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Calvert County Board of County Commissioners

The Complainant alleges that the Calvert County Board of County Commissioners (the "County Board" or "Board") has violated the Open Meetings Act (the "Act") by failing to make sufficiently detailed public disclosures before and after meeting in closed sessions, and by using a website that "acts as a structural barrier to public access." For the reasons below, we agree that the County Board has failed to comply with the Act's requirements for public disclosures before and after meeting in closed sessions. But we find no violation with respect to the County's website design.

Discussion

A. Written closing statements

We begin with the allegation that the County Board has violated the Act by "routinely rel[ying] on identical, copy-pasted, single-sentence boilerplate" in public disclosures before the Board meets in closed sessions.

Generally, a public body must meet in open session, § 3-301[1] unless the body is performing a function that is not subject to the Act's openness requirements,[2] or the body properly invokes at least one of fifteen exceptions in § 3-305(b). Before meeting in a closed session under one or more of the exceptions, however, the body must, among other things, have its presiding officer prepare "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). As we have previously explained, "each of the three items in the written statement serves a distinct purpose and must be included." 10 *OMCB Opinions*

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

[2] With few exceptions, the Act does not apply to a public body when it is performing an administrative, judicial, or quasi-judicial function. § 3-103(a)(1); *see also* § 3-101(b) (defining "administrative function"), § 3-101(e) (defining "judicial function"), § 3-101(i) (defining "quasi-judicial function").

46, 49 (2016) (citing 9 *OMCB Opinions* 15, 22-24 (2013)). "[T]he written statement of the topics to be discussed and reasons for closing allows the members to cast an informed vote on whether the claimed reason is sufficient to depart from the Act's norm of openness—that is whether it 'really is necessary' to exclude the public." 9 *OMCB Opinions* 46, 49 (2013) (quoting 4 *OMCB Opinions* 46, 48 (2004)). "A properly drafted statement also enables members of the public to understand why they are being excluded and, later, to ascertain from the summary of the closed session[3] whether the members adhered to the topics they identified." 9 *OMCB Opinions* at 49. We thus have "long encouraged public bodies to disclose as much information as possible on their closing statements." 9 *OMCB Opinions* 167, 168 (2014).

Here, the Complainant alleges that the County Board has repeatedly failed to disclose the nature of the public business it discusses in closed session. The Complainant directs our attention to a few "[r]epresentative examples": the written statements for closed sessions on March 11, March 18, and August 26, 2025. We agree that each written closing statement omits required details.

Before we discuss those missing details, however, we address a preliminary matter: how the County Board prepared these written closing statements. As already noted, the Act requires a public body's presiding officer to prepare a written closing statement *before* the body meets in closed session. But according to the County Board, the body's past practice was to disclose only some of the required details before meeting in a closed session; the Board disclosed other details only after the closed session, by incorporating a closed-session summary into the closing statement. For example, the closing statement for the March 11, 2025, closed session cited the statutory authority for closing the meeting; but, in a space for disclosing the topics of discussion and reasons for discussing them in closed session, said only "see memo." An attached memo, apparently prepared *after* the closed session, disclosed "[t]opics actually discuss*ed*" and "[a]ction [t]aken." The County Board asserts that it has changed its protocol and now discloses all required details before convening in closed session. But we conclude that the body's past practice of withholding some details until after closed sessions, violated § 3-305(d)(2).

Having addressed that preliminary matter, we turn our attention to the substance of the written closing statements for the closed sessions on March 11, March 18, and August 26, 2025.[4] Although each discloses the statutory authority for convening in closed session,

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[3] As discussed later, the Act also requires a public body to prepare a closed-session summary after convening in closed session. *See* § 3-306(c)(2).

[4] The County Board asserts that we should consider only the written closing statements for March 11 and March 18, as the complaint included copies of only those statements. The body of the complaint, however, also mentions the August 26 closed session, and the Complainant asserts that these are only "[r]epresentative examples" of violations the County Board has committed over two years. Because we are not an investigatory body, *see, e.g.*, 6 *OMCB*

we find that the statements fail to adequately describe all the topics of discussion and the reasons for discussing those topics in closed session. For example, the March 11 and March 18 statements each invoke the legal advice exception of § 3-305(b)(7) but describe the topic merely as "[d]iscussion of legal advice," a description we have previously found too vague to satisfy the Act. *See, e.g.*, 6 *OMCB Opinions* 77, 82 (2009).

We find several other topic descriptions to be insufficiently detailed to satisfy the Act. On the March 11 closing statement, the topic description "[d]iscussion of appropriate investment of funds" nearly mirrors the statutory exception of § 3-305(b)(5), which allows a public body to convene in closed session to "consider the investment of public funds." Similarly, on the March 18 closing statement, the County Board described one topic as "[d]iscussion of offer to acquire property," a mere paraphrase of the exception in § 3-305(b)(3), which allows a public body to convene in closed session to "consider the acquisition of real property for a public purpose and matters directly related to the acquisition." The problem is that "[w]e have often cautioned public bodies about merely repeating or paraphrasing the words of the statutory exception in lieu of meaningfully disclosing the topics of the closed session or reasons for closure." 15 *OMCB Opinions* 63, 65 (2021). By merely paraphrasing the statutory exceptions here, the County Board failed to provide sufficiently detailed descriptions of the topics of discussion. *See, e.g.*, 1 *OMCB Opinions* 245, 246-47 (1997) (finding that a body failed to provide a sufficiently detailed topic description when it disclosed that it had convened in closed session "[t]o receive an update on the acquisition of real property for a public purpose by the Public Building Committee"); *cf.* 4 *OMCB Opinions* 114, 118 (2005) (concluding that a public body failed to make a sufficiently detailed disclosure in a closed-session summary under § 3-306(c)(2) when the body said that it met in closed session "to consider the investment of public funds").

We also doubt whether the March 11 topic description "[d]iscussion of potential litigation" was sufficiently detailed to satisfy the Act. This description merely paraphrases § 3-305(b)(8), which allows a public body to convene in closed session to "consult with staff, consultants, or other individuals about pending or potential litigation." We have warned that, "under ordinary circumstances, the bare statement 'possible litigation' would be insufficient compliance," 1 *OMCB Opinions* 242, 244 (1997), and we see little difference between "*potential* litigation" and "*possible* litigation." That said, we have stopped short of finding a violation based on such language in the past, recognizing our inability to substitute our judgment for that of a body's attorney "as to the possible consequences of saying anything more" about potential litigation. *Id.* at 243-44. But we repeat our warning that "[u]ninformative boilerplate provides the reader with no

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Opinions 63, 67 n.4 (2008), and because we think we need not review each closing statement in the past two years to provide guidance to the County Board and the public, we focus on the three closing statements mentioned in the complaint.

opportunity to evaluate the propriety of a closed meeting." 5 *OMCB Opinions* 149, 152 (2007). We thus encourage the County Board, in the future, to disclose more details when invoking the litigation exception of § 3-305(b)(8).

Finally, with respect to the August 26 written closing statement, the Complainant alleges that the description "[m]atters pertaining to benefits, appointments, and recommendations for appointments" was too vague to satisfy the Act. We agree. For this discussion, the County Board invoked § 3-305(b)(1), which allows 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[.]

We have said that a public body should, at the very least, disclose the category of personnel matter that it will discuss in closed session, *e.g.*, 13 *OMCB Opinions* 1, 3 (2019), and the County Board did so here, disclosing that it would be discussing benefits and appointments. The problem, as we see it, is that the description did not make clear that the County Board's discussion would "involve the personal attributes or performance of specific individuals and [would] not instead involve broader policy, which would be implicated when anyone in the position would be affected by the action being considered and which would therefore not fall within the exception." 16 *OMCB Opinions* 110, 111 (2022) (quoting 7 *OMCB Opinions* 225, 228 (2011)). We thus conclude that this topic description was also too vague to satisfy the Act.

In addition to providing insufficiently detailed topic descriptions, the closing statements here also failed to explain why the County Board elected to discuss these topics in closed session. "As we have previously pointed out, closing a meeting under any exception in § 3-305(b) is discretionary, not mandatory." 17 *OMCB Opinions* 42, 46 (2023). And, as already noted, § 3-305(d)(2) requires a public body to disclose not only the topics it will discuss in closed session but the reason for closing the meeting. The statements here omit any meaningful explanations for why the County Board elected to exclude the public from the discussions. For example, neither the March 11 or March 18 statements explained why the County Board sought legal advice in closed session. As we have said before, "'it is not necessarily a foregone conclusion that a public body's attorney should only address the members' questions in a closed session.'" 19 *OMCB Opinions* 362, 364 (2025) (quoting 17 *OMCB Opinions* 83, 85 (2023)). "For example, '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.'" 20 *OMCB Opinions* 101, 105 (2026) (quoting 15 *OMCB Opinions* 99, 101 (2021)). "If so, the public body should disclose those reasons . . . ." *Id.* (quoting 15 OMCB Opinions at 101).

Similarly, when explaining the reasons for invoking other exceptions in § 3-305(b), the County Board "did not have to say much" to comply with the Act, "but it had to say *something* about the reason for excluding the public." 18 *OMCB Opinions* 12, 18 (2024). "As we have previously explained, '[t]he written statement of the reason, in particular, enables each member of the public body, before voting, to consider whether the reason is sufficient to depart from the Act's norm of openness.'" 19 *OMCB Opinions* 315, 321 (2025) (quoting 4 *OMCB Opinions* 46, 48 (2004)). "And even if the reason for a closure 'may be apparent upon reflection,' that is 'no excuse for omitting it . . . from the written statement.'" *Id.* (quoting 4 *OMCB Opinions* at 49).

In sum, we find that the County Board violated § 3-305(d)(2) because the closing statements for March 11, March 18, and August 26, 2025, did not adequately disclose topics of discussion and omitted reasons for discussing these topics in closed session. We also find that the Board violated the Act by failing to prepare complete closing statements before meeting in closed sessions.

B. Closed-session summaries

We turn next to the Complainant's allegations that the County Board violated the Act by failing to make sufficiently detailed disclosures following two closed sessions.

After a public body meets in closed session, the Act requires the body to include in the minutes for its next open session:

(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 of this subtitle 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 alleges that the summaries for closed sessions on May 13, 2025, and April 28, 2026, failed to provide enough details to satisfy the Act. Both sessions involved the business location exception of § 3-305(b)(4), which permits a public body to convene in closed session to "consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State." The closed-session summaries indicate that the County Board, on May 13, 2025, discussed an "[e]xtension pertaining to a proposal for a business or industrial organization to locate, expand, or remain in the State," and, on April 28, 2026, discussed "[m]atters pertaining to a request from a local business." The Complainant alleges that the closed-session summaries improperly hid the identities of the businesses and omitted "all defining characteristics of these transactions."

Because the purpose of the business location exception is to "address the business's interest in protecting its own identity and information," 7 *OMCB Opinions* 148, 163 (2011), we have said that "a public body 'need not reveal the name of the business entity, the nature or level of the financial assistance being considered to lure the business, or other specific information that could reasonably be foreseen as disadvantageous to [the body's] negotiating position.'" 18 *OMCB* Opinions 105, 109 (2024) (4 *OMCB Opinions* 142, 145 (2005)). But "even when the identity of the proposal or property must be secret, the public body can usually add some additional detail beyond the very broad words of the statutory exception." 12 *OMCB Opinions* 62, 63 (2018). And we agree with the Complainant that the County Board did not disclose enough information to satisfy the Act.

As with written closing statements, closed-session summaries must avoid "describing closed-session discussions in . . . broad and uninformative way[s]," 9 *OMCB Opinions* 71, 75 (2013), and must "provide the public enough information 'to broadly ascertain whether the actual discussion fell within the exceptions that the public body claimed as a basis for excluding the public,'" 16 *OMCB Opinions* 30, 38 (2022) (quoting 9 *OMCB Opinions* 127, 131 (2014)). A public body may not "merely paraphras[e] the applicable statutory exemption." 18 *OMCB* Opinions 94, 98 (2024) (quoting 6 *OMCB Opinions* 171, 174 (2009)).

The May 13 disclosure basically parroted the statutory exception. To be sure, the summary indicated that the discussion involved an "*[e]xtension pertaining* to a proposal for a business or industrial organization to locate, expand, or remain in the State." (Emphasis added). But the summary offered no further explanation of what "extension" means. If, for example, the County Board was talking about a business extending its lease, we fail to see why the body could not disclose that fact.

Likewise, the April 28 disclosure said only that the County Board discussed "[m]atters pertaining to a request from a local business." But the summary said nothing more about the nature of the request. We think, to comply with the Act, the Board "needed to offer a more detailed description." 18 *OMCB Opinions* 105, 109 (2024) (concluding that a closing statement that parroted the statutory language of § 3-305(b)(4) was insufficient). To be clear, the disclosure could still have been "quite general" and protected confidential information. 4 *OMCB Opinions* 143, 146 (2005) (suggesting that a closing statement would have satisfied the Act if it had simply said that the body planned "to discuss a specific company's potential move to the County and the extent of County financial assistance to offer that company"). But to say only that the County Board discussed "a request from a local business" did not satisfy the Act's minimum requirements regarding topic descriptions.

We also find that the County Board violated the Act by omitting any reason for having these discussions in closed sessions. Regarding the purpose of the closures, the closed-session summaries merely repeated the statutory language of § 3-305(b)(4). But the purpose and statutory authority for the closure are distinct elements of a closed-session summary. *See* § 3-306(c)(2); *see also, e.g.*, 19 *OMCB Opinions* 315, 324 (2025) (finding a violation when a closed-session summary failed to say why a public body had convened in closed session). We thus find that the County Board violated § 3-306(c)(2) because the summaries of the closed sessions on May 13, 2025, and April 28, 2026, failed to include sufficiently detailed topics of discussion and the purpose of the closures.[5]

C. Website design

Finally, the Complainant alleges that Calvert County "has deployed a web portal layout that acts as a structural barrier to public access." Specifically, the Complainant alleges that, because of the way the County website posts written closing statements, "the text is completely shielded from standard local browser searches (Crt + F) and external web crawlers or indexers." According to the Complainant, "[t]his design choice effectively ensures that a resident searching for 'zoning,' 'utility,' or specific economic exceptions cannot find these public records via ordinary means."

We find no violation as to this allegation. Although the Act requires public bodies to post certain meeting documents online "to the extent practicable," *see* § 3-305(d)(6) (written closing statements), § 3-306(e)(2) (minutes), the Act "does not micromanage the way in which a public body organizes its website," 13 *OMCB Opinions* 27, 28 (2019); *see also* 14 *OMCB Opinions* 42, 44 (2020) (noting that "[w]e have generally declined to second-guess the way in which public bodies organize the websites they use for posting notices and other meeting information"); 7 *OMCB Opinions* 259, 263 (2011) (finding no violation with respect to notice on a website that "was difficult to locate" but encouraging

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[5] The Complainant asks that we "[c]ompel the County [Board] to redraft compliant, detailed post-session summaries." But we have no authority to compel compliance with the Act, *see, e.g.*, 3 *OMCB Opinions* 328, 333 (2003), only the authority to opine on whether a public body has violated the Act's requirements, § 3-207(a)(2).

the body to make web content "more accessible"). We thus find no violation of the Act based on the design of the County's website.

Conclusion

We conclude that the County Board violated § 3-305(d)(2) because the closing statements for March 11, March 18, and August 26, 2025, did not adequately disclose topics of discussion and omitted reasons for discussing these topics in closed session, and the body did not prepare complete closing statements before meeting in closed sessions. We also find that the County Board violated § 3-306(c)(2) because the summaries of the closed sessions on May 13, 2025, and April 28, 2026, failed to include sufficiently detailed topics of discussion and the purpose of the closures. We find no violation of the Act with respect to the County's website design.

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

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