

## 13 Official Opinions of the Compliance Board 01 (2019)

- ◆ **2(D)(2) Notice Method–Practice Permitted. Posting on website through online calendar. (No Violation)**
- ◆ **5(C)(3) Closing Statement–Practice in Violation. Mere repetition of statutory authority. (Violation)**
- ◆ **6(B)(3) Minutes–Practice in Violation. Failure to post minutes online as soon as practicable. (Violation)**
- ◆ **6(B)(3) Minutes–Practice in Violation. Failure to approve minutes without undue delay. (Violation)**
- ◆ **6(B)(1) Minutes–Generally. Methods for public bodies that meet rarely.**
- ◆ **6(B)(1) Minutes–Generally. Administrative session held before open meeting not within the scope of § 3-104 and not subject to the Act (No Violation)**
- ◆ **6(D)(3) Summary of Closed Session–Practice in Violation. Failure to include any summary of closed session. (Violation)**
- ◆ **Violations: §§ 3-305(d)(2)(ii) and 3-306(b)(1), (c)(2), and (e).**

\*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](http://www.marylandattorneygeneral.gov/Pages/OpenGov/OpenMeetings/index.aspx)

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**January 18, 2019**

### **Re: Montgomery County Revenue Authority**

The complaint alleges that the Montgomery County Revenue Authority (“Authority”) violated the Open Meetings Act in a number of ways. The Authority responded. We have regrouped and rephrased the allegations in order to address them most efficiently.

#### *1. Allegations pertaining to the Authority’s meeting minutes*

The complaint alleges that the Authority does not post minutes of its meetings on its website and that it does not timely approve its meeting minutes. The Act requires a public body to prepare minutes of a meeting “as soon as practicable” after the public body meets, § 3-306(b)(1),<sup>1</sup> and, “[t]o the extent practicable,” to post those meeting minutes online, § 3-306(e)(2).

With regard to its posting practices, it appears that the Authority does not post its meeting minutes online—either on its own website, or on the portion of Montgomery County’s website devoted to County boards and commissions. The latter resource provides, among other information, meeting notices for various County boards and commissions, including the Authority, and also links to the meeting minutes and agendas of at least some of those boards and commissions. It does not appear to link to any minutes or agendas of the Authority’s meetings. Accordingly, we find that the

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

Authority violated §3-306(e). The Authority does not explain why it is not “practicable” to post its meeting minutes online. Moreover, in this context, posting its meeting minutes online helps to negate the possible inference that the Authority failed to prepare minutes at all. *See 9 OMCB Opinions* 232, 233 (2015) (noting that members of the public are “apt” to infer that a public body is not adopting minutes where that public body does not post its minutes online, especially “when a public body’s website provides meeting information for some of its related public bodies but not others”).

With regard to its adoption practices, the Authority acknowledges that it meets infrequently and that, therefore, some of its past meeting minutes were not adopted until the Authority next met several months later. For example, the Authority did not adopt minutes of its October 17, 2017 meeting until the following April. We find that this delay violates § 3-306(b)(1). The Authority desires guidance on how to approve minutes more promptly in these situations. We have in the past counseled public bodies that meet rarely to establish a practice for adopting minutes more promptly, such as by email adoption. *See, e.g., 8 OMCB Opinions* 125, 126-27 (2013) (explaining that although the email circulation of draft minutes is not itself a transparent process, on balance, it better serves the interest of transparency for a public body that meets infrequently to make minutes available promptly after a meeting than to wait until its next meeting).

2. *Allegations pertaining to the notice given by the Authority for its meetings*

The complaint alleges that the Authority does not provide notice of its meetings, including by not posting notice online. The Authority responds that, on the contrary, it provides notice of its meeting on the portion of the Montgomery County website dedicated to board and commission meetings. This allegation lacks a basis; we found notice of the Authority’s past and future meetings by navigating through the online calendar function, and through the drop-down menu of boards and commissions. We thus do not find a violation of the Act’s notice requirements. *See 10 OMCB Opinions* 95, 96 (2016) (approving of notice given in an online calendar function).

The complaint also alleges that that Authority did not provide notice of its cancelled meeting on June 26, 2018. The Authority responds that the June 26 meeting was actually scheduled as an administrative session, but that it was incorrectly referred to as a regular meeting in the minutes of a meeting that preceded it. We agree with the Authority that, under these circumstances, it was not required to provide notice of the administrative meeting’s cancellation, because the Act’s notice requirements do not apply when a public body meets solely to carry out an administrative function. *See* § 3-103(a)(1)(i). However, we encourage the Authority to word its meeting descriptions in such a way as to not confuse the public

3. *Allegations pertaining to the Authority’s disclosures before and after its closed meetings on September 26, 2017 and October 23, 2018*

Section 3-305(d)(2)(ii) requires a public body to make a written statement before meeting in closed session that contains the reason for closing the meeting, the statutory authority for closing, and a listing of the topics to be discussed. Section 3-306(c)(2) requires a public body that meets in closed session to include in the minutes of its next open session—or in the minutes of the open session immediately following the closed session—a summary of the closed session that includes:

“(i) a statement of the time, place, and purpose of the closed session; (ii) a record of the vote of each member as to closing the session; (iii) a citation of the authority under § 3-305 of [the Act] for closing the session; and (iv) a listing of the topics of discussion, persons present, and each action taken during the session.”

The Authority met in closed session on September 26, 2017. The complaint alleges that the closing statement for that session is deficient because the description of the topic to be discussed and reason for closing the meeting merely parrots the statutory language of the exception. The closing statement for the September 26 session cites § 3-305(b)(1)<sup>2</sup>—the personnel exception—as the statutory authority to close the session, then states “Confidential personnel matters” as the topic to be discussed, and “To discuss personnel matters” as the reason for closing. As we have explained on a number of occasions, “while a public body need not disclose a level of detail about a topic to be discussed in closed session that would undermine the confidentiality permitted by the Act, saying nothing beyond the statutory language deprives the public of information to which it is entitled.” 12 *OMCB Opinions* 28, 31 (2018) (quoting 7 *OMCB Opinions* 245, 248 (2011)). Here, we believe the Authority could have provided more detail about the personnel matter under discussion without compromising confidentiality, perhaps by specifying the *category* of personnel matter listed in the § 3-305(b)(1) exception. See 12 *OMCB* at 31 (drawing a similar conclusion). Accordingly, although the amount of information that can be disclosed about personnel matters can pose a close question, especially when, as here, a public body has few employees, we find that the Authority violated § 3-305(d)(2)(ii).

The complaint also alleges that the minutes of the Authority’s October 24, 2017 meeting—which was the next open meeting after the September 26 closed session—violated § 3-306(c)(2) because it did not contain a summary of that closed session. We have reviewed the September 26 and October 24 minutes, and neither set contains a summary of the September 26 closed session. Accordingly, we find a violation of § 3-306(c)(2). The Authority’s response indicates that it is not aware of the Act’s requirement for a closed session summary, *in addition to* the requirements for a closing statement and for closed session minutes. We refer the Authority to Chapter 5 of the Open Meetings Act Manual on the Attorney General’s website for guidance on all of the Act’s requirements pertaining to a closed session.

We do not find merit in the complaint’s allegation that the October 23, 2018 closed session was held without a preceding open session and vote to close. The Authority responds that it did hold an open meeting prior to closing this session, and includes a closing statement form from that meeting. We also note that the October 23 meeting is listed on the online calendar.

#### 4. *Allegations pertaining to the Authority’s administrative meetings*

The complaint alleges that the Authority often meets in an administrative session on the same day as—but prior to—its regular open meetings, and that it should therefore include a

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<sup>2</sup> The Authority is using an outdated closing statement form, which contains statutory citations to the State Government Article. The Act is now codified in the General Provisions Article. We recommend that the Authority employ the current model closing statement form contained on the Open Meetings portion of the Attorney General’s website.

description of the administrative session in its open session minutes. Although that practice would serve the interest of transparency—and therefore might be considered by the Authority—the Act does not require it. The Act applies to sessions held solely to perform an administrative function *only* when that session takes place after the public body recesses an open session for that purpose. *See* § 3-104 (requiring a public body that recesses an open session in order to carry out an administrative function to disclose in its open-session minutes the “date, time, place, and persons present” at the administrative function meeting and “a phrase or sentence identifying the subject matter discussed” there); *see also* 9 *OMCB Opinions* 206, 213 (2015) (explaining that “the only provision of the Act that applies to a meeting held solely to perform an administrative function” are the provisions of § 3-104).

5. *Allegation that none of the Authority’s members received required OMA training, and remaining allegations*

The complaint’s allegation that none of the Authority’s members have received the training required by the Act is unfounded: The Authority’s response includes the completed training certificates of several members. We do not address the complaint’s remaining allegations, which are similarly speculative in nature.

**Conclusion**

We find that the Authority violated §§ 3-305(d)(2)(ii) and 3-306(b)(1), (c)(2), and (e). Therefore, this opinion is subject to the announcement and acknowledgement requirements set forth in § 3-211.

Open Meetings Compliance Board

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