met behind closed doors to deal with housekeeping matters and administer its bylaws by forming special committees. The 529 Board violated GP § 3-104, however, by failing to include in its public minutes a sufficiently detailed summary of who attended the closed session. The Compliance Board further found that the 529 Board violated GP § 3-306(b) by taking more than thirteen weeks to prepare some meeting minutes.

Violation: GP §§ 3-104, 3-306(b)

16 OMCB Opinions 212 (2022)

Mayor and City Council of Pocomoke

Topics discussed: When electronic communications may rise to the level of a “meeting” under the Act; the Act’s agenda requirements; public comments

Opinion: The Compliance Board lacked sufficient information to determine whether the City Council members may have had telephone conversations or exchanged emails that rose to the level of a “meeting” for purposes of the Act. The City Council violated the Act’s agenda requirements when it omitted a known item of business from an agenda, even though the omission was inadvertent. The Council did not violate the Act, however, by declining to include a citizen-requested item of business on a meeting agenda. Furthermore, the Act does not regulate presiding officers’ decisions as to whether to allow public comments at a meeting.

Violation: GP § 3-302.1(a)

16 OMCB Opinions 219 (2022)

Montgomery County Board of Education

Topics discussed: The administrative function exclusion

Opinion: The Board of Education did not violate the Act when it met in closed session to receive an update on a conditional use permit application related to property owned by the Board, because receiving the update was an administrative function not subject to the Act.

Violation: None

16 OMCB Opinions 224 (2022)

Montgomery County Board of Education

Topics discussed: Required disclosures before meeting in closed session; the personnel matters exception; the collective bargaining exception; the pending or potential litigation exception; the legal advice exception

Opinion: The Compliance Board found that the Board of Education violated GP § 3-305(d) by failing to make sufficiently detailed disclosures to the public before meeting in closed session. Specifically, the Board of Education failed to: (1) provide the topic of discussion it planned to discuss under the personnel matters exception, (2) failed to identify the labor union it planned to discuss under the collective bargaining exception, (3) failed to specify whether it intended to discuss ongoing litigation, impending litigation, or potential litigation under the pending or potential litigation exception, and (4) failed to disclose the reason why it was seeking advice of counsel in closed session.

Violation: GP § 3-305(d)

16 OMCB Opinions 229 (2022)**Baltimore County Blue Ribbon Commission on Ethics and Accountability**

Topics discussed: “Evasive devices”; subcommittee exclusion from the Act’s definition of “public body”

Opinion: The Compliance Board concluded that subcommittees of the County Blue Ribbon Commission were not themselves public bodies under GP § 3-101(h)(3)(ix), the subcommittee exclusion from the Act’s definition of “public body.” The Compliance Board noted that the Maryland Supreme Court has said that a public body may not use an “evasive device” to skirt the Act’s requirements, and the Compliance Board further suggested that a public body could not apportion all its statutory powers among committees composed of fewer than a quorum of its members to avoid the Act’s openness requirements. But the Compliance Board declined to find a violation of the Act here because the record did not establish that the County Blue Ribbon Commission created the subcommittees as an evasive device.

Violation: None

16 OMCB Opinions 234 (2022)**Board of Trustees of the Washington County Free Library**

Topics discussed: The public’s right to attend meetings; public comment; detail required of meeting minutes; posting minutes online

Opinion: The Compliance Board noted that any action taken by a public body to discourage public attendance at a meeting to any substantial degree would likely violate the Act. But the Compliance Board did not find any such action on the part of the Board of Trustees: Although the Board of Trustees did not allow public comment at a meeting, the Act does not require public comment; and while the Board of Trustees moved its meeting location, there was no evidence the meeting site was inaccessible to the public or chosen to limit public attendance. The Compliance Board also declined to find a violation based on the level of detail in meeting minutes but was unable to determine whether the Board of Trustees violated the Act by taking too long to post minutes online.

Violation: None

January 1 – March 31, 2023

17 OMCB Opinions 1 (2023)**District Heights City Commission**

Topics discussed: Limits on the Compliance Board’s authority; the Act’s notice requirements

Opinion: The Complainant and the City Commission disputed the timing and content of a notice for a special meeting. The Compliance Board, which is not a fact-finding body, was

thus unable to determine whether the City Commission violated the Act's notice requirements.

Violation: None

17 OMCB Opinions 3 (2023)

Washington County Board of County Commissioners

Topics discussed: The Act's agenda requirements

Opinion: The Compliance Board found no violation of GP § 3-302.1(a)'s requirement to include on an agenda "known items of business or topics to be discussed" at a meeting. Although the agenda did not mention a discussion about whether to sign on to a letter opposing a proposed truck stop, it was not clear from the record whether the County Commissioners knew, at the time the agenda was prepared, that the discussion would come up at the meeting in question.

Violation: None

17 OMCB Opinions 7 (2023)

Board of Education of Kent County and its Citizens Advisory Committee

Topics discussed: The Act's requirements for preparing and amending agendas

Opinion: The Compliance Board was unable to determine whether the public bodies violated the Act by failing to include, when preparing agendas, known items of business and topics to be discussed at the meetings.

Violation: None

17 OMCB Opinions 11 (2023)

Board of Education of Prince George's County

Topics discussed: The proper scope of closed session discussions under GP § 3-305(b); the personnel matters exception; the privacy or reputation exception; the legal advice exception; the pending or potential litigation exception; the investigative proceeding regarding criminal conduct exception

Opinion: The Compliance Board found that the Board of Education's closed session discussions, as described in sealed closed session minutes, did not exceed the scope of the claimed exceptions under GP § 3-305(b) and, thus, did not violate the Act.

Violation: None

17 OMCB Opinions 13 (2023)

Frederick County Public Schools Reconsideration Committee

Topics discussed: The Act's definition of "public body"

Opinion: The Compliance Board found that the Reconsideration Committee did not satisfy the definition of "public body" found in GP § 3-101(h) and, thus, was not subject

to the Act.

Violation: None

17 OMCB Opinions 18 (2023)

Maryland 529 Board

Topics discussed: Reasonable advance notice of a meeting called on an urgent basis; the required process when someone objects to closure of a meeting; a public body's right to alter an agenda

Opinion: The Compliance Board found that the Maryland 529 Board provided reasonable advance notice of a special meeting the 529 Board scheduled only hours before the meeting was to take place because, in addition to its usual method of providing notice on its website, the 529 Board provided notice via a subscription email list. The 529 Board violated the Act, however, by failing to promptly provide a copy of its written closing statement to the Compliance Board when members of the public objected to the closure of the meeting. Finally, the 529 Board did not violate the Act by declining to alter the agenda to allow for public questions. Although GP § 3-302.1(e) allows public bodies to alter their agendas, it does not require them to do so.

Violation: GP § 3-306(d)(3)

17 OMCB Opinions 24 (2023)

City of Takoma Park's Sustainable Maryland Committee

Topics discussed: Reasonable advance notice; the Act's timing requirements for making agendas and minutes available to the public; posting minutes online

Opinion: The Compliance Board found that the Committee failed to provide reasonable advance notice of several meetings because the Committee failed to use its usual method of providing notice. The Compliance Board also found that the Committee violated the Act by failing to make agendas available to the public at least 24 hours before meetings. Finally, the Compliance Board found that the Committee violated the Act by taking more than nine months to prepare some minutes. The Compliance Board was unable to determine, however, whether the Committee violated the Act by taking too long to post the minutes online.

Violation: GP §§ 3-302(a), 3-302.1(a), 3-306(b)

17 OMCB Opinions 28 (2023)

Mayor and Council of the Town of Berlin

Topics discussed: The procurement exception

Opinion: The Compliance Board found that the Town Council violated the Act by entering a closed session to discuss a contract that did not fall within the procurement exception of GP § 3-305(b)(14)

Violation: GP § 3-305(b)(14)

April 1 – June 30, 2023

17 OMCB Opinions 31 (2023)

Prince George’s County Fire Commission

Topics discussed: Reasonable advance notice; how to provide notice of the “place” of a virtual meeting

Opinion: The Compliance Board found that the Fire Commission failed to provide complete timely notice of a virtual meeting. Although the Commission told the public well in advance that it would be meeting, the notice failed, until the day before, to indicate that the meeting would be virtual, even though the Commission knew about two weeks earlier that the meeting would be virtual.

Violation: GP § 3-302

17 OMCB Opinions 34 (2023)

City Council of New Carrollton

Topics discussed: The Compliance Board’s limited powers, a complaint’s required contents, the Act’s agenda and notice requirements

Opinion: The Compliance Board did not have sufficient information to determine whether the Council failed to make agendas available to the public in a timely fashion. The Compliance Board also lacked sufficient information to determine whether the Council’s last-minute amendments to one particular agenda violated the Act; the Compliance Board resolved that issue in the alternative: If the Council did not know, when it prepared the agenda, that the added items would be items of business or topics of discussion at the meeting, the failure to include them on the initial agenda was not a violation of GP § 3-301.1(a). If, on the other hand, the Council knew, when it prepared the agenda, that it would be addressing these items at the meeting, the Council violated the Act by altering the agenda at the last minute to include these items. Finally, the Compliance Board found no violations based on allegations that the Council canceled a meeting and that the mayor held a budget hearing without a quorum present.

Possible violation: GP § 3-301.1(a)

17 OMCB Opinions 39 (2023)

Board of Education of Wicomico County

Topics discussed: When the presence of a quorum of a public body at another entity’s gathering constitutes a “meeting” of the public body

Opinion: A quorum of the Board of Education attended a meeting of the school district’s Curriculum Council, which was discussing a matter that would later come before the Board. Thus, the gathering constituted a “meeting” of the Board, subject to the Act. Because there was no notice of the meeting, which was not open to the public, the Board acknowledged that the meeting violated the Act.

Violation: GP § 3-301

17 OMCB Opinions 42 (2023)

Town Council of Berwyn Heights

Topics discussed: Required content of a notice of an open session held only for the purpose of voting to enter closed session; the required procedure for entering closed session; the real property acquisition exception

Opinion: The Town Council did not violate the Act by considering only information from the Mayor in deciding whether to enter closed session. The Council's closed session discussion also stayed within the bounds of the real property acquisition exception of GP § 3-305(b)(3), which permits a public body to discuss "matters directly related to the acquisition." But the Council did violate the Act by stating in the meeting notice that the Council would be meeting in "executive session" under GP § 3-305(b)(3). By referring to an "executive session" and citing a closed-session provision of the Act, the Council improperly conveyed the message that the public was not entitled to attend the open portion of the meeting at which the Council voted to enter closed session.

Violation: GP § 3-302

17 OMCB Opinions 47 (2023)

Montgomery County Public Schools Ethics Panel

Topics discussed: The Act's requirements for notice, agendas, and minutes; whether social dinners before scheduled meetings are subject to the Act; whether GP § 3-306(d) requires a public body to allow a member of the public to inspect minutes in person at the body's place of business

Opinion: The Compliance Board found that the Ethics Panel did not err in failing to provide notice or prepare minutes of several meetings in 2021 and 2022, because these meetings involved administrative functions: reviewing ethics complaints within the Ethics Panel's purview, issuing advisory opinions that required the Panel to apply the ethics policy to particular sets of facts, and reviewing financial disclosure statements to determine if they complied with the policy. The Compliance Board found that the agenda and minutes of an October 26, 2022, meeting were sufficiently detailed, and the Ethics Panel was not required to apprise the public of a social dinner immediately proceeding the meeting, because the dinner did not involve the consideration of public business. Finally, the Compliance Board concluded that the Ethics Panel violated GP § 3-306(d) by telling the Complainant, in response to his in-person request to inspect minutes at the Ethics Panel's office, that the minutes were not immediately available and that the Complainant would have to make an appointment with an employee who was not in that day.

Violation: GP § 3-306(d)

17 OMCB Opinions 57 (2023)**Prince George's County Fire Commission**

Topics discussed: The Act's requirement of "reasonable advance notice"; when the presence of a quorum of a public body at another entity's gathering constitutes a "meeting" of the public body subject to the Act; whether the Act applies to a social gathering

Opinion: The Compliance Board lacked sufficient information to determine whether a January 13 gathering of another entity, at which a quorum of the Commission was present, was also a meeting of the Commission for which the Commission was required to provide notice. The Compliance Board thus decided the notice issue in the alternative. If the January 13 discussion involved a topic that could later come before the Commission, the presence of a quorum of the Commission made the gathering a meeting of the Commission, and the Commission violated the Act by failing to provide reasonable advance notice. Although the chair announced at an earlier meeting that he and three other commissioners would be gathering on January 13, the chair did not indicate that the gathering would be a meeting of the Commission, and the oral announcement was unaccompanied by a written notice. On the other hand, if the January 13 discussion did not involve a topic that could later come before the Commission, the gathering was not a meeting of the Commission for which the Commission was required to provide notice. As for an April 5 gathering, the Compliance Board concluded that this was a social gathering that was not subject to the Act.

Possible violation: GP § 3-302

17 OMCB Opinions 61 (2023)**Montgomery County's Upcounty Citizens Advisory Board, Revenue Authority, and County Council**

Topics Discussed: Permissible methods of providing notice and making an agenda available to the public; whether gatherings hosted by a public body's staff constitute "meetings" subject to the Act

Opinion: The Compliance Board found that the Upcounty Citizens Advisory Board provided reasonable advance notice of a committee's meeting by posting details on a website months before the meeting. The Compliance Board further found that the Advisory Board was not required to make the agenda available to the public by the same method; providing it via a newsletter satisfied the Act. The Compliance Board concluded that gatherings hosted by staff of the Revenue Authority were not "meetings" subject to the Act because they did not involve a quorum of a "public body." Finally, the Compliance Board found no violation based on an allegation that the County Council met secretly to disband a committee; the record indicated that the committee dissolved automatically pursuant to a previously adopted Council resolution.

Violation: None

17 OMCB Opinions 66 (2023)**Howard County Council**

Topics Discussed: The Act's requirements for closed-session summaries and posting minutes online; whether a public body must read a closed-session summary into the record of an open meeting; when the exchange of emails rises to the level of a "meeting" subject to the Act

Opinion: The Compliance Board found no violation based on the Council's failure to read into the record of an open meeting a summary of what happened at a closed session. The Compliance Board also found no violation of the Act's requirement that a public body post minutes online "[t]o the extent practicable." Although the Council acknowledged a delay in posting minutes online, the delay was attributable to the Council's transition to a new website. Finally, the Compliance Board found no evidence in the record that an exchange of emails rose to the level of a "meeting" of the Council subject to the Act. The emails did not reveal that a quorum of the Council improperly convened and deliberated on a matter of public business.

Violation: None

17 OMCB Opinions 71 (2023)**Montgomery County Planning Board**

Topics Discussed: The Act's definitions of "quorum" and "meeting"; the Compliance Board's inability to resolve factual disputes

Opinion: The Compliance Board was unable to determine whether the Planning Board improperly met during a site visit without providing the public notice and an opportunity to attend, because it was not clear whether a quorum of the Planning Board was present at the event in question. The Complainant alleged that a majority (and thus, a quorum) of the Planning Board attended the site visit, but the Planning Board asserted that only two members (fewer than a quorum) attended. Because the Compliance Board is unable to resolve such factual disputes, the Compliance Board could not determine whether there had been a "meeting" without proper notice.

Violation: None

17 OMCB Opinions 73 (2023)**Berlin Council**

Topics Discussed: The Act's definition of "public body"; the personnel matters exception of GP § 3-305(b)(1); the procurement exception of § 3-305(b)(14)

Opinion: The Compliance Board found that the Council had discretion to enter closed sessions under the procurement exception of GP § 3-305(b)(14) to discuss proposals for acquiring and developing Town land. Although the Council had entered into an exclusive negotiating agreement with one of the developers that responded to a request for proposals, the Council had not yet entered into a procurement contract with that developer at the time of the closed sessions. The Council violated the Act, however, when it entered closed

session under the personnel matters exception of § 3-305(b)(1) to discuss a personnel study, because the exception allows closed-session discussions only about personnel matters concerning identifiable individuals. The Compliance Board also found that a subcommittee that negotiated with a developer was not itself subject to the Act because it did not satisfy any of the Act's definitions of "public body."

Violation: GP § 3-305(b)(1)

17 OMCB Opinions 79 (2023)

Mayor and City Council of Takoma Park

Topics Discussed: The Act's requirements for notices and agendas of meetings at which a public body expects to enter closed session; how quickly a public body must prepare minutes

Opinion: The Compliance Board found that the City Council did not violate the Act by not explaining in a meeting notice and agenda why it anticipated the need for a closed session, as the Act does not require such an explanation in notices and agendas. The Compliance Board did, however, find that the Council violated the Act by taking three months to prepare meeting minutes, as there were no special circumstances to have excused such a delay.

Violation: GP § 3-306(b)