

Council Agenda Report

Date: April 24, 2017

Prepared and Submitted by: Sandra Tripp-Jones, City Manager 

SUBJECT: Findings of the Open Meetings Act Compliance Board in response to a complaint filed by Commissioner Stephen Rideout concerning the City Council meeting on February 21, 2017 in closed session

Recommendation: That Council:

- A. Council announce the findings of the Open Meetings Act Compliance Board filed by Commissioner Rideout concerning the meeting of the City Council on February 21, 2017 in closed session:
 - 1) Finding that Council violated § 3-305(d) 1 which required Council to hold the vote to close the session in public and § 3-302 which required the City provide the public with advance notice of the public's right to attend.
 - 2) Finding that Council violated § 3-305(d) which required that Council adopt a closing statement including the topic to be discussed, the reason for closing the session, and a "citation of the authority" under § 3-305 for the closed session.
 - 3) Finding that the Council violated § 3-305 by discussing a topic other than the one that it had disclosed.
- B. Authorize the Mayor to sign a copy of the opinion and forward to the Compliance Board.

Discussion:

The Open Meetings Act Compliance Board has reviewed the City's response to Commissioner Rideout's complaint about the City Council meeting of February 21, 2017 in closed session. The Board has made findings that the Council violated §§ 3-302 and 3-305 of the Open Meeting Act in the closing of the open meeting for closed session and in the conduct of the meeting in closed session. The City, in its response to the complaint, has already acknowledged the violations. The full findings document is attached. The Compliance Board requires that Council announce these findings and sign the findings document and return it to the Compliance Board.

Attach.

LAWRENCE J. HOGAN, JR.
Governor

BOYD K. RUTHERFORD
Lt. Governor



STATE OF MARYLAND
OPEN MEETINGS
COMPLIANCE BOARD

JONATHAN A. HODGSON, ESQ.
Chair

APRIL C. ISHAK, ESQ.
RACHEL A. SHAPIRO GRASMICK, ESQ.

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Cambridge City Council
Hon. Stephen W. Rideout, Complainant

April 13, 2017

Stephen W. Rideout, a Cambridge City Commissioner, alleges that the Cambridge City Council violated the Act in various ways with regard to the closed meeting that the Council held on February 21, 2017. The City Attorney, who did not attend the meeting, responded on the Council's behalf.

First, Complainant alleges that the Council violated the Act by posting a notice and an agenda for a "Closed session (closed to the public)" to occur on February 21, 2017 without inviting the public to attend the Council's vote to close the session to the public. The Council concedes that it was required to hold the vote in public, *see* § 3-305(d)¹, and therefore to provide the public with advance notice of the public's right to attend. § 3-302. We find that the Council violated these sections.

Second, Complainant alleges that the Council violated the Act by failing to provide, in its meeting notice, sufficient information about the topics to be discussed at the anticipated closed session. The Act does not require public bodies to include that information in their agendas. *See* § 3-302.1 (requiring an agenda to "indicat[e] whether the public body expects to close any portion of the meeting in accordance with § 3-305"). However, § 3-305(d) requires the presiding officer to make a written statement, at the time of closing, that specifies three items of information: the topics to be discussed, the reasons for closing the session, and a "citation of the authority" under § 3-305 for the closed session. A pre-prepared statement or agenda satisfies § 3-305(d) when (1) it contains the required information, and (2) the public body adopted it as the public body's closing statement at the time of closing. 9 *OMCB Opinions* 1, 6 (2013); *see also* Open Meetings Act Manual (2016) Chapter 5, Part A (explaining the § 3-305(d) requirements). Although staff may prepare the closing statement in advance for the public body's consideration and vote, the responsibility for its accuracy at the time of closing lies with the presiding officer. 9 *OMCB Opinions* 15, 23 (2013).

Here, the agenda specified "City Attorney proposals" as the topic to be discussed, and it referred to a closed session for "personnel matters." We find that the agenda did not serve as an adequate closing statement either as to content or as to its adoption. As to

¹ Statutory citations are to the General Provisions Article of the Maryland Annotated Code (2014, with 2016 supp.).

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content, the agenda does not specify the Council's reason for closing and does not cite any authority under § 3-305. We understand that § 3-305(b)(1), the exception that permits public bodies to close a meeting in order to discuss appointment or employment matters pertaining to particular individuals, is often referred to as the "personnel matters" or "personnel" exception. However, the public does not necessarily know that, and the Act requires a "citation" so that the public is assured that the Act authorizes the closed session. As to the use of an agenda as the presiding officer's written statement, we see no indication that the Council adopted the agenda as a written closing statement. The response acknowledges, and we find, that the Council violated § 3-305(d).

Third, Complainant alleges that the closed-door discussion exceeded the scope of the topic disclosed on the agenda. *See* § 3-305(b) (providing authority for closing a meeting only to discuss certain topics) and (d) (conditioning the authority to close a session on the disclosure, in the written statement, of the topics to be discussed). As predicted on its closing statement, the Council reviewed proposals of law firms that had responded to the City's request for proposals for the position of City Attorney. That discussion fell within both the Council's description and the personnel exception. *See* § 3-305(b)(1); *see also* 7 *OMCB Opinions* 125, 128 (noting that a discussion about the public body's attorney's contract fell within the exception); *Open Meetings Act Manual* (2016) Chapter 4, Part A (explaining the exception). Additionally, Complainant alleges, the Mayor asked the City Manager to report on the city's receipt of a letter from the current City Attorney about the City's contract with him. Complainant further states that a Council member and Complainant remarked on the matter briefly before the City Manager ended the discussion. The response acknowledges that the topic had not been "planned," that the topic was not "entirely" germane to the review of proposals for the position, and that the Council will take measures in the future to avoid straying into discussions of topics not disclosed on the written statement. We find that the Council violated § 3-305 by discussing a topic other than the one that it had disclosed. As noted in 9 *OMCB Opinions* 46, 50 (2013), the introduction of an unplanned topic during a closed session renders the closing statement inaccurate and the members' vote insufficient as to the new topic. We refer the Council to that opinion.

Fourth, Complainant alleges that the Council violated the Act when it did not return to open session after the closed session. The Act does not impose such a requirement. The Act thus permits public bodies to schedule their closed-session items as the last items on the agenda so as not to inconvenience the public.

In conclusion, we find that the Council violated §§ 3-302 and 3-305 with regard to its February 21, 2017 closed session.

As required by § 3-211, the Council must announce these findings at its next meeting and submit to us a signed copy of this opinion.

Open Meetings Compliance Board

Jonathan A. Hodgson, Esq.

April C. Ishak, Esq.

Rachel A. Shapiro Grasmick, Esq.

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- ◆ **2(B) NOTICE-CONTENT: NOTICE OF “CLOSED SESSION” MUST CONVEY THAT VOTE TO CLOSE IS OPEN TO THE PUBLIC**
- ◆ **5(C)(1) WRITTEN CLOSING STATEMENT: AGENDA NOT SUFFICIENT WHEN NOT ADOPTED AS CLOSING STATEMENT AND NOT COMPLETE**
- ◆ **5(A)(2) CLOSED SESSIONS: IN VIOLATION, DISCUSSION OF TOPIC NOT DISCLOSED ON WRITTEN STATEMENT**

*Topic numbers and headings correspond to those in the Opinions Index (2014 edition) posted on the Open Meetings webpage at www.marylandattorneygeneral.gov/Pages/OpenGov/OpenMeetings/index.aspx

April 13, 2017

Re: Cambridge City Council
(Hon. Stephen W. Rideout, Complainant)

Stephen W. Rideout, a Cambridge City Commissioner, alleges that the Cambridge City Council violated the Act in various ways with regard to the closed meeting that the Council held on February 21, 2017. The City Council responded.

First, Complainant alleges that the Council violated the Act by posting a notice and an agenda for a “Closed session (closed to the public)” to occur on February 21, 2017 without inviting the public to attend the Council’s vote to close the session to the public. The Council concedes that it was required to hold the vote in public, *see* § 3-305(d)¹, and therefore to provide the public with advance notice of the public’s right to attend. § 3-302. We find that the Council violated these sections.

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time of closing, that specifies three items of information: the topics to be discussed, the reasons for closing the session, and a “citation of the authority” under § 3-305 for the closed session. A pre-prepared statement or agenda satisfies § 3-305(d) when (1) it contains the required information, and (2) the public body adopted it as the public body’s closing statement at the time of closing. 9 *OMCB Opinions* 1, 6 (2013); *see also* Open Meetings Act Manual (2016) Chapter 5, Part A (explaining the § 3-305(d) requirements). Although staff may prepare the closing statement in advance for the public body’s consideration and vote, the responsibility for its accuracy at the time of closing lies with the presiding officer. 9 *OMCB Opinions* 15, 23 (2013).

Here, the agenda specified “City Attorney proposals” as the topic to be discussed, and it referred to a closed session for “personnel matters.” We find that the agenda did not serve as an adequate closing statement either as to content or as to its adoption. As to content, the agenda does not specify the Council’s reason for closing and does not cite any authority under § 3-305. We understand that § 3-305(b)(1), the exception that permits public bodies to close a meeting in order to discuss appointment or employment matters pertaining to particular individuals, is often referred to as the “personnel matters” or “personnel” exception. However, the public does not necessarily know that, and the Act requires a “citation” so that the public is assured that the Act authorizes the closed session. As to the use of an agenda as the presiding officer’s written statement, we see no indication that the Council adopted the agenda as a written closing statement. The response acknowledges, and we find, that the Council violated § 3-305(d).

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In conclusion, we find that the Council violated §§ 3-302 and 3-305 with regard to its February 21, 2017 closed session.

Open Meetings Compliance Board

Jonathan A. Hodgson, Esq.

April C. Ishak, Esq.

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* The Compliance Board revised this opinion on April 20, 2017, to reflect that the City Council responded to the complaint.