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STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE
BOARD

18 Official Opinions of the Compliance Board 101 (2024)

July 5, 2024

Prince George's County Fire Commission

The Complainant has filed two complaints alleging that the Prince George's County Fire Commission (the "Fire Commission" or "Commission") has violated several aspects of the Open Meetings Act (the "Act") pertaining to notice, agendas, and minutes. As we explain below, we find that the Commission violated the Act by failing to prepare an agenda for a meeting, failing to include a known item of business on the agenda of another meeting, and failing to post a set of meeting minutes online when it was practicable to do so.

A. Agenda and minutes of April 2022 meeting

The Complainant's first set of allegations concern the Act's requirements for agendas and minutes. Specifically, the Complainant asserts violations based on the Commission's alleged failure to reference, either in a meeting agenda or meeting minutes, the election of the Commission's secretary in April 2022.

"[B]efore meeting in an open session," the Act requires a public body to "make available to the public an agenda: (i) containing known items of business or topics to be discussed at the portion of the meeting that is open; and (ii) indicating whether the public body expects to close any portion of the meeting" § 3-302.1(a)(1).¹ "[A]s soon as practicable after [the] public body meets, it shall have minutes of its session prepared," reflecting: "(i) each item that the public body considered; (ii) the action that the public body took on each item; and (iii) each vote that was recorded." § 3-306(b)(1), (c)(1).²

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

² "A public body need not prepare minutes of an open session if: (i) live and archived video or audio streaming of the open session is available; or (ii) 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).

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The Commission acknowledges that it did not prepare a meeting agenda in April 2022, as it was not aware at that time that it was required to do so. But the Commission asserts that its secretary was appointed solely by the chair of the Commission, not elected by the entire body, and, thus, the appointment would not have appeared on a meeting agenda anyway. If, as the Commission asserts, it did not anticipate discussing the appointment of the secretary at a meeting, it was not required to include the appointment as an item of business on the agenda of any April 2022 meeting. But the failure to prepare an agenda at all was, as the Commission acknowledges, a violation of § 3-302.1(a)(1).

With respect to minutes, the Commission acknowledges that “the meeting minutes of the April 2022 Fire Commission meetings were uploaded late.” The Act requires that a public body post minutes online “[t]o the extent practicable.” § 3-306(e)(2). The Commission asserts that a member “was supposed to upload the meeting minutes” but “had some delays in doing so.” We understand this to be an acknowledgement that, despite it being practicable to do so, the Commission failed to promptly post the April 2022 minutes online. The delay in doing so was a violation of § 3-306(e)(2). *See, e.g., 18 OMCB Opinions 5, 10 (2024); 16 OMCB Opinions 30, 39 (2022).*

B. Alleged meeting in December 2023 to elect officers

The Complainant next asserts that the Fire Commission violated the Act by failing to note in a meeting agenda or minutes that the Commission met in December 2023³ to elect officers. The Fire Commission responds that no such meeting took place. According to the Commission, the body recommends candidates to the Fire Chief, who in turn forwards recommended candidates to the County Executive for appointment. The Commission denies that it discussed candidates at a meeting. Because the record does not conclusively establish that the Commission met in December 2023 to discuss candidates, we cannot find that the Fire Commission violated the Act by failing to prepare an agenda or minutes of a meeting. *See, e.g., 15 OMCB Opinions 132, 134 (2021) (declining to find a violation when the complainant inferred that a meeting must have taken place but the public body denied that any such meeting occurred); 4 OMCB Opinions 67, 68 (2004) (same).*

C. Agenda and minutes showing training officer’s appointment

The Complainant asserts that, at a March 6, 2024, meeting, “it was reported that a training officer had been appointed by the Fire Commission.” But the Complainant alleges that there was no notice of the meeting at which the officer was appointed, and the Commission never referenced the appointment in a meeting agenda or minutes. He further

³ The complaint refers to December 2024 but, based on the response and the fact that December 2024 has not yet arrived, we assume that the Complainant meant December 2023.

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asserts that the officer was appointed by only four commissioners, which is less than a quorum of the body.

The Commission responds that the training officer was appointed during a meeting on January 3, 2024. Notice of the meeting appeared on an online calendar, where the Commission posts notice of all meetings. Minutes of the meeting reflect the appointment of the training officer. The Commission also prepared an agenda for the meeting, although the agenda did not mention the appointment of the training officer. The Commission asserts, however, that this is because the Commission did not know, in advance of the meeting, that it would address this item of business; the issue only came up once the meeting was underway. Based on the record before us, then, we do not find any violations with respect to the Act's provisions governing notice, agenda, and minutes.

As to the Complainant's grievance about an alleged lack of a quorum, we note that the Act applies only when a public body "meets," *e.g.*, 17 *OMCB Opinions* 101, 102 (2023), and "[m]eet' means to convene a quorum of a public body to consider or transact public business," § 3-101(g). If, as the Complainant alleges, a quorum was not present, the Act did not apply, absent some evidence that the Commission deliberately evaded the Act by, for example, using a "walking quorum." 17 *OMCB Opinions* 34, 37 (2023) (noting that "a public body may not skirt the Act's requirements" by using a "walking quorum," "whereby members of a public body convene to discuss public business but arrange for members to cycle in and out of the meeting space so that a quorum is never officially present in one room"); *see also Community and Lab United For Baltimore Charter Comm. (CLUB) v. Baltimore City Bd. of Elections*, 377 Md. 183, 189-91, 194-97 (2003) (applying the Act to a gathering of a public body, even though a quorum was not always present because members of the body moved in and out of the meeting room). The record here is devoid of any such evidence. Indeed, the minutes of the January 3 meeting reflect the presence of seven of the nine commissioners, well more than a quorum. *See* § 3-101(k) ("Quorum' means: (1) a majority of the members of a public body; or (2) the number of members that the law requires.").

D. April 2024 adoption of bylaws

Finally, the Complainant alleges that the Fire Commission violated the Act by failing to reference, in the agenda of an April 15, 2024, meeting, that the Commission would be voting on bylaws. He further complains that the bylaws "were not available to the public prior to the meeting or after adoption," and "[t]he only copy available was a draft used at a work session the prior week."

With respect to the agenda, the Fire Commission concedes that the vote on the bylaws did not appear on the agenda for the April 15 meeting, despite being a known item of business. The vote had been "discussed during the previous meeting," which the

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Commission apparently understood to be sufficient notice that the vote would take place on April 15. We disagree. Because the Act explicitly requires an agenda to indicate known items of business, § 3-302.1(a)(1), the omission of such an item—even one discussed at a prior meeting—violates the Act. After all, “the purpose of the agenda requirement is to provide members of the public ‘information that will help them decide whether to attend a particular meeting.’” 16 *OMCB Opinions* 62, 62 (2022) (quoting 15 *OMCB Opinions* 1, 3 (2021)). Here, a member of the public would not know that the Fire Commission planned to vote on bylaws at its April 15 meeting unless that person had attended the prior meeting. The omission of this known item of business from the April 15 meeting agenda was a violation of § 3-302.1(a)(1).

As to the public’s access to the bylaws themselves, “the Act requires a public body to make an agenda available to the public, but it imposes no such requirement for documents related to an agenda item.” 16 *OMCB Opinions* at 62 (citation omitted). Likewise, the Act “does not require a public body to attach to its minutes the documents reviewed during a meeting.” 8 *OMCB Opinions* 122, 123 (2012). We thus find no violation in this regard.

Conclusion

We conclude that the Commission violated § 3-302.1(a)(1) by failing to prepare an agenda for a meeting and by failing to include a known item of business on the agenda of another meeting. We also find that the Commission violated § 3-306(e)(2) by failing to post one set of meeting minutes online when it was practicable to do so. We do not, however, find that the Commission violated the Act by failing to append to a meeting agenda or minutes a copy of a document that the Commission considered at a meeting.

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

Open Meetings Compliance Board

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