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STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE
BOARD

18 Official Opinions of the Compliance Board 59 (2024)

April 23, 2024

Hyattsville City Council

The Complainant alleges that the Hyattsville City Council (the “Council”) violated the Open Meetings Act (the “Act”) during several recent virtual meetings by using the “chat” feature on a virtual meeting platform to have substantive side conversations that the public could not see. The Council acknowledges that its members exchanged chat messages that were not visible to the public and that at least some of these messages related to the very business that the Council was considering at the meetings. Thus, as we explain in more detail below, we find that the Council violated the Act.

Background

On February 5, February 20, and March 4, 2024, the Council met via Zoom. During these meetings, Councilmembers used the chat feature, which allows someone to send instant written messages to other users in the meeting.¹ Members of the public observing each of these meetings could see an icon indicating that messages were being sent via chat. But, for what the Council calls “unknown and innocuous reasons,” members of the public could not see the messages themselves.

The February 5 meeting produced thirty-three messages via chat. In some of these messages, Councilmembers exchanged greetings (e.g., “Good evening!”) or remarked on technical issues that arose during the meeting (e.g., “i [sic] think the slides are stuck”). But several other messages touched on the substance of the business before the body, such as redesigning the City’s flag (e.g., “5 wards, a star for each ward?”) and what position to take on a proposed development project (e.g., “I want to make sure we restate the concerns

¹ Zoom, “Chatting in a Zoom meeting,” Jan. 14, 2024, https://support.zoom.com/hc/en/article?id=zm_kb&sysparm_article=KB0064400#:~:text=chats%20between%20participants,-While%20in%20a%20meeting%2C%20click%20Chat%20in%20the%20meeting%20controls,to%20send%20your%20private%20message.

we’ve stated in past letters, or attach our past letters, and that we especially lay out our concerns about the countless violations that the Maryland Dept [sic] of the Environment haven’t called out properly”).

The February 20 meeting produced twenty-four messages via chat. As with the February 5 meeting, many of these related to technical issues that arose during the meeting (e.g., “Can you hear me?”). But many others related to substantive issues before the Council, such as how repairs to a street lamp damaged by a car might be impacted if the City changed its street lighting system (e.g., “Couldn’t the requirement be a signed affidavit instead of a police report?”) and whether the City should use an app to charge for street parking (e.g., “Who has coins”).

The March 4 meeting produced thirty-one messages. Some were purely social, such as remarks on a Councilmember’s appearance (e.g., “Guess whose beard is back!!”). Other messages touched on the substance of the business before the Council, such as participation on City committees (e.g., “Also the distance, the further away from the city building the less participation”) and a financial audit (e.g., “SEC is provided [sic] approval for crypto based ETFs...they’re actual securities now”).

Discussion

“While the Act does not afford the public any right to participate in . . . meetings, it does assure the public right to observe the deliberative process and the making of decisions by [a] public body at open meetings.” *City of New Carrollton v. Rogers*, 287 Md. 56, 72 (1980); *see also* § 3-301² (“Except as otherwise expressly provided in this [Act], a public body shall meet in open session.”); § 3-303(a) (“Whenever a public body meets in open session, the general public is entitled to attend.”). Thus, “[w]hen a meeting falls within the scope of the Act, the public body must give the public the ability to observe the meeting in a meaningful way.” 14 *OMCB Opinions* 29, 31 (2020).

In a 2020 opinion, we concluded that a public body violates this duty when at least two of its members exchange electronic messages during a public meeting on business that the body is considering at the time. 14 *OMCB Opinions* at 33. In reaching this conclusion, we noted that that Act “impose[s] on public bodies the duty to meet openly, and each member, as part of the collective whole, shares in the public body’s duty to avoid interfering with the ability of the public to observe the members’ conduct of public business during a public meeting.” *Id.* at 31. We recognized that “a member might sometimes have a good reason to ask another member a question on the side instead of troubling the whole group with it; for example, a member who did not recognize an acronym used in the discussion might ask another what it meant.” *Id.* But we otherwise concluded that “all

² Statutory references are to the General Provisions Article of the Maryland Annotated Code.

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substantive communications among members, during a public meeting of a quorum, regarding the topic then under discussion, are subject to the Act regardless of whether a quorum is actually involved in the particular communication.” *Id.* This is because “[t]he transmission of substantive side messages among a few members, on the topic being discussed at that time . . . deprives the public . . . of the opportunity to observe the deliberations fully.” *Id.* Thus, “the gist of substantive electronic communications, among members on the dais or attending by other means, on the business at hand, should be disclosed to the public at the time.” *Id.* at 32. Applying these principles, we concluded that a public body violated the Act when, during a meeting, two members of the body “exchanged a series of detailed messages at different times on topics” being discussed by the body. *Id.* at 30, 32.

Citing this 2020 opinion, the Complainant asserts that the Council here violated the Act by exchanging Zoom chat messages, outside of the public’s view, during the February 5, February 20, and March 4 meetings. The Council similarly acknowledges that the logic of our 2020 opinion “would presumably extend to include Zoom chat messages between City Council members during a City Council meeting that are restricted from the public.”

We agree. The Act did not require the Council to disclose in real time the substance of the Councilmembers’ greetings to one another, messages about technical issues, and purely social remarks (such as those about a Councilmember’s growth of a beard). But the Council violated the Act by exchanging, outside of public view, chat messages on the substance of the public business that the Council was considering during the meeting. Withholding these messages from the public (however unintentionally) impaired the public’s ability to observe the Council’s deliberations. We thus find a violation of § 3-301.

This Opinion is subject to the acknowledgement and announcement requirements of § 3-211.

Open Meetings Compliance Board

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