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STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE
BOARD

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Montgomery County Council

The Complainant alleges that the Montgomery County Council (the “Council”) violated the Open Meetings Act (the “Act”) by improperly invoking the administrative function exclusion to convene in closed session, by failing to comply with the Act’s requirements for written closing statements, by taking four months to approve a set of minutes, and by failing to post minutes online. For the reasons below, we cannot determine whether the Council violated the Act by discussing a matter in closed session that exceeded the bounds of the administrative function exclusion. We do, however, find that the Council violated the Act by failing, in several written closing statements, to disclose all the details required by the Act. As for the allegations regarding minutes, we find that, under the circumstances described below, the Council did not violate the Act by taking four months to approve one set of minutes. We also find no violation with respect to posting minutes online.

Discussion

A. October 7 closed session

We begin with the Complainant’s allegation that the Council improperly invoked the Act’s administrative function exclusion to meet in closed session on October 7, 2025.

Generally, a public body must meet in open session. *See* § 3-301.¹ But “[t]he Act expressly permits public bodies to hold a closed session when the discussion falls either within a function that is explicitly excluded from the Act—an ‘*exclusion*’—or within one of the [fifteen] topics that are explicitly excepted from the Act[5]—an ‘*exception*.’” 11 *OMCB Opinions* 12, 14 (2017) (emphasis added). The exceptions are listed in § 3-305(b). “If the public body’s discussion falls within one of these exceptions, the body may exclude the public from its meeting, but only after the presiding officer ‘conduct[s] a recorded vote

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

on the closing of the session’ and ‘make[s] a written statement of the reason for closing the meeting, including a citation of the authority . . . , and a listing of the topics to be discussed.’” 18 *OMCB Opinions* 129, 130 (2024) (quoting § 3-305(d)(2)).

“If, by contrast, the public body’s meeting falls within an *exclusion*—because the body is performing an administrative, judicial, or quasi-judicial function—the Act generally does not apply.” 18 *OMCB Opinions* at 130 (citing § 3-103(a)); *see also* § 3-101(b) (defining “administrative function”); § 3-101(e) (defining “judicial function”); § 3-101(i) (defining “quasi-judicial function”); *but see* § 3-103(b) (providing that the Act still applies to a public body when it is meeting to consider granting a license or permit or certain zoning matters); § 3-104 (requiring a public body to make certain public disclosures after recessing an open session to meet in closed session to perform an administrative function).

On October 7, 2025, the Council convened in closed session. The agenda stated:

The Council intends to meet in closed session to carry out an administrative function . . . and to discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of an appointee, employee, or official over whom it has jurisdiction under [§ 3-305(b)(1)]. The topic is the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of an appointee, employee, or official over whom it has jurisdiction, and related administrative functions.²

The Council asserts that the October 7 closed session involved a discussion about an upcoming vacancy on the body and the Council’s obligation to fill that vacancy under County law. *See* Montgomery County Charter, Art. I, § 106 (“When a vacancy has occurred, a majority of the remaining members of the Council shall appoint a person to fill the vacancy within thirty days.”).

“We have long concluded that a public body is fulfilling an administrative function when it convenes to fulfill its own statutory duty to make an appointment.” 8 *OMCB Opinions* 84, 85 (2012) (citing 1 *OMCB Opinions* 252 (1997) and 6 *OMCB Opinions* 53 (2008)). Moreover, “[w]hen a public body has such an appointment power, we have said that the body performs an administrative function not only when the body votes to make the appointment but when it engages in certain preliminary discussions leading up to the

² The agenda is available at https://montgomerycountymd.granicus.com/GeneratedAgendaViewer.php?view_id=169&clip_id=18304 (last visited Feb. 9, 2026).

appointment.” 19 *OMCB Opinions* 56, 61 (2025); *see also* 18 *OMCB Opinions* 129, 130 (2024) (concluding that a public body was performing an administrative function when the body interviewed candidates for a vacant position); 18 *OMCB Opinions* 85, 86 (2024) (same); 7 *OMCB Opinions* 264, 267 (2011) (referring to “evaluating and interviewing candidates” as an administrative function); 6 *OMCB Opinions* 53, 55 (2008) (recognizing that a discussion “to consider which candidates would merit an interview” was an administrative function); 4 *OMCB Opinions* 182, 184 (2005) (concluding that interviews and discussions about candidates to fill a vacancy were administrative); 1 *OMCB Opinions* 123, 125 (1995) (recognizing that a school board was engaged in what is now called an administrative function when it “considered whom it might wish to name as interim Superintendent” because it was administering a State law that obligated the board to appoint someone to the position).

The Complainant, however, asserts that, “rather than simply administering existing law, the Council presumably met to decide policy regarding the timing and process for appointing a person to fill [the] Council vacancy.” She alleges, “[b]ased on subsequent information released by the Council,” that the October 7 closed session must have involved discussions about the timeline for candidates to apply, the Council’s decision to consider only applicants who pledged not to run for office in 2026, requiring candidates to file a confidential financial disclosure to the Council clerk, when to interview candidates, and what information about the candidates to withhold from the public.

We have said that “[n]ot every discussion touching on an appointment within the public body’s own powers falls within the definition of ‘administrative function.’” 8 *OMCB Opinions* at 85 n.1. The administrative function exclusion does not apply “if the discussion at issue pertains to the process for making an appointment rather than, say, an individual’s suitability for appointment or which of several candidates should be appointed.” 18 *OMCB Opinions* 1, 3 (2024). Thus, “[f]or example, a public body’s discussion of whether to form outside committees to broaden participation in the appointment process falls more into the realm of forming policy, a quasi-legislative function.” 8 *OMCB Opinions* 85 n.1 (citing 7 *OMCB Opinions* 264 (2011)). And quasi-legislative functions must be performed in a meeting open to the public, unless an exception applies. *See* § 3-301 (providing generally that “a public body shall meet in open session” except as otherwise provided in the Act); § 3-305(b) (enumerating the fifteen exceptions under which a public body may convene in a closed session). That said, even a discussion about the process of making an appointment may be administrative if the public body “is merely discussing the implementation of procedures that it has already adopted.” 10 *OMCB Opinions* 104, 106 (2016).

To determine whether the closed-session discussion here stayed within the bounds of the administrative function exclusion, we requested a copy of the sealed closed-session minutes. Because we must maintain the confidentiality of these minutes, § 3-206(b)(3),

we will not disclose specific details, other than to say that the minutes reflect a discussion about the appointment and, more broadly, the process for making the appointment. But because the minutes do not clearly indicate whether the Council was establishing a process for the appointment or merely confirming a process that had previously been established, we are unable to say with confidence whether the entire discussion fell within the administrative function exclusion.

We can say, however, that the discussion did *not* fall within the personnel matters exception of § 3-305(b)(1), which the Council also invoked for excluding the public from this discussion. “[W]e have consistently drawn the following line” when construing the personnel matters exception: “This exception permits discussion in closed session of personnel decisions applicable *to specifically identifiable individuals only*.” 3 *OMCB Opinions* 335, 337 (2003) (emphasis added). “The exception does not permit discussion in closed session of general personnel issues . . .” *Id.* Thus, while the exception applies to discussions of particular applicants for an appointment, *see* 15 *OMCB Opinions* 46, 50 (2021), it does not apply to discussions about, for example, the process for recruiting or selecting a candidate to fill a vacancy, *see, e.g.*, 14 *OMCB Opinions* 66, 68 (2020) (finding that discussions about advertising for vacant positions or the need to fill a position did not fall within the personnel matters exception because these topics “did not pertain to a particular individual”); *see also* 7 *OMCB Opinions* 125, 127 (2011) (concluding that a discussion about a job description did not fall within the personnel matters exception).

To summarize, we find that the Council’s closed session discussion exceeded the bounds of the personnel matters exception of § 3-305(b)(1). But it is unclear, from our review of the closed-session minutes, whether the discussion stayed within the bounds of the administrative function exclusion of § 3-103(a)(1)(i). Thus, we cannot resolve whether the Council violated the openness requirement of § 3-301 by excluding the public from this portion of the October 7 meeting. *See* § 3-207(c)(2) (recognizing that “[a]n opinion of the [Compliance] Board may state that the Board is unable to resolve [a] complaint”).

B. Written closing statements

Next, we address the Complainant’s allegations with respect to written closing statements.

As noted above, when a public body invokes one or more of the exceptions in § 3-305(b) to convene in closed session, the body must, among other things, ensure that its presiding officer “make[s] a written statement of the reason for closing the meeting, including a citation of the authority under [§ 3-305], and a listing of the topics to be discussed.” § 3-305(d)(2). This written closing statement “shall be a matter of public record,” § 3-305(d)(5), and, “[t]o the extent practicable, a public body shall post online the written statement,” § 3-305(d)(6).

Here, the Complainant alleged that the Council failed to post online the written closing statements for six closed sessions that took place in 2025,³ despite it being “practicable and within the resources of the County Council” to do so. The Council responded that the Act did not apply to two of the meetings because the Council was performing administrative functions; regardless, the Council asserted that it prepared written closing statements for all the sessions and incorporated them into meeting summaries that appear on the Council’s website. The Complainant replied that the language in those summaries do not satisfy the requirements for written closing statements.

We accept the Council’s representation that the language posted online for each meeting was intended to serve as written closing statements under § 3-305(d). We turn our attention, then, to whether the statements contain all the information required by the Act. Before doing that, however, we must determine how many of the statements are subject to our review. If, as the Council asserts, the administrative function exclusion applied to two of the meetings, the Council was not required to prepare written statements for those sessions, *see* § 3-103(a)(1)(i) (providing, generally, that the Act does not apply when a public body is carrying out an administrative function), and any deficiencies in those statements would not establish a violation of the Act, *see* 19 *OMCB Opinions* 56, 63 (2025) (recognizing that, when the Act does not apply, a public body that voluntarily purports to comply with a provision of the Act does not violate the law if the body does not satisfy every element of the provision).

The Council asserts that it was performing administrative functions during two closed sessions: those on October 7 and October 28, 2025. We have already addressed the October 7 meeting and, as noted above, we are unable to determine whether that closed-session discussion stayed within the bounds of the administrative function exclusion. As for the October 28 closed session, the Council asserts that it was performing an administrative function by discussing the appointment of the Director of Office of Zoning and Administrative Hearings and her salary. Having reviewed the closed-session minutes for this meeting, we can confirm that the discussion was limited to the topics disclosed by the Council. We agree with the Council that it was performing an administrative function when it appointed someone to the vacant position. *See, e.g.,* 8 *OMCB Opinions* at 85. But we cannot say whether the discussion about her salary was administrative. If the discussion of compensation “implicated an amendment to the current budget or an item for the upcoming budget, as opposed to the mere administration of an already-budgeted item, the discussion [was] likely . . . quasi-legislative in nature and thus subject to the Act.” 10 *OMCB Opinions* 22, 28 (2016). For purposes of our analysis, then, we will assume that the Act required written closing statements for both the October closed sessions. Thus, we will review the sufficiency of each of the six written closing statements raised in the complaint.

³ The closed sessions took place on January 16, May 14, July 29, September 22, October 7, and October 28, 2025.

As we explain below, we find several deficiencies in these statements.

1. Public security exception

The Council has, on several occasions, invoked the public security exception of § 3-305(b)(10), which allows a public body to convene in closed session to:

discuss public security, if the public body determines that public discussion would constitute a risk to the public or to public security, including:

- (i) the deployment of fire and police services and staff; and
- (ii) the development and implementation of emergency plans[.]

§ 3-305(b)(10). But when invoking this exception, the Council has failed to provide the public with enough information about topics of discussion and the reasons for excluding the public from these discussions.

With respect to describing topics of discussion, we have long said that “‘the mere parroting’ or a rote paraphrase of the applicable exception is not acceptable as a topic description.” 4 *OMCB Opinions* 142, 145 (2005) (quoting 4 *OMCB Opinions* 38, 41-42 (2004)). “While public bodies need not disclose a level of detail about the topic that undermines the confidentiality permitted by the Act, we have repeatedly advised that ‘saying nothing beyond the statutory language deprives the public of information to which it is entitled’ in connection with a closed session.” 5 *OMCB Opinions* 33, 35 (2006) (quoting 4 *OMCB Opinions* 114, 118 (2005)). Indeed, members of the public should be able “to understand why they are being excluded and, later, to ascertain from the summary of the closed session whether the members adhered to the topics they identified.” 9 *OMCB Opinions* 46, 49 (2013). But the Council has not always provided sufficiently detailed disclosures before closed sessions to allow this. For example, the language for the January 16 and July 29 closed sessions are insufficiently detailed. The January 16 language restates the statutory language almost verbatim and describes the topic of discussion only as “County security planning.” Similarly, the Council described the topics of discussion for the July 29 closed session as “public safety resources and deployment.” We find both of these topic descriptions too vague.

As for the reason for excluding the public, the public security exception is applicable only “if the public body determines that public discussion would constitute a risk to the public or public security.” § 3-305(b)(10). And we have said that the closing statement “must reflect th[is] requirement[.]” 7 *OMCB Opinions* 225, 229 (2011). “To be sure, ‘a reason for secrecy’ may occasionally be ‘obvious from the topic that a public body has specified.’” 15 *OMCB Opinions* 99, 101 (2021) (quoting 10 *OMCB Opinions* 46, 50 (2016)). But “even when the need for secrecy ‘may be apparent upon reflection,’ there ‘is no excuse for omitting it . . . from the written statement.’” 15 *OMCB Opinions* at 101

(quoting 4 *OMCB Opinions* 46, 49 (2004)). The language about the January 16 and September 22 closed sessions says nothing about why a public discussion would pose a risk to the public or public security. The July 29 closed session language indicates that the Council would invoke the public security exception “*if* the public body determine[d] that public discussion would constitute a risk to the public or to public security” (emphasis added); but the language does not indicate that the Council actually made that finding, nor does the disclosure provide any hint of *why* the Council might have found such a risk. We thus find that the Council has repeatedly failed to provide adequate topic descriptions and reasons for excluding the public when invoking the public security exception of § 3-305(b)(10).

2. Legal advice exception

The Council has also failed several times to provide an adequate reason for excluding the public when invoking the legal advice exception of § 3-305(b)(7), which allows a public body to convene in closed session to “consult with counsel to obtain legal advice.” For example, with respect to the September 22 closed session, the Council invoked the exception and indicated that it would be seeking legal counsel “concerning public safety matters”; but the Council offered no explanation for *why* the body wanted to exclude the public from this discussion. Likewise, the disclosures about the May 14 and July 29 closed sessions offered no reason for why the Council intended to exclude the public when it sought legal advice about contractual matters.

“With respect to potential reasons for invoking the legal advice exception of § 3-305(b)(7), we have said that ‘it is not necessarily a foregone conclusion that a public body’s attorney should only address the members’ questions in a closed session.’” 18 *OMCB Opinions* 190, 193 (2024) (quoting 17 *OMCB Opinions* 83, 85 (2023)).

[A] public body might decide to receive legal advice from its lawyer in a closed session because the public body does not want to waive the attorney-client privilege as to a particular matter, or because public disclosure would adversely affect the public body’s position in litigation, or even because the public body wants the lawyer’s advice on whether a matter should or must be kept confidential. If so, the public body should disclose those reasons [...].

15 *OMCB Opinions* 99, 101 (2021) (quoting 10 *OMCB Opinions* 4, 6 (2016)). In short, “the public body must explain why secrecy is appropriate under the particular circumstances at hand.” 15 *OMCB Opinions* 5, 8 (2021). The failure to do so with respect to the May 14, July 29, and September 22 closed sessions violated § 3-305(d)(2)(ii) of the Act.

3. Personnel matters exception

Finally, with respect to disclosures in written closing statements, we find that the Council has failed to provide sufficient detail when invoking the personnel matters exception of § 3-305(b)(1). This exception permits a public body to convene in closed session 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).

The October 7 and October 28 written closing statements invoked the personnel matters exception but provided no reason for excluding the public and parroted the statutory language in describing the topic of discussion: “the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of an appointee, employee, or official over whom it has jurisdiction.” As already noted, we think the October 7 closed-session discussion exceeded the scope of the personnel matters exception. But even if it had not, the statement for that closed session—as well as the statement for the October 28 closed session—lacked sufficient detail to satisfy the Act. In describing the topic, the Council “could have provided more detail about the personnel matter under discussion without compromising confidentiality, perhaps by specifying the *category* of personnel matter listed in the § 3-305(b)(1) exception.” 13 *OMCB Opinions* 1, 3 (2019). As for the reason for convening in closed session, the Council “did not have to say much, but it had to say something about the reason for excluding the public.” 18 *OMCB Opinions* 105, 108 (2024). For example, we have said that a public body could say:

that the particular matters under discussion were confidential, *see* 16 *OMCB Opinions* 110, 111 (2022) (finding no violation when a closing statement said that the reason for closure was because “personnel matters are confidential”), or that closure was necessary to allow [the public body’s] members “to discuss the qualifications of the candidates in a candid manner, protect the privacy of the confidential, personal information of the individuals discussed, and/or to prevent any harm to the reputation of any individuals discussed,” 16 *OMCB Opinions* 224, 226 (2022) (finding no deficiency in the closing statement with respect to the reason for closure under the personnel matters exception).

Id. Because the closing statements here merely parroted the statutory language in describing the topics of discussion and provided no reason for excluding the public, we find that the statements fail to satisfy the requirements of § 3-305(d).⁴

C. May 14 closed session minutes

We next address the Complainant’s allegation that the Council failed to promptly prepare minutes of a May 14, 2025, closed session.

The Act requires, “as soon as practicable after a public body meets,” that it “have minutes of its session prepared.” § 3-306(b)(1). This requirement applies to both open and closed sessions. *E.g.*, 5 *OMCB Opinions* 100, 101 (2007). The Act further provides that, “[i]f 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).

Here, the Complainant asserts that the Council violated the Act by taking until September 9, 2025, to approve the closed-session minutes of the Council’s May 14, 2025, closed session.

We find no violation of the Act based on this allegation. As a preliminary matter, we note that a delay in preparing closed-session minutes generally has no effect on members of the public, who typically will never see the minutes. *See* § 3-306(c)(3)(ii) (providing generally that closed-session minutes “shall be sealed and may not be open to public inspection”); *but see* § 3-306(c)(4) (providing limited circumstances in which closed-session minutes must be “unsealed and open to inspection”). Here, the Council asserts that the *open* session minutes, including the public summary of the May 14 closed session, were approved and posted online on June 24, 2025.

Regardless, we do not find the four-month interval between the closed session and the approval of the closed-session minutes unlawful under the circumstances here. Although we have said that, “[a]s a general rule,” minutes should be approved “on a cycle paralleling a public body’s meeting schedule,” we have also recognized that sometimes “special circumstances might justify a delay.” 6 *OMCB Opinions* 164, 169 (2009). Thus, we must “consider the specific facts and circumstances surrounding each claimed delay.”

⁴ The Complainant also asserts that the agendas for the October 7 and October 28 meetings did not adequately apprise the public of what the Council intended to discuss in the closed sessions. But “[a] public body is not required to make available any information in the agenda regarding the subject matter of the portion of the meeting that is closed in accordance with § 3-305(b)” § 3-302.1(c).

16 *OMCB Opinions* 203, 210 (2022). Here, the Council asserts that the “[t]he adoption period for minutes of this closed session was lengthier than normal due to particular logistical challenges, including the Council’s required review of the County’s \$7.6 billion budget at that same time, the Council’s month-long recess, and the technical nature of the minutes[,] which required legal advice involving multiple contracts.” Based on this representation, we decline to find that the Council violated the Act by taking four months to approve this one set of minutes. *See, e.g., 10 OMCB Opinions* 1, 2 (2016) (finding no violation of the Act when, due to staff constraints, a public body took two to four months to prepare various sets of minutes).

D. Posting minutes online

Finally, we address the Council’s practice of posting minutes online. The Act requires that, “as soon as practicable after a public body meets, it . . . have minutes of its session prepared,” § 3-306(b)(1), and, “[t]o the extent practicable,” posted online, § 3-306(e)(2). 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)⁵; in that case, the archived recording “shall be deemed the minutes of the open session,” § 3-306(b)(3), and this recording should, “[t]o the extent practicable,” be posted online, § 3-306(e)(2).

The Council streams live video and audio of its sessions and posts them online; but the body also prepares written minutes for each meeting and posts them to the Council’s website under the heading “Summary/Minutes.” Until the Council approves minutes, the body posts a summary that includes the following disclaimer:

This summary is not intended to be the official record of the Council.
Official minutes are available for that purpose in the Office of Legislative
Information Services.

Once the Council approves minutes, they are combined with the summary into one document. The summary appears at the beginning of the document, and a reader must scroll past the summary to find the minutes.

The Complainant initially alleged that the Council had failed to post minutes online for its 2025 meetings. She had opened documents linked under the “Summary/Minutes” heading, seen only the summaries, and not realized that she needed to scroll down to find the minutes. After the Council explained its process, the Complainant acknowledged that the minutes had, in fact, been posted online for the Council’s 2025 meetings. But she

⁵ Written minutes are also not necessary if “the public body votes on legislation and the individual votes taken by each member of the public body who participates in the voting are posted promptly on the Internet.” § 3-306(b)(2)(ii).

suggested that the Council consider adding a “[a] clearer header,” such as “Scroll down within this document to see the official minutes (after approval).”

Because the Act “does not micromanage the way in which a public body organizes its website,” 13 *OMCB Opinions* at 28, or dictate how a body makes minutes available online when it is practicable to do so, 18 *OMCB Opinions* 40, 42 (2024), we find no violation here. But we encourage the Council to take the Complainant’s suggestion under advisement, as we think it likely that she is not the only member of the public who has been unable to locate minutes of the Council’s meetings online. *See, e.g., 7 OMCB Opinions* 259, 263 (2011) (finding no violation with respect to notice on a website that “was difficult to locate” but encouraging the body to make web content “more accessible”).

Conclusion

We cannot determine whether the Council violated the openness requirement of § 3-301 by convening in closed session on October 7, 2025; although the topic of discussion exceeded the bounds of the personnel matters exception, it is not clear from the closed-session minutes whether the discussion stayed within the scope of the administrative function exclusion. We find that the Council violated § 3-305(d) by failing, in several written-closing statements, to disclose all necessary details. We do not, however, find that the Council violated the Act by taking four months to approve the May 14 closed-session minutes. We also find no violation with respect to posting minutes online, though we encourage the Council to consider the Complainant’s suggestions for making minutes easier to find.

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

Open Meetings Compliance Board

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