

12 Official Opinions of the Compliance Board 117 (2018)

- ◆ **2(A) Notice Requirement–Generally.** The Act does not require public bodies to announce orally that they expect to hold a closed session during their next meeting. **(No Violation)**
- ◆ **5(B)(1) Closed Session Vote–Generally.** Vote to close must be held in open session. **(No Violation)**
- ◆ **5(C)(1) Closing Statement–Generally.** Posting on website not required. **(No Violation)**
- ◆ **5(C)(3) Closing Statement–Practice in Violation.** Failure to provide information required by the Act. **(Violation)**
- ◆ **Violations: § 3-305(d)**

*Topic numbers and headings correspond to those in the Opinions Index posted on the Open Meetings webpage at www.marylandattorneygeneral.gov/Pages/OpenGov/OpenMeetings/index.aspx

December 31, 2018

Re: Board of Trustees for Montgomery College

The complaint alleges that the Board of Trustees for Montgomery College violated the Act in four ways with respect to closed meetings from September 18, 2017 to June 25, 2018. The complaint does not provide details or documentation with regard to any particular meeting; instead, we are simply directed to the Trustees’ online meetings page. The College’s general counsel responded on the Trustees’ behalf with a thorough explanation of their procedures and recent improvements. In light of that constructive response, we do not need to either examine all 13 meetings or give extensive guidance.

1. *Allegation that the Trustees violated the Act by failing to announce in each open session that they will close the next open meeting.*

The Act does not require public bodies to announce orally that they expect to hold a closed session during their next meeting. Instead, the public body’s written notice of an upcoming meeting must include, when appropriate, an alert to the fact that the meeting will include a closed session, § 3-302(b)(3).¹ The notice must convey to the public that it is entitled to observe the public body’s vote to close the meeting. *See* § 3-305(d) (providing that a public body must vote to close a session before it meets in the closed session).

Here, the Trustees did not violate the Act by failing to announce at each meeting that they would hold a closed session during their next meeting. However, it is not clear whether, during the period in question, their written meeting notices adequately conveyed to the public that the public could observe their vote to close each session. The complaint did not raise this issue, neither party submitted to us a copy of the written notices for the meetings in question, and the Trustees’ meeting

¹ References are to the General Provisions Article of the Maryland Annotated Code (2014, with 2018 supp.).

page now clearly explains the public's right to observe the Trustees' votes to close their meetings. We raise the issue, without determining it, only to provide other public bodies with an example of language that tells the public exactly what to expect when public bodies hold a closed session as the first order of business after the initial public vote to close. The Trustees' notice now states:

Prior to the public session of the monthly meetings, the Board typically meets in closed session to discuss one or more of the topics set forth in General Provisions Article 3-305(b) of the Maryland Code. Although members of the public are excluded from closed sessions, all closed sessions begin with a brief public session to vote on a motion to close. Members of the public may attend and observe the vote of the Board to move into closed session at the time, date, and place specified.

2. *Allegation that the presiding officer did not prepare written closing statements, as required by § 3-305(d), before closing each meeting*

Before a public body meets in closed session, its presiding officer must conduct a recorded vote on a motion to close the meeting and must also prepare a written statement that discloses the statutory authority for closing the session, the topics to be discussed, and the public body's reasons for excluding the public from the discussion of those topics. § 3-305(d). The Act does not require public bodies to post closing statements online.

The complaint alleges that no closing statements were prepared for the Trustees' closed sessions. The complainant bases the allegation solely on the fact that none had been posted online; apparently the complainant did not ask the public body whether any had been prepared. In any event, the response establishes that closing statements were prepared before the closed sessions. Next, we will address the related allegation that the Trustees did not disclose the necessary information.

3. *Allegation that the presiding officer did not prepare written closing statements, with all of the information required by § 3-305(d), before closing each meeting*

The response acknowledges that the Trustees used a closing statement form that did not have spaces for all of the information required by § 3-305 and that, in any event, some forms were not completed. The response further states that the Trustees will use the most recent model form posted on the open meetings page of the Attorney General's website and will also review the material in the Open Meetings Act Manual on avoiding closed-session violations. We find that the Trustees violated § 3-305(d) by not making all of the required disclosures before closing its meetings.

4. *Allegation that the presiding officer did not conduct a recorded vote on a motion to close the meeting, as required by § 3-305(d), before closing each meeting*

The complaint alleges that the presiding officer did not conduct a recorded vote before closing each meeting but instead conducted the vote after the fact. The response states that the presiding officer did conduct a recorded vote before closing each meeting.

The minutes of the May 14, 2018 meeting, for example, report that the Trustees voted, unanimously, “to convene a closed session this evening at 6:33 p.m.” Confusingly, that entry appears under a heading for “Adjournment,” which occurred at 8:54 p.m. and followed the open session (which had begun at 8:03), not the closed session. In any event, the submissions are inconclusive and do not establish that the Trustees voted “to convene a closed session” after the closed session had occurred.

We suggest that the Trustees place their closed-session summary under a different heading so as to avoid confusion about when the vote occurred. By way of additional guidance, we encourage the Trustees to review Chapter 6 of the Open Meetings Act Manual for its discussion of the information to be provided in closed-session summaries and to consider whether it can disclose the topics discussed in more detail. We also direct the Trustees’ attention to the closed-session summary template posted on the Attorney General’s website.

Conclusion

We find that this public body’s written closing statements during the challenged time period did not provide all of the information required by § 3-305(d) and that it therefore violated that provision. This opinion is subject to the acknowledgment requirements set forth in § 3-211.

Open Meetings Compliance Board

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