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STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE BOARD

16 Official Opinions of the Compliance Board 163 (2022)

August 19, 2022

**Sixty Boards, Committees, and
Commissions of Montgomery County**

The Complainant alleges violations of the Open Meetings Act (the “Act”) by “60 Boards, Committees and Commissions that fall under the purview of the Office of the County Executive in Montgomery County.” He asserts that the bodies should have, but failed, to post on public websites the bodies’ notices of meetings, agendas, minutes, and information about how to access virtual meetings. Montgomery County (the “County”) disputes many of the alleged violations but concedes that, “[d]ue to COVID and the large number of [boards, commissions, and committees] in the County, some . . . did fall into areas of noncompliance.”

Due to the exceptionally large number of bodies involved, we focus on the types of alleged violations rather than going through every allegation and response related to each of the sixty bodies.¹ As we explain below, we find that many of the Complainant’s assertions fail to allege a violation of the Act, and we lack sufficient details in several other instances to determine whether a violation has occurred. But we also conclude that several bodies violated the Act, by failing to provide reasonable advance notice of meetings, by failing to provide the public information on how to access virtual meetings, by failing to retain meeting notices, by failing to make agendas available to the public or by failing to do so in a timely manner, and by failing to prepare minutes or post them online when it was practicable to do so.

¹ The County does not challenge the Act’s applicability to the named entities. We thus assume that all are public bodies, subject to the Act. *See, e.g.*, 16 *OMCB Opinions* 41, 43 (2022) (recognizing that “[t]he Act applies to meetings of ‘public bodies’”); *see also* Maryland Code Ann., Gen. Prov. § 3-101(h) (defining “public body”). The County does, however, assert that seven of the entities have not violated the Act, either because the bodies have been abolished or because they have not been meeting. *See, e.g.*, 7 *OMCB Opinions* 272, 273 (2011) (recognizing that “[t]he Act applies only when a public body ‘meets’”); *see also* Maryland Code Ann., Gen. Prov. § 3-101(g) (defining “meet”).

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A. Notice

The Complainant asserts that many of the bodies have violated the Act by failing to provide reasonable advance notice of their meetings on public websites. The Act does not, as a rule, require every public body to post notices online but, rather, affords public bodies “considerable flexibility” with respect to the method of providing notice. 7 *OMCB Opinions* 237, 238 (2011) (quoting 4 *OMCB Opinions* 88, 98 (2004)). A public body may provide notice by publication in the Maryland Register (if the body is a unit of State government), by delivery to the press, by posting notice online or at a convenient public location near the meeting place (if the body has provided the public notice that this method would be used), or “by any other reasonable method.” § 3-302(c).² We have also said, however, that “[a] hallmark of ‘reasonable’ notice under the Act is reasonable consistency as to the method used; notice is hardly effective if it does not appear in the place where the public expects to find it.” 11 *OMCB Opinions* 78, 82 (2017); *see also* 16 *OMCB* 47, 49-50 (2022) (recognizing that a public body may violate the Act’s “reasonable advance notice” requirement “when it deviate[s] from its usual method of giving notice”). Thus, if a public body has established a custom of posting meeting notices online, the failure to do so may violate the Act.

Here, the Complainant alleges that many bodies violated the Act by failing to post notices of their meetings on a public website. With respect to some of the entities, the County flatly denies any violation. For example, it asserts that the Commission for Women satisfied the Act’s notice requirement by posting online a standing notice of its meetings, informing the public that the Commission meets at 7 p.m. on the second Thursday of every month. We have previously found that such “standing notices” satisfy the Act. *See, e.g.*, 14 *OMCB Opinions* 12, 12 (2020). The County concedes, however, that the Criminal Justice Coordinating Commission, the Friendship Heights Transportation Management District Advisory Committee, and the Silver Spring Transportation Management District Advisory Committee violated the Act’s notice requirement, apparently because these bodies made it a custom to post their notices online but failed to do so for at least one meeting. The County also concedes that the Firearm Safety Committee violated the Act by failing to provide notice of any past meetings. We thus find that these bodies violated the “reasonable advance notice” requirement of § 3-302(a). For other bodies, we cannot determine, based on the limited information before us, whether the bodies customarily provided notice by posting notices on their website, or through some other method (in which case a failure to post a notice online may not have violated the Act). For example, the County asserts that the Committee Against Hate/Violence “*will ensure*” (emphasis added) that notices are properly posted online going forward, but the County does not address how, if at all, the Committee previously provided notice. Thus, we cannot

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

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determine whether a violation occurred. *See* § 3-207(c)(2) (recognizing that we may be unable to resolve a complaint).

The Complainant further asserts that many of the public bodies have violated the Act by using a central events calendar maintained by the County to provide notice of their meetings. As we have previously explained, however, a public body may provide notice of meetings via a calendar function, provided “the meeting notice appears on the date block for the day of the meeting.” 10 *OMCB Opinions* 95, 96 (2016); *see also* 15 *OMCB Opinions* 174, 175 (2021) (finding that a public body complied with the Act when it provided notice of its meeting via a centralized events calendar). As such, we decline to find a violation of the Act.

Relatedly, the Complainant fails to state a violation when he complains that some meeting notices in the calendar do not include agendas. The Act does not require a notice to include an agenda, only “the date, time, and place of the session” and, “if appropriate, . . . a statement that a part or all of a meeting may be conducted in closed session.” § 3-302(b).

Finally, with respect to notices, the Complainant asserts that several bodies violated the Act because their websites did not, at the time that the complaint was filed, include notices for past meetings. This allegation also fails to state a violation of the Act. Although the Act requires public bodies to retain notices for one year,³ the Act does not require that they be posted online. And even if the relevant bodies’ usual method of providing notice is to post it online, reasonable advance notice requires only that the notices be posted online *before* the meetings occur; it does not require notices to remain online *after* the meetings are over.

B. Access Information for Virtual Meetings

The Complainant alleges that many of the bodies have violated the Act by failing to post online the information that members of the public need to access virtual meetings. “Whenever a public body meets in open session, the general public is entitled to attend,” § 3-303, and “[t]his same basic principle governs virtual as well as in-person meetings,” 15 *OMCB Opinions* 161, 162 (2021). Thus, a public body violates the Act if it fails to provide sufficient information to the public about how to access a virtual meeting. *See* 15 *OMCB* 32, 33 (2021) (finding that a public body violated the Act by failing to inform all members of the public how to obtain the Zoom information for its remote-only meetings); *cf.* 16 *OMCB Opinions* 1 (2022) (finding that a meeting notice violated the Act when it failed to indicate that the meeting would be held virtually and failed to provide instructions on how to obtain access information for the meeting).

³ Come October 1, 2022, the Act will require public bodies to retain notices for three years. 2022 Md. Laws, ch. 345.

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The County acknowledges that several bodies—including the Criminal Justice Coordinating Commission, the Silver Spring Transportation Management District Advisory Committee, and the Friendship Heights Transportation Management District Advisory Committee—violated the Act by failing to provide the public information on how to access virtual meetings. Thus, we find that these bodies violated § 3-303 of the Act.

With respect to several other bodies, the Complainant and the County disagree about whether access information was posted online, a factual dispute that we are not equipped to resolve. *See 9 OMCB Opinions* 186, 188 (2014) (noting that the Compliance Board is “not set up to resolve disputes of fact”). Regarding other bodies, such as the Adult Public Guardianship Review Board and the White Flint Downtown Advisory Committee, the County asserts that access information is now posted online, but the response does not make clear whether that information was available before the complaint was filed. We thus cannot determine whether those bodies violated the Act. *See* § 3-207(c)(2).

Finally, regarding at least one body—the Commission on Child Care—the County asserts that a staff person “was not able to pull up past meeting notice entries on the consolidated calendar,” and, thus, “was not able to confirm what type of access information was provided for past meetings.” Although this factual void leaves us unable to determine whether the Commission violated § 3-303’s openness requirement, we find a violation of § 3-302(d), which requires a public body to keep a copy of a meeting notice for at least one year. As noted above, a public body may provide notice through an events calendar; but if it does, the body must be able to retain a copy of the notice. The Commission of Child Care’s failure to do so was a violation of § 3-302(d).

C. Agendas

The Complainant alleges that many bodies have violated the Act by not “list[ing] agenda information on [a] public website.” The Act requires that, “before meeting in an open session, a public body shall make available to the public an agenda.” § 3-302.1(a). But the Act does not require a public body to post its agenda online. *See, e.g., 11 OMCB Opinions* 25, 33 (2017). Rather, the Act allows a public body to use any “reasonable method” for making an agenda available. §§ 3-302.1(d)(1), 3-302(c). The website of the Agricultural Preservation Advisory Board, for example, gives the name and contact information of a County staff person who will provide agendas to interested members of the public. The Alcohol and Other Drug Abuse Advisory Council and the Mental Health Advisory Committee provide agendas via email. And the County asserts that several bodies, including the Interagency Commission on Homelessness, have, since before the complaint was filed, posted agendas on their websites. All of these methods satisfy the basic requirement of “mak[ing] the agenda ‘available,’ before the meeting, to anyone who

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asks for it.” 11 *OMCB Opinions* at 33. Thus, we decline to find a violation of the Act in these instances.

With respect to many other public bodies, however, we cannot conclude whether a violation has occurred. *See* § 3-207(c)(2). In some cases, the Complainant and the County simply do not agree whether a public body made an agenda available to the public, a material dispute that we cannot resolve. *See, e.g., 9 OMCB Opinions* at 188. In other cases, the County asserts that, at the time that the complaint was filed, bodies including the Advisory Committee on Consumer Protection had prepared agendas but not posted them online. It is not clear to us whether the agendas might have been available by another method, or whether the County concedes that these bodies violated the Act by failing to provide agendas by any method. The County asserts that other bodies, including the Agricultural Advisory Committee, *have* made their agendas available online; but it is not clear whether they have long done so or whether they began this practice only after the complaint was filed. We are similarly unable to determine whether the Citizens Review Panel for Children has violated the Act because, although it uploads its agendas to a Google drive, it is not clear from the submissions whether the public is aware of this drive and has access to it.

We do, however, find that the Firearm Safety Committee violated § 3-302.1(a), based on the County’s concession that this body failed to prepare any agendas for its meetings. The Alcoholic Beverages Advisory Board and the Commission on Common Ownership Communities violated the same provision when technical glitches made certain agendas unavailable to the public.

In addition, several other bodies violated the Act’s timing requirement for agendas. Under the Act, a public body must make an agenda available at the same time the body provides notice of the meeting, if the agenda has been set. Otherwise, the body must make the agenda available as soon as practicable “but no later than 24 hours before the meeting.” § 3-302.1(a)(2) & (3). The County concedes that the Commission on Child Care often did not finalize its agenda until the same day as a meeting and, thus, failed to meet the 24-hour deadline set forth in § 3-302.1(a). The same is true of the Citizens Review Panel for Children, which sometimes did not upload agendas to the Google drive until the morning of a meeting, and the Local Management Board for Children, Youth, and Families, which made agendas available only during meetings. The County also concedes that the Climate, Energy, and Air Quality Advisory Committee failed to timely make its agenda available in January 2022. We thus find violations of the timing requirement of § 3-302.1(a) with respect to these bodies.

D. Minutes

Finally, the Complainant alleges that numerous bodies violated the Act by failing to publish minutes online. To be clear, the Act does not unconditionally require that public

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bodies post their minutes online, only that they do so “[t]o the extent practicable.” § 3-306 (e). The response does not explicitly address the practicability of the various entities posting minutes online, but the County does point out that at least one body—the Adult Public Guardianship Review Board—had no website at the time the complaint was filed. We cannot say that it was practicable for that body (and any others lacking their own websites) to have posted minutes online by the time this complaint was filed. Indeed, even for bodies that had their own websites, it may not have been practicable to post minutes online. The Commission for Women, for example, has not posted minutes online because they “take up too much room” on the body’s website, and the Housing Opportunities Commission has occasionally had delays in posting minutes online “due to staffing issues.” As we have repeatedly noted, “[w]e are seldom in a position to second-guess what was ‘practicable’ for a public body’s staff at a given point of time.” 16 *OMCB Opinions* 129, 130 (2022) (quoting 12 *OMCB Opinions* 83, 83 (2018)). The County asserts that other bodies with their own websites have prepared minutes but not posted them online, but the County provides no further details, leaving us unable to assess the practicability of those bodies posting minutes online. *See, e.g.*, 12 *OMCB Opinions* 80, 81 (2018) (recognizing that “what is ‘practicable’ depends on the facts”).

The County does, however, acknowledge some violations of the Act. The County concedes that the Committee to Recommend Funding for the Public Election Fund did not post minutes for meetings in January 2020, December 2020, and September 2021, despite posting other minutes online. We understand this to be a concession that it was practicable for the Committee to have posted the missing minutes online and, based on that understanding, we find a violation of § 3-306(e)(2). Several other bodies—the Firearm Safety Committee, the Western Montgomery County Citizens Advisory Board, the White Flint Downtown Advisory Committee, and the Silver Spring Urban District Advisory Committee—failed to prepare any minutes in the first place, a violation of § 3-306(b), which provides that, “as soon as practicable after a public body meets, it shall have minutes of its session prepared.”

With respect to several other bodies, such as the Agricultural Advisory Committee, the Complainant and the County dispute whether minutes were posted online, a factual disagreement that we simply cannot resolve. *See, e.g.*, 9 *OMCB Opinions* 186, 188 (2014). Regarding these bodies, we cannot determine whether a violation occurred.

Conclusion

We find that several of the County’s boards, commissions, and committees have violated § 3-302(a) by failing to provide reasonable advance notice of their meetings, and § 3-303 by failing to provide the public information necessary to access virtual meetings. We further find that several County bodies have violated § 3-302.1 by failing to make agendas available to the public or by failing to do so in a timely manner. At least one body

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has violated § 3-302(d) by failing to retain meeting notices. Finally, several bodies have violated § 3-306, either by failing entirely to prepare minutes, or by failing to post them online when it was practicable to do so. This Opinion is subject to the acknowledgement and announcement requirements of § 3-211.

Open Meetings Compliance Board

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