

## 15 Official Opinions of the Compliance Board 32 (2021)

- ◆ 3(A) Open Meeting-Generally. Noticing virtual open meetings while preserving integrity of meetings through password protection. (Guidance)
- ◆ 3(C) Open Meeting-Practice in Violation. Not informing nonresident members of the public how to obtain Zoom information for remote-only meetings. (Violation)
- ◆ Violations: § 3-303(a)

\* *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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### Section 3 of the Village of Chevy Chase

February 16, 2021

The complainant alleges that Section 3 of the Village of Chevy Chase (the “Village”) has violated the Act by not distributing the Zoom information for its remote-only meetings to members of the public. More specifically, the complainant alleges that the Village’s monthly meetings are password-protected, and that the password is only distributed via an e-mail to Village residents. The Village, by its attorney, responds that notice of its monthly meetings is posted on the Village website and that it now makes clear on its notices that the password is available to members of the public, including nonresidents, upon request. The Village explains that it has not posted the password more broadly in order to prevent its meetings from being hijacked, a practice that is commonly referred to as “Zoom-bombing.”

The Act generally requires public bodies to “meet in open session,” § 3-301, and when that occurs, “the general public is entitled to attend,” § 3-303(a).<sup>1</sup> Because members of the public can only attend meetings if they are aware of them, the Act requires public bodies, before they meet in open session, to provide written notice of “the date, time, and place of the session.” § 3-302(b). Based on the meeting notice submitted by the Village, there is no question that the Village provided the date and time of its monthly meetings, as well as indicated that the meeting would take place on Zoom rather than in a physical location. The Act does not require passwords to be posted in meeting notices, and we recognize that security may be a factor in that decision.

However, “[a]n open session means that members of the public are, *as a practical matter*, able to attend.” 1 *OMCB Opinions* 44, 45 (1993) (emphasis added). For example, we previously concluded that discussions held after a public body adjourned and members of the public had left were not held in “open session” even if the door remained open, because proceeding in that manner “would cause a reasonable member of the public to conclude that the meeting was over.” 1 *OMCB Opinions* 162, 165 (1996). When that public body later adopted a procedure to explicitly invite members of the public to remain for discussions held after scheduled hearings, we observed that “[t]his new procedure should ensure that a meeting open in theory is open in fact as well.” *Id.*

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<sup>1</sup> Unless otherwise noted, statutory references are to the General Provisions Article of the Maryland Annotated Code.

Here, the meeting notice submitted by the Village instructed interested parties to “see [the] e-mail to residents for [the] Zoom login information.” While nonresident members of the public could in theory have requested the password, that language by itself would cause a reasonable member of the public to conclude that the meeting was only open to residents. As a practical matter, it was not clear that nonresident members of the public could attend or, if so, how to attend. Thus, we find a violation of § 3-303(a).

We note with approval that the Village has subsequently amended its meeting notices and replaced the statement identified above with one that reads: “The meeting is open to the public. The open meeting is password protected. The password is sent by e-mail to residents of record and to others who have requested to receive the password. To obtain the password, please contact the Village Manager . . . .” The statement then provides an e-mail address and phone number so that members of the public know where to direct their request. We encourage public bodies who wish to secure virtual meetings with password protection to communicate to members of the public their right to attend open sessions and provide instructions on how to access the meetings. We also suggest that public bodies consider how members of the public can obtain the password not just before a meeting begins but also during a meeting in progress.

### **Conclusion**

Although it has since remedied the problem, we find that the Village violated § 3-303(a) by not informing nonresident members of the public how to obtain the Zoom information for its remote-only meetings. We commend the Village for updating its practices accordingly. This opinion is subject to the acknowledgment requirement set forth in § 3-211.

### **Open Meetings Compliance Board**

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