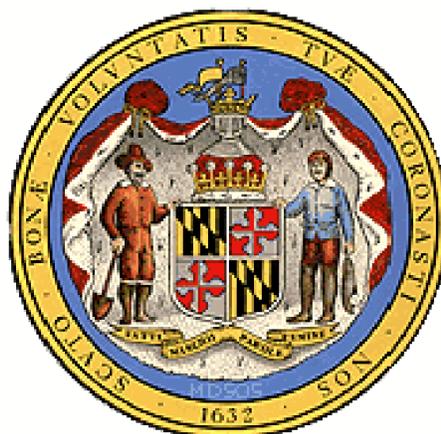


**THIRTY-SECOND ANNUAL REPORT**  
**OF THE**  
**OPEN MEETINGS COMPLIANCE BOARD**



**BOARD MEMBERS**

**LYNN MARSHALL, ESQ., CHAIR**  
**RUNAKO KUMBULA ALLSOPP, ESQ.**  
**JACOB ALTSHULER, ESQ.**

**SEPTEMBER 12, 2024**

**THIRTY-SECOND ANNUAL REPORT  
OF THE  
OPEN MEETINGS COMPLIANCE BOARD**

The Open Meetings Compliance Board submits this annual report for the period running from July 1, 2023, through June 30, 2024 (“FY 2024”), in accordance with § 3-204(e) of the General Provisions Article (“GP”) of the Maryland Code. In this report, we discuss our activities and the opinions we issued this year, the number and nature of the complaints we received (highlighting those that alleged a failure to provide reasonable notice of a meeting), and the types of violations of the Open Meetings Act (the “Act”) that we found. We also provide summaries of our opinions, identifying each public body that violated a provision of the Act, and describe open meetings legislation that the General Assembly adopted during the 2024 legislative session.

**INTRODUCTION**

As detailed below, the Compliance Board’s primary function is to issue advisory opinions in response to complaints that public bodies have violated the Act. The Compliance Board also recommends improvements to the Act when needed. An additional function, in conjunction with the Office of the Attorney General, is conducting educational programs for the staffs and attorneys of public bodies, the Maryland Municipal League, the Maryland Association of Counties, and the Maryland Association of Boards of Education. GP § 3-204.

The Compliance Board is an independent State board of three members who are appointed by the Governor and serve without compensation. At least one member must be an attorney admitted to the Maryland bar. All three of the Board’s current members—Runako Kumbula Allsopp, Jacob Altshuler, and Lynn Marshall (who serves as chair)—are attorneys.

The Compliance Board has no budget and no staff of its own. The Office of the Attorney General provides counsel and administrative support, as required by statute, and posts the Compliance Board’s opinions on the Open Meetings webpage of the Attorney General’s website. However, the Compliance Board is an independent body and is not a part of the Office of the Attorney General.

**I  
ACTIVITIES OF THE BOARD**

***A. Complaint Statistics***

*1. Complaints received and opinions issued*

From July 1, 2023, to June 30, 2024, we received **forty-four** written complaints—four more than last year—concerning **thirty-four** separate entities.

This fiscal year, we issued **thirty-four** opinions, the same number as last year. **Five** opinions involved the consolidation of two complaints into one. **Five** opinions involved complaints that were filed the previous fiscal year. In **nineteen** opinions, we found violations, in varying degrees of seriousness, by **eighteen** separate public bodies.<sup>1</sup> In **nine** opinions, we found no violation. In **four** opinions, we lacked sufficient information to determine whether a violation had occurred. In **two** opinions, we found that some allegations did not state a violation of the Act but other allegations could not be resolved, because we lacked sufficient information.

Several bodies drew multiple complaints, though not all of these complaints resulted in a finding of a violation. For example, the Berlin Council, the Board of County Commissioners for Charles County, and the Montgomery County Board of Education were each the subject of two Compliance Board opinions; but for each body, the Compliance Board issued only one opinion finding violations of the Act. The Pocomoke City Council and the Pocomoke Planning and Zoning Commission were also each the subject of two opinions; the Compliance Board found in all these opinions that both bodies had violated the Act.

The complaint docket was as follows:

Docketed complaints from FY 2023, still pending on July 1, 2024: .....	5
Complaints received during FY 2024 .....	44
<b>Total complaints on the docket for FY 2024: .....</b>	<b>49</b>
Complaints consolidated .....	10 to 5
Complaints dismissed without an opinion.....	0
Complaints withdrawn.....	0
Complaints alleging a prospective violation .....	0
<b>Total matters to address: .....</b>	<b>44</b>
Opinions issued in FY 2024: .....	34
Reports on complaints alleging a prospective violation.....	0
Matters still pending on July 1, 2024: .....	10

*2. The provisions violated*

We issued nineteen opinions in which we found violations of one or more provisions of the Act. Last year, we issued seventeen opinions finding one or more violations.

Of all the matters we considered in FY 2024, thirteen involved alleged violations of GP § 3-302, which requires reasonable notice of a meeting or its cancellation. We found violations in eight matters. We provide more details below in Section I.B, beginning on

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<sup>1</sup> Some bodies were the subject of more than one opinion.

page 5.

The other most common types of violations involved failures to comply with the Act's requirement that meetings generally be open to the public, failures to satisfy the Act's requirements related to agendas and minutes, failures to comply with the procedural requirements for meeting in closed session, and failures to keep closed-session discussions within the bounds of the Act's legal advice exception.

In eight opinions, we found violations of the Act's requirements related to agendas. *See* GP § 3-302.1. In four of those opinions, we found that a public body violated the Act by failing to make a meeting agenda available to the public.<sup>2</sup> In three opinions, we found that a public body provided the public an agenda but not early enough to comply with the Act.<sup>3</sup> Finally, in one opinion, we found that a public body violated the Act by omitting a known item of business from an agenda.<sup>4</sup>

In six opinions, we found violations of the Act's requirements related to minutes. In three of these opinions, we found that a public body failed to provide enough detail in its minutes.<sup>5</sup> In the other opinions, we found that a public body violated the Act by failing to prepare minutes of a closed session,<sup>6</sup> failing to retain its minutes for at least five years,<sup>7</sup> and failing to post minutes online "[t]o the extent practicable." GP § 3-306(e)(2).<sup>8</sup>

In six opinions, we found violations of the Act's general requirement, absent exceptions spelled out in the law, that a public body's meetings be open to all members of the public who wish to observe. *See* GP § 3-301 (providing that, "[e]xcept as otherwise expressly provided in [the Act], a public body shall meet in open session"), § 3-303(a) (providing that, "[w]henver a public body meets in open session, the general public is entitled to attend"). In two opinions, we found that a public body violated this requirement by suggesting, in a meeting notice, that the body would be meeting only in closed session, even though a public body must first meet in open session before voting to exclude the public.<sup>9</sup> In the other opinions, we found violations based on public bodies excluding people

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<sup>2</sup> *See* 17 *OMCB Opinions* 109 (2023); 18 *OMCB Opinions* 5 (2024); 18 *OMCB Opinions* 37 (2024); 18 *OMCB Opinions* 52 (2024).

<sup>3</sup> *See* 17 *OMCB Opinions* 129 (2023); 18 *OMCB Opinions* 57 (2024); 18 *OMCB Opinions* 80 (2024).

<sup>4</sup> *See* 17 *OMCB Opinions* 142 (2023).

<sup>5</sup> *See* 17 *OMCB Opinions* 83 (2023); 17 *OMCB Opinions* 92 (2023); 17 *OMCB Opinions* 142 (2023).

<sup>6</sup> *See* 18 *OMCB Opinions* 80 (2024).

<sup>7</sup> *See* 17 *OMCB Opinions* 129 (2023).

<sup>8</sup> *See* 18 *OMCB Opinions* 5 (2024).

<sup>9</sup> *See* 17 *OMCB Opinions* 42 (2023); 17 *OMCB Opinions* 134 (2023).

from an otherwise open meeting,<sup>10</sup> exchanging chat messages (outside of public view) about the substance of the public business being discussed at an open meeting,<sup>11</sup> imposing unreasonable restrictions on recording meetings,<sup>12</sup> and conducting public business through an exchange of emails that rose to the level of a “meeting” under the Act.<sup>13</sup>

In three opinions, we found that public bodies violated the Act by failing to comply with the procedural requirements for convening in closed session. In two of these opinions, we found violations based on the failure to give the public an opportunity to object to the closure.<sup>14</sup> The other violations involved a public body’s failure to prepare a written closing statement<sup>15</sup> and the failure to provide sufficient detail in a written closing statement.<sup>16</sup>

In two opinions, we found that public bodies improperly engaged in closed-session discussions that exceeded the bounds of the legal advice exception of GP § 3-305, which permits a public body to convene in closed session to “consult with counsel to obtain legal advice.”<sup>17</sup>

### *3. The complainants*

In FY 2024, fifty-three different complainants alleged violations of the Act.<sup>18</sup> These complainants included private individuals, citizens groups, and an elected official. Six complainants each filed two or more complaints.

### *4. The entities alleged to have violated the Act*

The complaints that we received in FY 2024 concerned thirty-four different entities. In one opinion, we determined that an entity accused of violating the Act was not actually a public body subject to the Act’s requirements.<sup>19</sup> The other opinions that we issued in FY 2024 involved: a State commission; a regional task force; community college boards of

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<sup>10</sup> See 18 OMCB Opinions 34 (2024).

<sup>11</sup> See 18 OMCB Opinions 59 (2024).

<sup>12</sup> See 17 OMCB Opinions 111 (2023).

<sup>13</sup> See 17 OMCB Opinions 101 (2023).

<sup>14</sup> See 18 OMCB Opinions 52 (2024); 18 OMCB Opinions 80 (2024).

<sup>15</sup> See 18 OMCB Opinions 80 (2024).

<sup>16</sup> See 17 OMCB Opinions 83 (2023).

<sup>17</sup> See 17 OMCB Opinions 117 (2023); 18 OMCB Opinions 43 (2024).

<sup>18</sup> Sometimes a single complaint was signed by more than one complainant.

<sup>19</sup> See 18 OMCB Opinions 12 (2024).

trustees; local advisory or legislative bodies; a local liquor board; local school boards; and local boards of elections.

### ***B. Complaints Involving the Failure to Provide Adequate Notice***

Pursuant to GP § 3-204(e)(2)(iii), we highlight here, and in the opinion summaries below in Part III, those “complaints that reasonable notice of a meeting was not given.” As already noted, *see above* page 2, thirteen matters alleged violations of GP § 3-302, which requires reasonable notice of a meeting or its cancellation. We found violations in eight matters. These violations involved failures to provide any notice of a meeting whatsoever,<sup>20</sup> failures to indicate in meeting notices that a public body would meet in open session before convening in closed session,<sup>21</sup> a failure to indicate in a meeting notice that the public body expected to convene in closed session,<sup>22</sup> a failure to apprise the public that a meeting had been rescheduled to a new date,<sup>23</sup> omitting the time of a meeting from the notice,<sup>24</sup> posting the wrong start time for a meeting (even though notice by another method provided the right time),<sup>25</sup> and posting inaccurately on a website that the public body had not scheduled its next meeting when, in fact, the body had scheduled the meeting.<sup>26</sup>

In three other matters, complainants alleged a failure to provide adequate advance notice of a meeting, but we found no violation.<sup>27</sup>

In the remaining two matters, we could not determine whether the public body had violated GP § 3-302. In one matter it was not clear, based on the limited facts before us, whether a meeting had occurred and, thus, whether the public body had been required to provide notice.<sup>28</sup> In the other, it was not clear whether the public body had provided notice of a meeting cancellation as soon as practicable after the meeting was cancelled.<sup>29</sup>

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<sup>20</sup> See 17 OMCB Opinions 101 (2023); 17 OMCB Opinions 109 (2023).

<sup>21</sup> See 17 OMCB Opinions 134 (2023); 18 OMCB Opinions 52 (2024).

<sup>22</sup> See 18 OMCB Opinions 80 (2024).

<sup>23</sup> See 18 OMCB Opinions 39 (2024).

<sup>24</sup> See 17 OMCB Opinions 134 (2023).

<sup>25</sup> See 18 OMCB Opinions 43 (2024).

<sup>26</sup> See 18 OMCB Opinions 48 (2024).

<sup>27</sup> See 17 OMCB Opinions 92 (2023); 18 OMCB Opinions 62 (2024); 18 OMCB Opinions 84 (2024).

<sup>28</sup> See 18 OMCB Opinions 67 (2024).

<sup>29</sup> See 18 OMCB Opinions 5 (2024).

### *C. Conclusions from the Statistics – Overview of the Year*

The issues that we addressed this year are listed in the topic descriptions in the opinion summaries in Part III, below. As we have noted in previous annual reports, one must view our statistics in perspective. The overall number of complaints, and of the matters in which we found a violation, remains small in proportion to the total number of public bodies statewide.

This year we issued the same number of opinions that we issued last year (thirty-four), which is in line with our annual tallies for the past decade; with the exception of Fiscal Year 2022,<sup>30</sup> we have issued between 19 and 37 opinions annually.

Although in recent years, many complaints focused on practices that public bodies adopted in light of the pandemic,<sup>31</sup> this was the first in several years in which COVID-19 was not a factor in any matter that came before us.

Of the thirty-four opinions we issued, we found violations in a little more than half (nineteen). As noted above, the most common types of violations involved failures to provide reasonable advance notice (eight opinions), failures to satisfy the Act's requirements for agendas (eight opinions), failures to satisfy the Act's requirements for minutes (six opinions), and violations of the Act's general requirement, absent exceptions spelled out in the law, that a public body's meetings be open to all members of the public who wish to observe (six opinions).

### *D. Financial Support and Educational Activities*

The Attorney General's Office provides the Board with staff support, posts the Board's opinions and other Open Meetings Act materials on its website, and bears the incidental costs associated with administering the Board's work. The Board could not fulfill its statutory duties without this support, as no funds have ever been specifically appropriated for its operations.

The Institute for Governmental Service and Research at the University of Maryland hosts, maintains, and performs updates to the online class that many public bodies rely on to comply with the Act's training requirement. We thank the Institute for its service to the public in creating the online class, in conjunction with the Office of the Attorney General,

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<sup>30</sup> As we noted in last year's annual report, Fiscal Year 2022 "was exceptionally busy and produced forty-eight opinions." Open Meetings Compliance Board, *Thirty-First Annual Report of the Open Meetings Compliance Board* 6 (September 22, 2023).

<sup>31</sup> See, e.g., 16 *OMCB Opinions* 173 (2022) (concluding that a public body, which, early in the pandemic switched to virtual meetings and used a conference-calling service to connect a member of the public who did not have a cell phone, was not required to continue providing that service when the body switched to hybrid meetings that the public could attend in person and continued to allow members of the public to observe by internet or by calling in).

and in making it continuously available to the general public, currently at no charge to the public for access, and, to date, without charging for its services.<sup>32</sup>

### *E. Publication of Opinions Issued During the Fiscal Year*

The Board's opinions for the 2024 fiscal year are posted at <http://www.marylandattorneygeneral.gov/Pages/OpenGov/OpenMeetings/index.aspx>, in Volume 17, beginning on page 83, and in Volume 18, pages 1 through 87. The table of contents for each volume lists each opinion, along with the name of the public body and notations of any provisions that we found violated. Summaries appear in Part III of this report.

## II LEGISLATION

### *A. Legislation proposed and enacted in 2024*

The General Assembly made only one minor amendment to the Open Meetings Act during the 2024 legislative session: adding the Maryland Department of Transportation to the list of state entities that are subject to GP § 3-307 of the Act. *See* 2024 Md. Laws, ch. 603. That provision imposes certain obligations related to agendas, posting information online, livestreaming, and minutes, above and beyond those requirements that apply to all public bodies. *See* GP § 3-307. Effective October 1, 2024, the Department of Transportation will have to comply with § 3-307, “with respect to quarterly public meetings held by the Vision Zero coordinator on the implementation of Vision Zero under § 8-1004 of the Transportation Article” of the Maryland Code.<sup>33</sup> 2024 Md. Laws, ch. 603.

### *B. Board recommendations for the 2025 Legislative Session*

We encourage the General Assembly to consider clarifying GP § 3-303(c), which governs the removal of disruptive individuals, in light of a novel question we confronted this year: whether the Act permits a public body to remove the majority of an audience without first determining that each individual in that majority caused a disruption. 18 *OMCB Opinions* 70 (2024).

On February 6, 2024, the Cecil County Council convened for a legislative session at its regular meeting space. 18 *OMCB Opinions* at 70. The public was invited to attend in person or watch a real-time broadcast of the meeting via Zoom. *Id.* An unusually large audience showed up in person to address the Council about proposed cuts to public school funding. *Id.* During a public comment period, many members of the public clapped and cheered loudly, despite several warnings from Council staff that such disruptions could

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<sup>32</sup> The online class is posted at [https://www.igsr.umd.edu/VLC/OMA/class\\_oma\\_title.php](https://www.igsr.umd.edu/VLC/OMA/class_oma_title.php).

<sup>33</sup> Vision Zero is a program that aims “to develop strategies to make roadways safer for drivers and passengers of motor vehicles, bicyclists, and pedestrians,” with the goal of having “zero vehicle-related deaths or serious injuries on roadways by the year 2030.” Md. Code Ann., Transp. § 8-1003.

“result in the meeting being recessed and the chambers cleared, or the meeting being adjourned.” *Id.* at 70-71. After a particularly rowdy response to one speaker, the Council recessed the meeting and cleared the room. *Id.* at 71. Thereafter, the Council allowed only certain people to return to the room: the press, members of the public who had signed up for public comment and not yet spoken, and families with disabled children.

Two complainants alleged that the Council’s actions violated the Act. They asserted that people just outside the meeting room could not hear the proceedings, even though the doors were propped open. *Id.* at 75. And at least one person who tried to observe the rest of the meeting via the livestream was unable to do so, as the virtual platform had already reached its capacity of 500 attendees. *Id.*

In resolving these complaints, we considered whether the Council complied with § 3-303(c), which states that, “[i]f the presiding officer determines that the behavior of an individual is disrupting an open session, the public body may have the individual removed.” § 3-303(c) (emphasis added). The Council conceded that some people removed from the meeting space may not have caused a disruption but asserted that “determining who these few people may have been would have required a person-by-person determination which would [have] be[en] an unreasonable burden on the Council President.” 18 *OMCB Opinions* at 73.

We concluded that, if a public body removes a large group of people from a meeting room without first determining that each of those individuals was causing a disruption, the body does not violate § 3-303(c) if the body provides meaningful alternative opportunities for the removed individuals to observe the meeting. 18 *OMCB Opinions* at 75. In our view, this approach “accounts for the fact that it may be difficult or even impossible in a meeting with dozens or more spectators for a public body to determine exactly who has caused a disruption,” but this approach “also ensures that a public body does not inadvertently deny access to someone who did not disrupt the proceedings.” *Id.*

As to the Cecil County Council, we could not determine whether there was a violation of the Act because, although the body provided alternative means of observing the meeting, both alternatives presented problems; but it was not clear from the record before us whether the Council knew or should have known that people in the lobby could not hear the proceedings and that at least one person was unable to access the livestream because of capacity issues.

Although we confronted only one matter this year involving the removal of a large group of people from a meeting, we flag this issue as one that may arise again. Our Open Meetings Act speaks only to the removal of “an individual” who is causing a disruption; but the General Assembly may wish to amend the law to explicitly address disruptions by groups of individuals, as do several other states’ open meetings laws. See Calif. Gov’t Code § 54957.9 (providing, in the event of a “meeting . . . willfully interrupted by a group” of people, making “the orderly conduct of such meeting unfeasible,” that “members of the legislative body conducting the meeting may order the meeting room cleared and continue in session,” provided that the news media are allowed to remain and the body considers

only matters already appearing on the agenda); Wash. Rev. Code Ann. § 42.30.050 (similarly allowing for a “governing body” to clear a room of everyone except “[r]epresentatives of the press and other news media” when the meeting “is interrupted by a group . . . of persons so as to render the orderly conduct of such meeting unfeasible”); Wyo. Stat. Ann. § 16-4-406 (providing that, when a “public meeting is willfully disrupted by a . . . group of persons,” a body “may order the removal of the . . . group from the meeting room and continue in session, or may recess the meeting and reconvene at another location,” but further providing that a body “shall establish procedures for readmitting . . . individuals not responsible for disturbing the conduct of a meeting”).

### III

#### SUMMARIES OF OPINIONS ISSUED FROM JULY 1, 2023, THROUGH JUNE 30, 2024<sup>34</sup>

##### July 1-September 30, 2023

###### **17 OMCB Opinions 83 (2023)**

###### **Board of Education of Somerset County**

**Topics discussed:** The Act’s requirements for receiving training on open meetings law and for meeting in closed session

**Opinion:** The Compliance Board found no violation of the Act’s requirement that, before meeting in closed session, at least one member must receive training on the Act, as at least two members of the Board of Education had completed an online training. The Compliance Board did, however, find that the Board of Education failed to provide enough details in its written closing statement. Specifically, the Compliance Board found that the public body’s descriptions of the topics of discussion and reasons for meeting in closed session were too vague. The Compliance Board found that an exchange of emails among members of the Board of Education was not subject to the Act because the communications involved the administration of an existing policy (about when to permit public presentations at meetings) and, thus, was an administrative function that is generally not subject to the Act’s openness requirements. The Compliance Board also found that a closed session discussion did not, as the Complainant alleged, involve a legislative function. Finally, the Compliance Board concluded that the public body failed to provide enough detail in its public disclosures following a closed session. In particular, the Compliance Board found that the topic descriptions were too vague, and the Board of Education failed to specify who was present during a closed session to perform an administrative function.

**Violations:** GP §§ 3-104, 3-305(d)(2), 3-306(c)

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<sup>34</sup> The opinions summarized here are posted on the Open Meetings webpage on the website of the Office of the Attorney General. See <https://www.marylandattorneygeneral.gov/Pages/OpenGov/OpenMeetings/index.aspx>.

**17 OMCB Opinions 92 (2023)****City of Takoma Park's Sustainable Maryland Committee**

**Topics discussed:** The Act's requirements for providing notice of a meeting; the content of minutes; posting minutes online; and receiving training about open meetings law

**Opinion:** The Compliance Board found that the public body did not violate the Act by failing to provide notice of a meeting on its website, because the body provided notice through its usual methods: notice in a City newsletter and on a City calendar. The Compliance Board was unable to determine whether the public body violated the Act's requirement to post minutes online "[t]o the extent practicable," GP § 3-306(e)(2), because the limited record did not make clear whether the body was capable of posting the minutes online any earlier than it did. As to the content of the minutes, the Compliance Board found a violation when one set of minutes referred to a spreadsheet with more details about the body's discussion but the minutes themselves did not include those details or include the spreadsheet. Finally, the Compliance Board could not determine whether the public body had violated the Act's training requirements, as it was not clear which, if any members, of the body had received training before the body met in closed session.

**Violations:** GP § 3-306(c)(1)

**17 OMCB Opinions 98 (2023)****Berlin Council**

**Topics discussed:** The Act's procurement exception for meeting in closed session; limits of the Compliance Board's authority

**Opinion:** The Compliance Board did not have authority to consider whether a request for proposals ("RFP") complied with procurement law or any other statute other than the Act. As to the Act, the Board found no basis to conclude that the Council improperly issued an RFP to create a pretext for closing discussions about how to use public land, or that the proposal process that the RFP initiated was not competitive. The Compliance Board also rejected the assertion that, because the Council later discussed the status of negotiations with a developer at an open meeting, the Council had no grounds for discussing those discussions in closed session at an earlier date.

**Violations:** None

**17 OMCB Opinions 101 (2023)****Berlin Council**

**Topics discussed:** Whether the exchange of emails rises to the level of a "meeting" subject to the Act

**Opinion:** The Compliance Board found that an exchange of emails among a quorum of the Council constituted a "meeting" subject to the Act: Within about one hour, a quorum sent "reply all" emails to all members of the Council about the same topic (whether to approve a budget transfer), which apparently had not been discussed publicly. Because the Council did not provide notice of this meeting or an opportunity for the public to observe, the Board found violations of GP §§ 3-301 and 3-302.

**Violations:** GP §§ 3-301, 3-302

**17 OMCB Opinions 109 (2023)**

**Board of County Commissioners for Charles County**

**Topics discussed:** When the presence of a quorum of a public body at another entity's event constitutes a "meeting" of the public body subject to the Act

**Opinion:** The Compliance Board found that the presence of a quorum of the Board of County Commissioners at an event hosted by a private foundation constituted a "meeting" of the Board for purposes of the Act. Three members of the Board sat at the front of the room on a panel facing the audience, answering questions and engaging in a back-and-forth discussion with audience members about topics such as traffic in western Charles County, residents' access to grocery stores and medical facilities, zoning laws, and how the County can create a climate to attract the types of businesses that residents desire. The discussion also touched on a specific plan for how to develop an area of land centered around Maryland Route 210, a matter then before the Board for consideration. The Compliance Board thus concluded that the event was a "meeting" of the Board of County Commissioners for which the Commissioners should have provided notice and made an agenda available.

**Violations:** GP §§ 3-302, 3-302.1

**17 OMCB Opinions 111 (2023)**

**Montgomery County's Telecommunication Facility Coordinating Group**

**Topics discussed:** The Act's provision requiring a public body to set reasonable rules for recording its meetings

**Opinion:** The Compliance Board found that the public body violated the Act when it told a member of the public that she could not record an open meeting unless all members of the body consented to the recording, because such a condition is not a reasonable restriction. But the Compliance Board found that the public body later came into compliance with the Act when it told members of the public that they could record open sessions without the precondition of obtaining consent from each member of the body.

**Violations:** GP § 3-303

**17 OMCB Opinions 117 (2023)**

**Salisbury City Council**

**Topics discussed:** The Act's legal advice exception for meeting in closed session

**Opinion:** The Compliance Board found that the Council violated the Act when it invoked the legal advice exception of GP § 3-305(b)(7) to enter closed session but then engaged in a discussion that went beyond the mere receipt of legal advice.

**Violations:** § 3-305(b)(7)

**17 OMCB Opinions 121 (2023)****District Heights City Commission**

**Topics discussed:** Whether a public body must take a formal vote to remove a disruptive person from a meeting

**Opinion:** The Complainant, a member of the City Commission, alleged that he was improperly removed from a meeting without the Commission first taking a vote on his removal. Section 3-303(c)(1) of the Act states that, “[i]f the presiding officer determines that the behavior of an individual is disrupting an open session, the public body may have the individual removed.” The Compliance Board concluded that, regardless of whether this provision applied to members of a public body and not just members of the public, the law did not require a public body to take a formal vote before a person’s removal for being disruptive.

**Violations:** None

**October 1-December 31, 2023****17 OMCB Opinions 124 (2023)****Talbot County Council**

**Topics discussed:** The Act’s legal advice exception for meeting in closed session; the administrative function

**Opinion:** The Compliance Board found that the Council exceeded the scope of the legal advice exception of § 3-305(b)(7) when, in closed session, the Council did not merely receive legal advice but “concurred” with the County Attorney’s plan to send a letter to a State agency. The Compliance Board stopped short of finding a violation, however, because it was not clear from the record whether the Council merely signed off on the letter—as opposed to discussing the substance of the letter—and, thus, performed an administrative function that is generally not subject to the Act’s openness requirements.

**Violations:** None

**17 OMCB Opinions 129 (2023)****Maryland Board of Social Work Examiners**

**Topics discussed:** Timing requirements for making agendas available to the public; preparing and posting minutes online; retaining minutes

**Opinion:** The Board of Social Work Examiners acknowledged that, because of staffing challenges, the body violated GP § 3-302.1 by failing to make agendas available to the public less than 24 hours before meetings. Due to staff turnover at the Board of Social Work Examiners, the Compliance Board was unable to determine whether the public body also violated GP § 3-306 by failing to prepare and post some sets of minutes online to the extent practicable. But the Compliance Board found that the body violated the Act by failing to timely prepare some sets of minutes and by failing to retain other sets of minutes. Although the Compliance Board was sympathetic to the Board of Social Work Examiners’ plight in dealing with a ransomware attack, the Compliance Board repeated

its earlier advice that public bodies keep hard copies of electronic records to avoid violations of the Act.

**Violations:** GP §§ 3-302.1(a), 3-306(b)(1), 3-306(e)(1)

### **17 OMCB Opinions 134 (2023)**

#### **Pocomoke City Council and Planning and Zoning Commission**

**Topics discussed:** The Act's notice requirements; amending an agenda

**Opinion:** The Compliance Board found that the City Council violated GP § 3-302 by failing to include a time of a scheduled meeting in the notice, and for failing to make clear in the notice that the closed session would be preceded by an open meeting. The Compliance Board could not determine, however, whether the Council also violated the Act by failing to provide notice on Facebook, as it was not clear from the limited record whether the Council regularly provided notice by that method. The Council did not violate the Act by adding to a meeting agenda, hours before the meeting, an item of business that was not known when the agenda was initially prepared. As for the Planning and Zoning Commission, the Compliance Board found that this body violated the Act by failing to provide reasonable advance notice of a meeting. A webpage indicated—in all capital, bolded letters—that the body's next meeting would be a different date and, although an agenda with the correct date was posted to the webpage, a member of the public would have had to look past the boldface message, go under the heading "Meeting File Archives," and open a linked agenda to discover that the Commission intended to meet on the date in question. The Compliance Board found it unlikely that a member of the public would have gone through all these steps and, thus, that the Commission failed to provide reasonable advance notice.

**Violations:** GP §§ 3-301, 3-302

### **17 OMCB Opinions 140 (2023)**

#### **Montgomery County Board of Education**

**Topics discussed:** The Act's requirement that a public body meet in open session before closing a meeting under GP § 3-305; the Compliance Board's inability to resolve factual disputes

**Opinion:** The Complainant alleged that the Board of Education convened in closed session without first meeting in open session, as the Act requires. The Board of Education flatly denied the allegation. Because the Compliance Board is unable to resolve disputes of fact, the Compliance Board could not determine whether there had been a violation of the Act.

**Violations:** None

### **17 OMCB Opinions 142 (2023)**

#### **Annapolis Alcoholic Beverage Control Board**

**Topics discussed:** The Compliance Board's jurisdiction; the lack of a statute of limitations for complaints to the Compliance Board; when a public body may alter an agenda with violating the Act; the procedure for meeting in closed session under GP § 3-

305; quasi-judicial and administrative functions; required public disclosures following a closed session.

**Opinion:** Before turning to the merits, the Compliance Board pointed out that it can resolve only questions related to the Open Meetings Act and, thus, would not address alleged violations of other laws. The Compliance Board also pointed out that there is no time limit for filing a complaint. Turning to the substance of the complaint, the Compliance Board explained that GP §§ 3-302.1(a) and (e), read together, permit a public body to alter an agenda only to add new items of business that were not known when the agenda was initially made available to the public. Because the Control Board altered an agenda to add an item that was known but omitted from the agenda that was first made available to the public, the Compliance Board found a violation of the Act. The Compliance Board further found that at least part of a discussion in closed session was a violation, because it was neither a quasi-judicial nor administrative function, which typically fall beyond the scope of the Act. Discussion about a citizen's comment and its effect (if any) on the Control Board's decision about whether to grant or deny a license is expressly subject to the Act under GP § 3-103(b). The Compliance Board further found that the Control Board failed to make required public disclosures following its closed session discussion.

**Violations:** GP §§ 3-302.1(a), 3-301, 3-306(c)(2)

### **17 OMCB Opinions 151 (2023)**

#### **Baltimore City Community College Board of Trustees**

**Topics discussed:** A public body's obligation when it discovers that it has posted an incorrect link for a virtual meeting

**Opinion:** After posting a link for a virtual meeting, the Board of Trustees discovered that the link was incorrect. The Board posted an updated agenda, with the correct link, three hours and 51 minutes before the meeting. The Compliance Board found no violation of the Act, recognizing that a public body has some latitude to fix unexpected technical problems with a virtual meeting without canceling and re-noticing the meeting. The Compliance board advised, however, that especially when an issue is discovered before a meeting begins, the body should make reasonable and good-faith efforts to disseminate the updated meeting access instructions as broadly as possible under the circumstances.

**Violations:** None

### **17 OMCB Opinions 154 (2023)**

#### **Baltimore Regional Water Governance Task Force**

**Topics discussed:** The Act's agenda requirements; the Compliance Board's inability to resolve factual disputes

**Opinion:** The Complainant alleged that the Task Force failed to make an agenda available to the public before a meeting. The Task Force responded that it posted the agenda on two different webpages: one maintained by Baltimore City and another maintained by Baltimore County. The complaint suggested that the agenda did not appear on the City-maintained webpage, creating a factual dispute that the Compliance

Board could not resolve. But because the Complainant did not dispute that the agenda appeared on the webpage maintained by the County, the Compliance Board found no violation of the Act. The Board did, however, “emphasize the importance of consistency in document availability across platforms,” suggesting that, when a public body operates multiple webpages, and uses them to post public documents required by the Act, it ensure that the documents are posted on all of those webpages, not just one.

**Violations:** None

### January 1-March 31, 2024

#### 18 OMCB Opinions 1 (2024)

##### Hagerstown City Council

**Topics discussed:** When discussions about an appointment to a body are an “administrative function” or fall within the “personnel matters” exception

**Opinion:** After the City Council met in closed session, the Mayor remarked that the body had “decided a process” for making an appointment to fill a vacancy on the Council. Based on these remarks, the Complainant alleged a violation of the Act. The Compliance Board, reviewing the closed-session minutes, found no violation. The Board concluded that the Council’s closed-session discussion focused on the strengths and weakness of specific candidates, not the process for making an appointment, and thus, was an administrative function. The Board concluded alternatively that the discussion properly took place in private under the personnel matters exception of GP § 3-30(b)(1).

**Violations:** None

#### 18 OMCB Opinions 5 (2024)

##### Town Council of Fairmount Heights

**Topics discussed:** The Act’s requirements for agendas, notice of a cancelled meeting, the “personnel matters” exception for closed sessions, the need to keep minutes of sessions closed under GP § 3-305.

**Opinion:** The Town Council violated the Act by failing to prepare an agenda for one meeting but did not violate the Act by failing to post agendas on a Facebook page until the same day of the meeting, as the Town Council posted the agendas elsewhere more than 24 hours before the meetings. The Act also did not require the Town Council to keep agendas of past meetings on its website. The Compliance Board was unable to determine whether the Town Council violated the Act with respect to the timing of its notice that a meeting was cancelled, as it was not clear from the record whether the Council posted the notice as soon as practicable after the meeting was cancelled. In any event, the Town Council was not required to provide notice by delivering flyers to every residence in the Town, as the Council provided notice by several other methods. The Compliance Board was unable to determine whether a closed-session discussion exceeded the scope of the “personnel matters” exception of § 3-305(b)(1), as the Council did not prepare minutes of the session. The Compliance Board found, however, that the failure to prepare minutes was a violation of § 3-306(b)(1). As to other meetings, the

Compliance Board found that the Council did not violate the Act by failing to prepare minutes less than a month after a meeting had taken place, though the Compliance Board found that the Council had failed to post minutes online to the extent practicable, as required by GP § 3-306(e)(2).

**Violations:** GP § 3-302.1(a), § 3-306(b)(1), § 3-306(e)(2)

### **18 OMCB Opinions 12 (2024)**

#### **Dorchester County Council and Cambridge Waterfront Development, Inc.**

**Topics discussed:** Whether a non-profit corporation was a “public body” subject to the Act; whether a public body “meets” for purposes of the Act when a quorum attends a gathering hosted by another entity

**Opinion:** The Compliance Board Concluded that Cambridge Waterfront Development, Inc., was not a “public body” subject to the Act, despite performing some public functions, because it did not satisfy any of the statutory tests in GP § 3-101(h), nor did it have as many public traits as other corporate entities that Maryland’s appellate courts have found to be “public bodies.” The Compliance Board further concluded, based on the totality of circumstances, that the Dorchester County Council was not “meeting” when all its members attended a gathering of the development corporation. In particular, the Compliance Board emphasized that the host was a private entity and the topic of discussion was not a particular item of business pending before the Council. The Compliance Board noted, however, that although the Act did not apply to this gathering, the appearance that business was being conducted in secret did not serve the purpose of the Act to increase the faith of the public in government.

**Violations:** None

### **18 OMCB Opinions 29 (2024)**

#### **Rockville Board of Supervisors of Elections**

**Topics discussed:** The Act’s definition of “administrative function”

**Opinion:** The Complainant alleged that the Board of Supervisors impermissibly excluded the public from a meeting in the early morning hours after an election. The Compliance Board found that the Board of Supervisors, which was verifying election results, was administering election laws and, thus, performing an administrative function that was not subject to the Act’s openness requirement.

**Violations:** None

### **18 OMCB Opinions 32 (2024)**

#### **Prince George’s County Fire Commission**

**Topics discussed:** The content required for meeting minutes

**Opinion:** The Complainant alleged that a secret meeting took place, but the Commission denied the allegation; the Compliance Board thus found no violation based on the alleged failure to provide notice or prepare minutes. The Commission, however, suggested that it may not have provided enough detail in another set of minutes. The Compliance Board, lacking enough information, could not determine whether there was a violation, but

reiterated the Act’s requirement that a public body’s minutes reflect each item of business that the body considered.

**Violations:** None

**18 OMCB Opinions 34 (2024)**

**Seat Pleasant Environmental Justice and Transportation Committee**

**Topics discussed:** The Act’s general openness requirement; functions excluded from the Act’s openness requirements; the procedure for meeting in closed session under GP § 3-305

**Opinion:** The Committee convened a meeting but excluded the mayor and city manager. The Compliance Board concluded that this violated the Act’s openness requirement, as it was not apparent that the Committee was performing a function exempt from the openness requirement, nor did it appear that the Committee followed the procedure for meeting in closed session under GP § 3-305.

**Violations:** GP § 3-301

**18 OMCB Opinions 37 (2024)**

**Task Force to Study Compensation and Student Members of the Baltimore City Board of School Commissioners**

**Topics discussed:** The Act’s agenda requirement

**Opinion:** The Task Force acknowledged that it violated the Act by failing to make an agenda available to the public at least 24 hours before a meeting, as required by GP § 3-302.1(a).

**Violations:** GP § 3-302.1(a)

**April 1-June 30, 2024**

**18 OMCB Opinions 39 (2024)**

**Pocomoke City Council**

**Topics discussed:** The Act’s requirement of “reasonable advance notice”; providing notice of a change in a meeting’s time, date, or location

**Opinion:** The Council postponed a meeting one day and advised the public that the originally scheduled meeting was canceled but failed to advise the public of the new meeting time. The Council acknowledged that this was a violation of the Act, which requires a public body to provide reasonable advance notice of a meeting and any changes in the meeting’s time, date, or location, including cancellations and postponements.

**Violations:** GP § 3-302

**18 OMCB Opinions 40 (2024)****Board of County Commissioners for Charles County**

**Topics discussed:** The Act's requirements for agendas and posting minutes online

**Opinion:** The Complainant alleged that the Board of County Commissioners violated the Act by adding an item to a meeting agenda shortly before the meeting. The Compliance Board found no violation of the Act because there was no indication that the Board of County Commissioners had knowingly omitted an item of business from the agenda originally made available to the public, and the Act permits a public body to add a new item to the agenda after it has been made available to the public. The Complainant also alleged a violation based on changes to how the Board of County Commissioners archives and makes available to the public meeting minutes and recordings. The Compliance Board found no violation of the Act because there was no indication that the public body had failed to post minutes online when it was practicable to do so, and the Act does not micromanage how a public body organizes its website.

**Violations:** None

**18 OMCB Opinions 43 (2024)****Talbot County Public Works Advisory Board**

**Topics discussed:** The Act's notice requirement; the legal advice exception for convening in closed session

**Opinion:** The Advisory Board provided notice on two webpages, one of which listed the wrong start time for a meeting. The Compliance Board concluded that, when a public body provides notice by only two methods and one of those methods provides the wrong information (as opposed to merely omitting certain details), the public body has not provided reasonable advance notice of the meeting. The Compliance Board further found that the Advisory Board's closed session discussion exceeded the bounds of the legal advice exception of GP § 3-305(b)(7) because the conversation involved more than the receipt of legal advice from their attorney.

**Violations:** §§ 3-302, 3-305(b)(7)

**18 OMCB Opinions 48 (2024)****Pocomoke City Planning and Zoning Commission**

**Topics discussed:** The Act's requirement of "reasonable advance notice"; whether a public body satisfies that requirement if it provides notice by two methods and one of those methods provides incorrect information

**Opinion:** The Planning and Zoning Commission provided notice of a February 21, 2024, meeting by two methods: posting meeting information on a page of the City's website and posting notice at City Hall. The Complainant did not allege any deficiencies with the City Hall notice but asserted that the online notice failed to provide reasonable advance notice as required by GP § 3-302(a). The Compliance Board agreed, finding it unlikely that a member of the public would have navigated to the linked agenda on the Commission's page to know that the body would be meeting on February 21; to find the agenda, someone would have had to look below the heading "MEETING FILE

ARCHIVES,” which suggested that the information pertained to past meetings, not upcoming meetings. Moreover, in bold lettering above this language, the webpage stated, “Next Scheduled Meeting TBA-WEDNESDAY, , [sic] 2024 AT 5:00 P.M. IN COUNCIL CHAMBERS.” The webpage thus indicated that the Commission had not scheduled its next meeting when in fact it had. Assuming that the City Hall notice was complete and accurate, the Compliance Board nonetheless found a violation of the Act, reasoning that, when “a public body provides notice by only two methods and one of those methods provides wrong information (as opposed to merely omitting certain details), the public body has not provided reasonable advance notice of the meeting.” The Compliance Board was unable to conclude that the Commission further violated the Act by failing to provide notice by including meeting details on the City’s homepage and the City’s Facebook page. The Compliance Board has said that a public body must be consistent in the methods it uses to provide notice, but the record did not indicate that the Commission usually posted meeting notices on the City’s Facebook page or list of upcoming events on the City’s homepage.

**Violations:** GP § 3-302(a)

### **18 OMCB Opinions 52 (2024)**

#### **Montgomery County Board of Education**

**Topics discussed:** The required content of a notice of a meeting at which a public body intends to immediately convene in closed session; the agenda requirement; the need to allow the public to object to a vote to enter closed session

**Opinion:** The Compliance Board found that the Board of Education violated the Open Meetings Act because a meeting notice suggested that the entire meeting would occur in closed session, with no portion open to the public. The Compliance Board further found that, because of the deficiency of the meeting notice, the entire meeting was effectively closed to the public, making it impossible for the Board of Education to give the public an opportunity to object to the vote to enter closed session, as required by Act. Finally, the Compliance Board found a violation of the Act based on the Board of Education’s failure to prepare an agenda for the meeting.

**Violations:** GP §§ 3-302, 3-302.1, 3-305(d)

### **18 OMCB Opinions 57 (2024)**

#### **Board of Trustees of Frederick Community College**

**Topics discussed:** How soon before a meeting a public body must make an agenda available to the public

**Opinion:** The Board of Trustees acknowledged that it violated the Act by failing to make a meeting agenda available to the public in a timely fashion. The Act generally requires that, “[i]f the agenda has been determined at the time the public body gives notice of the meeting . . . , the public body shall make available the agenda at the same time . . . .” § 3-302.1(a)(2). “If an agenda has not been determined at the time the public body gives notice of the meeting, the public body shall make available the agenda as soon as practicable after the agenda has been determined but no later than 24 hours before the

meeting.” § 3- 302.1(a)(3). The Board of Trustees acknowledged that, here, the body inadvertently failed to make public an agenda at least 24 hours before a meeting.

**Violations:** GP § 3-302.1

### **18 OMCB Opinions 59 (2024)**

#### **Hyattsville City Council**

**Topics discussed:** Whether a public body violates the Act when, during a virtual meeting, members exchange chat messages that members of the public cannot see

**Opinion:** During three virtual meetings, members of the Council exchanged messages via the virtual platform’s chat function. Although members of the public could see that messages were being exchanged in the chat, the public could not view the messages. Some messages were purely social, such as greetings and remarks on a Councilmember’s appearance, or were comments on technical issues that arose during the meeting. But other messages pertained to the substance of items of business before the body. The Compliance Board found that the exchange of messages on the substance of business before the Council violated the Act by impairing (however inadvertently) the public’s ability to observe the Council’s deliberations.

**Violations:** GP § 3-301

### **18 OMCB Opinions 62 (2024)**

#### **Pocomoke City Board of Elections Supervisors**

**Topics discussed:** Administrative functions; the Act’s notice requirement

**Opinion:** The Complainant alleged that the Elections Board violated the Act by failing, until the morning of a meeting, to notify the public of the meeting’s start time. The Compliance Board found no violation, because the Elections Board was performing only administrative functions at the meeting in question: The body reviewed candidates’ certificates of nomination, appointed an election clerk, elected a chairperson, signed an annual pledge of duties, updated contact information, scheduled a future meeting, discussed notice of an upcoming election, and received an update from the City Clerk about when the City would receive elections materials. These were not any non-administrative functions defined by the Act but were instead housekeeping matters and/or the administration of City law; thus, the Elections Board was performing only administrative functions, and the meeting was not subject to the Act’s notice requirements. Nonetheless, the Compliance Board noted that, generally, when meetings *are* subject to the Act, a public body must give notice of the date, time, and place of a meeting as soon as is practicable after the body has fixed those details. The Compliance Board further noted that, when a public body schedules a meeting on short notice, it may have to take extra steps to assure that the public has reasonable advance notice of the meeting.

**Violations:** None

**18 OMCB Opinions 67 (2024)****Laurel City Council**

**Topics discussed:** The Act’s quorum requirement for a “meeting”; the Compliance Board’s inability to resolve factual disputes

**Opinion:** The Complainant alleged that a quorum of the Council met to discuss whether the City’s communications director should be reappointed; the Council denied that a quorum ever convened to discuss the matter. Because the Compliance Board is incapable of resolving factual disputes, the Board could not offer an opinion on whether the Act was violated here.

**Violations:** None

**18 OMCB Opinions 70 (2024)****Cecil County Council**

**Topics discussed:** Altering an agenda; public comment; removing audience members for being disruptive

**Opinion:** An unusually large crowd attended a Council meeting to advocate for more funding for public schools. The Compliance Board found that the Council did not violate the Act by altering the agenda to put the public comment period at the end of the meeting. During that comment period, many audience members cheered and applauded in response to public commenters, despite admonitions by the Council president and staff not to do so. After one speaker defied these admonitions and encouraged the audience to cheer, the Council recessed the meeting and had everyone removed from the meeting room. The Council allowed only some people to return to the room: those who had signed up but not yet provided public comment, the press, and families of children with disabilities. All other members of the public had to listen to the meeting in the lobby area, just beyond the open doors of the meeting room, or watch the meeting via livestream. The Complainants alleged that the Council violated the Act by removing nearly everyone from the meeting space and requiring the public to observe from the lobby area, where at least one person could not hear the proceedings, or via a livestream, which reached capacity and locked out at least one interested member of the public. The Compliance Board could not determine whether the Council violated the Act. The Compliance Board reasoned that, when a public body removes the vast majority of the audience from a meeting room without first determining that each individual was disruptive, the body should provide an alternative meaningful opportunity for those removed to still observe the proceedings. The Council provided two, both of which had failings. But because it was not clear whether the Council knew or should have known of these shortcomings, the Compliance Board could not determine whether the Council violated the Act in this regard.

**Violations:** None

**18 OMCB Opinions 80 (2024)****Maryland Commission on African American History and Culture**

**Topics discussed:** The Act's notice and agenda requirements; procedure for convening in closed session; closed-session minutes

**Opinion:** The Commission acknowledged that it violated the Act by failing to provide notice to the public of an intended closed session, and by failing to make an agenda available at least 24 hours before the meeting. The Commission further acknowledged violating the Act by failing to prepare a written closing statement and by failing to take a vote before entering closed session. Finally, the Commission acknowledged violating the Act by failing to prepare minutes of the closed session.

**Violations:** GP §§ 3-302(b), 3-302.1(a), 3-305(d), 3-306(b).

**18 OMCB Opinions 84 (2024)****Board of License Commissioners for Anne Arundel County**

**Topics discussed:** The Act's notice and agenda requirements; the Compliance Board's inability to investigate and resolve factual issues

**Opinion:** The Compliance Board found no violation of the Act with respect to a meeting notice that apprised the public that it had five days to provide public comment. The Compliance Board also found no violation based on the Complainant's assertion that the Board of License Commissioners had failed to notify the public that the body would not entertain challenges to internal memos prepared by the County office of planning and zoning during new license or protest renewal hearings. The Compliance Board could not, however, determine whether the Board of License Commissioners improperly met in secret: the Complainant did not provide sufficient details of any alleged meetings in her complaint, and the Board of License Commissioners offered no details about whether its members convened to discuss public business outside of regularly scheduled meetings.

**Violations:** None