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STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE BOARD

16 Official Opinions of the Compliance Board 123 (2022)

June 6, 2022

Board of Education of Carroll County

The Complainant alleges that the Board of Education of Carroll County (the “Board” or “Board of Education”) violated several provisions of the Open Meetings Act (the “Act”) with respect to closed-door discussions on January 12, 2022. For the reasons that follow, we conclude that the Board violated the Act by failing to make sufficiently detailed disclosures to the public before and after these closed-door discussions.

Background

On January 5, 2022, the Board of Education provided notice that it would briefly convene in open session at 3 p.m. on January 12, 2022—two hours before a regular monthly meeting—for the purpose of entering closed session to discuss personnel matters, consult with legal counsel, and “discuss matters related to negotiations.”

On January 11, 2022, someone filled the lawn in front of the Carroll County Department of Education building with hundreds of pairs of children’s shoes and signs with messages including “Unmask Our Children” and “These shoes represent the students in Carroll and Frederick Counties who oppose state mandates and will walk away from further restrictions.” The following day, in a post in the Facebook group “Moms for Liberty—Carroll County, MD,” a woman claimed responsibility and thanked three other women and “Concerned Parents of Carroll County MD” for their contributions and support. In a separate post in the Facebook group “Concerned Parents of Carroll County MD,” a man shared pictures and said that the aforementioned group was happy to help and support.

At 3 p.m. on January 12, 2022, the Board of Education convened in open session and promptly voted to enter closed session. At 5 p.m., the Board of Education recessed the closed session and reconvened in open session for its regular monthly meeting. During that meeting, the two people who posted in the “Moms for Liberty” and “Concerned Parents” Facebook groups, claimed responsibility for the “shoe drop.” At 11 p.m., the Board of Education adjourned the open session and reconvened in closed session.

On January 14, 2022, the Supervisor of Security for Carroll County Public Schools sent a letter to the woman who claimed responsibility for the “shoe drop,” asserting that it was a criminal offense, her involvement had been “discussed with members of the Board of Education during an Administrative Function on January 12, 2022,” and it was “their decision to not seek criminal charges at this time.”

Analysis

The Complainant alleges several violations with respect to the January 12, 2022 closed sessions. First, she alleges that the Board of Education’s notice of the 3 p.m. meeting omitted “required language indicating that the closed meeting would begin as an open meeting and that the public was welcome to attend.” The Complainant is correct that a notice “must make clear that the [public] body will meet in open session, even if only to vote to close the session.” 15 *OMCB Opinions* 136, 138 (2021) (citing 8 *OMCB Opinions* 150, 158 (2013)); *see also* § 3-302(a)¹ (“Before meeting in a closed or open session, a public body shall give reasonable advance notice of the session.”). But the notice here did so: The notice expressly provided that the Board of Education would “convene in open session . . . to move into closed session.” We thus find no violation of § 3-302(a).

Next, the Complainant alleges that the Board of Education violated the Act by failing to prepare a closing statement for the 11 p.m. closed session. The Act provides that, “[b]efore a public body meets in closed session, the presiding officer shall: (i) conduct a recorded vote on the closing of the session; and (ii) make a written statement of the reason for closing the meeting, including a citation of the authority” for the closure,² “and a listing of the topics to be discussed.” § 3-305(d)(2). The Board of Education asserts that it *did* prepare a closing statement—for the 3 p.m. closed session. The Board argues that the 11 p.m. closed session was merely a continuation of the 3 p.m. closed session; thus, the Board argues, the same closing statement applied to both closed sessions. We disagree. “[T]he Act does not permit any variance in the timing of the vote or the written statement.” 3 *OMCB Opinions* 4, 6 (2000). “[T]he vote [to close the meeting] is to be taken and the written statement prepared *just prior* to the closing of the session.” *Id.* (emphasis added); *see also* 5 *OMCB Opinions* 160, 162 (2007) (recognizing that “the vote [to close] must occur immediately prior to closing the meeting to the public”). As such, the vote to close (and thus the preparation of a closing statement) “must be held during the open session that is to be closed.” 11 *OMCB Opinions* 12, 16 (2017). In this case, the Board of Education held two meetings on January 12, 2022: the 3 p.m. special meeting, convened in open solely to enter closed session, and the 5 p.m. regular monthly meeting. It was the regular monthly

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

² Generally, meetings must be open to the public, § 3-301, except when a public body carries out a function not subject to the Act, such as an administrative function, § 3-103(a), or when the public body invokes one of fifteen exceptions enumerated in § 3-305(b).

meeting—not the 3 p.m. special meeting—that the Board closed to the public at 11 p.m. Thus, the 3 p.m. vote to close and the corresponding closing statement did not apply to the 11 p.m. closed session. That the Board considered the 11 p.m. closed session a “continuation” of the 3 p.m. closed session is immaterial. A continuation does not “absolve[] a public body of compliance with” one of “the Act’s flat requirements.” 5 *OMCB Opinions* 184, 186 (2007). The Act’s procedure for entering closed session “implies that those present must accept responsibility, *then and there*, for closing the session to the public.” *Id.* (emphasis added); *cf.* 8 *OMCB Opinions* 38, 41 (2012) (“[T]he fact that a meeting is convened to continue discussion of a topic does not except that meeting from the Act.”). Thus, in failing to take another vote and prepare a new closing statement just before the 11 p.m. closed session, the Board failed to satisfy § 3-305(d)(2).

The Board of Education argues, however, that the 11 p.m. session was not subject to the Act because the Board was discussing appeals, the consideration of which is a quasi-judicial function beyond the scope of the Act. *See* § 3-103(a)(1)(iii) (providing that the Act does not apply to a public body when it is carrying out a quasi-judicial function); § 3-101(i) (defining “quasi-judicial function”); *see also* 90 *Opinions of the Attorney General* 17, 20 (2005) (concluding that a county school board’s consideration of an appeal of an adverse personnel action is a quasi-judicial function not subject to the Act). When a meeting is not subject to the Act, the Board’s failure to comply with § 3-305(d)(2) is immaterial. *Cf.* 4 *OMCB Opinions* 67, 70-72 (2004) (recognizing that a public body, whose discussion during a meeting and whose subsequent minutes were so cryptic that they failed to satisfy the Act’s provisions pertaining to the public’s right to attend a meeting and the level of detail required of minutes, would not violate the Act if the cryptic discussion fell within the administrative function exclusion). We thus find no violation of § 3-305(d)(2).

The Complainant next alleges a violation of the Act based on alleged discrepancies between the closing statement for the 3 p.m. closed session and the public summary of that closed session. The Act provides that, “If a public body meets in closed session, the minutes for its next open session shall include: (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 . . . for closing the session; and (iv) a listing of the topics of discussion, persons present, and each action taken during the session.” § 3-306(c)(2). The Complainant points out that, in the closing statement, the Board indicated that it would discuss only one matter with counsel under the legal advice exception of § 3-305(b)(7),³ but the summary indicates that the Board actually discussed two.

We need not review the closed session minutes to conclude that the Board of

³ That exception permits a public body to enter closed session to consult with counsel to obtain legal advice. § 3-305(b)(7).

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Education violated the Act. The discrepancy between the closing statement and the closed session summary indicates that at least one of three things happened: (1) the Board failed to list a known topic of discussion on the closing statement, in violation of § 3-305(d)(2); (2) the Board discussed a topic in closed session that was not disclosed on the closing statement, also in violation of § 3-305(d)(2); and/or (3) the closed session summary did not accurately describe what happened in closed session, a violation of § 3-306(c)(2). Moreover, our review of the closing statement and closed session summary reveals several deficiencies. The closing statement fails to provide sufficiently detailed descriptions of the intended topics of discussion, or reasons for the closure. As we have previously explained, each of the three items required by § 3-305(d)(2)(ii)—the reason for the closed session, the statutory authority for closure, and the topics of discussion—“serves a distinct purpose and must be included” in a closing statement. 15 *OMCB Opinions* 99, 100 (2021). After all, “the decision to close a meeting” under § 3-305(b) “is discretionary,” so “the mere identification of the topic to be discussed will not always convey why the public body has elected to discuss it behind closed doors.” 8 *OMCB Opinions* 95, 96 n.2 (2012) (emphasis added). Thus, while “there is no hard and fast rule for how much information is required in every circumstance,” 7 *OMCB Opinions* 216, 224 (2011), there must be “some account beyond uninformative boilerplate,” 4 *OMCB Opinions* 46, 48 (2004), and public bodies should “disclose as much information as they can without compromising the confidentiality of matters discussed within the claimed exception,” 15 *OMCB Opinions* at 101 (quoting 15 *OMCB Opinions* 37, 39 (2021)).

We find that the Board’s topic descriptions, listed as “personnel,” “legal,” and “negotiations,” fall well short of this standard. So do the proffered reasons for convening in closed session, which include such vague statements as “employee update” and “negotiation update.” With respect to the “employee update,” for which the Board invoked the personnel matters exception of § 3-305(b)(1),⁴ the Board should have provided enough detail to

show that the discussion [would] involve the personal attributes or performance of specific individuals and [would] not instead involve broader policy, which would be implicated when anyone in the position would be affected by the action being considered and which would therefore not fall within the exception.

7 *OMCB Opinions* 225, 228 (2011) (citing 3 *OMCB Opinions* 335, 337 (2003)). Similarly, with respect to the “negotiation update” listed under the collective bargaining exception of

⁴ That exception permits a public body to close a meeting to discuss “(i) the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of an appointee, employee, or official over whom it has jurisdiction; or (ii) any other personnel matter that affects one or more specific individuals.” § 3-305(b)(1).

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§ 3-305(b)(9),⁵ the Board of Education should have, at a minimum, identified on the closing statement which labor union was involved. *Cf.* 6 OMCB Opinions 96, 100 (2009) (finding disclosures in minutes insufficiently detailed when they “provided the public no meaningful information beyond the fact that the sessions involved labor negotiations,” but concluding that “minutes would certainly satisfy the minimal disclosure requirements under the Act” if they identified the various unions involved). The failure to provide sufficient topic descriptions and reasons for closure violated § 3-305(d)(2).

We also find several deficiencies in the closed session summary. The summary fails to provide any details about the place of the closed session or the people present; instead of listing topics of discussion, the summary simply asserts that the Board “discussed 2 items under Personnel,” “2 items under Legal,” and “4 items under Negotiations.” We thus find a violation of § 3-306(c)(2).

Finally, the Complainant asserts that the Board of Education should have, but failed, to publicly disclose details of its discussion about whether to pursue criminal charges against the individuals responsible for the “shoe drop.” The Complainant asserts that the discussion is not mentioned in any open session minutes or closed session summary. The Board responds that the discussion was an administrative function and, thus, not subject to the Act. *See* § 3-103(a)(1)(i) (providing that the Act does not apply when a public body is carrying out an administrative function); *see also* § 3-101(b) (defining “administrative function”). But, according to the Board, the discussion *is* referenced in the open session minutes, which include the following:

January 12, 2022 – ADMINISTRATIVE FUNCTION

The Board received information on the following items:

1. Mask mandate.
2. Budget Meetings.
3. Superintendent Search.
4. Joint Meeting.
5. Shoe Demonstration.
6. Bus Contractors.

Assuming without deciding that the Board is correct that the discussion about whether to pursue criminal charges was an administrative function, we nonetheless find a violation of the Act. The Board indicates that the discussion took place “in closed session during its meeting on January 12, 2021.” It is not clear to us whether the discussion occurred during the 3 p.m. closed session or the 11 p.m. session. Regardless, the Act provides that, “[i]f a public body recesses an open session to carry out an administrative

⁵ That exception allows a public body to enter closed session to “conduct collective bargaining negotiations or consider matters that relate to the negotiations.” § 3-305(b)(9).

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function in a meeting that is not open to the public, the minutes for the public body's next meeting shall include: (1) a statement of the date, time, place, and persons present at the administrative function meeting; and (2) a phrase or sentence identifying the subject matter discussed at the administrative function meeting." § 3-104. The brief summary above fails to include many of these details, such as the time, place and persons present at the meeting. We thus find a violation of § 3-104.⁶

Conclusion

We find that the Board of Education failed to include sufficient details in a closing statement, in violation of § 3-305(d)(2), failed to include sufficient details in a closed session summary, in violation of § 3-306(c)(2), and failed to include sufficient details in the summary of an administrative function meeting, in violation of § 3-104. This Opinion is subject to the acknowledgement and announcement requirements of § 3-211.

Open Meetings Compliance Board

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⁶ Because it falls outside the scope of the Act, we do not address the Complainant's assertion that members of the Board of Education are friends with the individuals responsible for the "shoe drop" and should have recused themselves from any discussion of the matter. *See, e.g., 9 OMCB Opinions* 146, 146 n.1 (2014) (noting that "our authority extends only to the consideration of alleged violations of the Open Meetings Act").