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STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE BOARD

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**Development Review Committee
of the Montgomery County Planning Department**

January 3, 2022

The Complainant alleges that the Development Review Committee of the Montgomery County Planning Department (“DRC”) violated the Open Meetings Act (“Act”) by issuing meeting notices that failed to properly identify the location of virtual meetings, by failing to make past meeting agendas and notices available for public inspection, and by failing to approve meeting minutes or post them online. For the following reasons, we find that the DRC violated the Act by failing, in some meeting notices, to adequately identify the “place” of virtual meetings, and by failing to prepare minutes of meetings that took place before March 2020.

Discussion

A. Providing notice of the “place” of a virtual meeting

The Act provides that, before meeting in open or closed session, a public body “shall give reasonable advance notice of the session,” including “the date, time, and place of the session.” §§ 3-302(a), 3-302(b)(2).¹

The Complainant alleges that notices of meetings that the DRC conducts virtually “lack the ‘location’ information that would allow a member of the public to ‘attend.’”² For

¹ Statutory references are to the General Provisions Article of the Maryland Annotated Code.

² The Complainant asserts elsewhere in the complaint that the DRC’s *agendas* fail to include “‘location’ information.” The Act requires only that agendas contain “known items of business or topics to be discussed at the portion of the meeting that is open” and an indication of “whether the public body expects to close any portion of the meeting.” § 3-302.1(a)(1). Neither the Complainant nor the DRC distinguishes the public body’s notices from its agendas and, from the DRC’s website, it appears that one document serves as both notice and agenda for each meeting. Thus, we understand the Complainant to be alleging a violation of § 3-302(b)(2)’s requirement that a session *notice* inform the public of the place of the session.

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example, notices of meetings on April 13, 2021, and October 26, 2021, provide the time and date of the meetings but say nothing about the place, except the following:

Please note: The Planning Department is currently closed to the public because of Covid19. It is unknown when the building will reopen to the public. The Planning Department is committed to ensuring regulatory applications are reviewed in a timely manner and the DRC meetings occur on their scheduled date. If the building is still closed to the public when the in-person DRC is scheduled to occur, applicants and their team will receive information on how to participate in the DRC meeting remotely. That information will be relayed to the development applicants the day before the meeting is scheduled to occur.

The DRC responds that, since March 2020, “due to the COVID-19 pandemic,” it has been holding meetings via Microsoft Teams. Because “[t]here was no in-person option,” the DRC argues that “no ‘location’ was required” on its meeting notices.

We believe the DRC construes the Act’s notice requirement too narrowly. The purpose of § 3-302(b)(2) is to ensure that members of the public who would like to attend a public body’s meeting have enough information to be able to do so. *See* § 3-102(c) (stating the Act’s “public policy . . . that the public be provided with adequate notice of the time and location of meetings of public bodies, which shall be held in places reasonably accessible to individuals who would like to attend these meetings”); *Grant v. County Council of Prince George’s County*, 465 Md. 496, 520 (2019) (noting that the Act’s “minimum standards for giving notice” help implement the legislative policy of the Act). An individual cannot attend a meeting without knowing where the meeting will take place. And while a virtual meeting may not happen in a physical location in the traditional sense, a person hoping to attend the meeting must still know where to go to observe the public body’s business, be it the public body’s website, YouTube, or a virtual meeting platform such as Zoom or Microsoft Teams. Thus, as we observed in another recent opinion, a notice for a virtual meeting adequately conveys the “place of the session” as required by § 3-302(b)(2) when it “indicates that the meeting will be held virtually and provides instructions on how to obtain access information for the meeting.” 15 *OMCB Opinions* 168, 172 (2021).

Here, the April 13 and October 26, 2021 notices gave no indication of where the meetings would take place. At most, the notices suggested that, because the “Planning Department [was] currently closed to the public” due to Covid-19, the meetings might be virtual. The notices further indicated that “project applicants and their team” would receive information about “how to participate in the DRC meeting[s]” remotely. But the notices gave no indication of how an interested member of the public could obtain access

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information for the meeting. In its response, the DRC asserts that “[s]omeone wishing to join [a] Teams meeting would call the Information Counter” and “request to be added to the Teams meeting.” But the DRC fails to explain how an individual interested in attending such a meeting would even know to call “the Information Counter” or where to find that number, as such details are missing from the meeting notices. We thus find that the DRC violated § 3-302(b)(2) by failing to identify the “place of the session[s]” on April 13 and October 26, 2021.

B. Availability of past notices and agendas for inspection

The Complainant alleges that “[p]ast meeting agendas/notices are available via [Maryland Public Information Act] request but are not linked on the website and are not easily obtained for public inspection as is required for agendas.” This allegation fails to state a violation of the Act. To be clear, the Act requires a public body to retain “a copy of a *notice* . . . for at least 1 year after the date of the session,” § 3-302(d) (emphasis added), but the Act imposes no requirement that a public body post past notices online or otherwise make them available for public inspection.³ Because the Complainant does not allege that the DRC has failed to retain past notices—and in fact, concedes the opposite—he fails to allege a violation of § 3-302(d).

As for agendas, the Act neither requires public bodies to retain agendas for past meetings nor requires them to post agendas online.⁴ The only time that the Act requires a public body to make a past agenda available is if the body was unable to provide the agenda before a meeting “because the meeting was scheduled in response to an emergency, a natural disaster, or any other unanticipated situation.” § 3-302.1(b) (requiring, under those circumstances, that the public body “make available on request an agenda of the meeting

³ Indeed, the Act does not require any notices—even those of future meetings—to appear on a public body’s website. Rather, the Act “provides public bodies with the flexibility to use a method” of their choosing in providing notice of upcoming meetings. 9 *OMCB Opinions* 206, 208 (2015); *see also* § 3-302(c) (authorizing notice “by delivery to representatives of the news media,” posting notice “at a convenient public location at or near the place of the session,” “posting the notice on an Internet website ordinarily used by the public body to provide information to the public,” or “by any other reasonable method”).

As for public inspection, the Act requires *minutes* to be open to public inspection, *see* § 3-306(d), but imposes no similar requirement for session *notices*. Whether the notices may be open to public inspection under some other law, such as the Public Information Act, is not within our jurisdiction. *See, e.g.,* 2 *OMCB Opinions* 49, 50 n.2 (1999) (declining to address the requirements of laws other than the Open Meetings Act).

⁴ *See* § 3-302.1(d) (providing that a public body may, but need not, make available an agenda via any method authorized for giving notice); 12 *OMCB Opinions* 108, 110 (2018) (noting that § 3-302.1 does not require public bodies to post agendas online).

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within a reasonable time after the meeting occurs”). We thus find no violation based on the DRC’s failure to post past agendas online.⁵

C. Preparation and posting of minutes

Finally, the Complainant alleges several violations of the Act’s requirements related to minutes. The Act provides that, “as soon as practicable after a public body meets, it shall have minutes of its session prepared,” § 3-306(b)(1), reflecting “(i) each item that the public body considered; (ii) the action that the public body took on each item; and (iii) each vote that was recorded,” § 3-306(c)(1). “A public body need not prepare minutes of an open session,” however, if “live and archived video or audio streaming of the open session is available.” § 3-306(b)(2)(i). Generally, “minutes of a public body are public records and shall be open to public inspection during ordinary business hours.” § 3-306(d).⁶ Moreover, “[t]o the extent practicable, a public body shall post online the minutes or recordings” of meetings. § 3-306(e)(2). “A public body shall keep a copy of the minutes of each session and any recording made . . . for at least 5 years after the date of the session.” § 3-306(e)(1).

The Complainant alleges that the DRC “is not in the practice of approving the minutes of past meetings,” and no meeting minutes or recordings are posted to its website or “easily obtained for inspection.” He further asserts that, while the DRC provides notes and comments in response to public information requests, such notes and comments “are not readily available for public inspection as is required by the act for minutes,” and they “lack information that would normally be contained within minutes.”

The DRC concedes that, before March 2020, it did not create or retain minutes, as required by the Act. We thus find violations of § 3-306(b)(1) and § 3-306(e)(1). The DRC asserts that it now records and archives its meetings, but “the technology used to record” the meetings “did not allow for ease of posting on the website” until recently. For this reason, we decline to find a violation of § 3-306(e)(2), which requires public bodies to post minutes or recordings online only “[t]o the extent practicable.” As we have previously stated, “[w]e are seldom in a position to second-guess what was ‘practicable’ for a public body’s staff at a given point of time,” 12 *OMCB Opinions* 83, 83 (2018), and we have no reason to doubt the DRC’s representation that posting the recordings online was technologically challenging until recently. As for public inspection of minutes, the DRC asserts that recordings of meetings have been available upon request since March 2020, an assertion that the Complainant does not dispute. Section § 3-306(d) requires only that minutes be open to inspection; if it is not “practicable” to post minutes online, the Act does

⁵ We note, however, that the DRC has updated its website to include agendas for meetings dating back to January 5, 2021. See <https://montgomeryplanning.org/development/development-review/> (last visited Jan. 3, 2022). As we recognized above, the DRC’s agendas appear to serve as meeting notices, as well.

⁶ Minutes of closed sessions “shall be sealed and may not be open to public inspection.” § 3-306(c)(3)(ii).

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not impose any other requirement that a public body make minutes (or recordings in lieu of minutes) available to the public by a particular method. We therefore decline to find a violation of § 3-306(d). In any event, the DRC asserts that, beginning with its November 23, 2021, meeting, video recordings will now be available through a link on the DRC's website, and staff is working to upload previous videos.

Conclusion

We find that the DRC's notices of virtual meetings on April 13 and October 26, 2021 violated § 3-302(b)(2) by failing to identify "the place of the session[s]." We further find that the DRC violated § 3-306(b)(1) and § 3-306(e)(1) by failing to prepare or retain minutes of meetings that took place before March 2020. This opinion is subject to the announcement and acknowledgment requirements of § 3-211 of the Act.

Open Meetings Compliance Board

Lynn Marshall, Esq.

Jacob Altshuler, Esq.