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STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE
BOARD

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La Plata Town Council

The Complainant alleges that the La Plata Town Council (the “Town Council” or “Council”) violated the Open Meetings Act (the “Act”) by failing to make required public disclosures before and after meeting in a closed session. For the reasons below, we agree that the Town Council violated the Act by failing to include all the required details in those disclosures.

Background

The Town Charter vests legislative powers in the Council, which consists of the Mayor and four Council members. *See* La Plata Town Charter § C3-1. The Mayor has the following duties: The Mayor acts as head of the administrative branch of town government; appoints heads of all offices, departments, and agencies (with the approval of the Council); reports to the Council on “the condition of municipal affairs”; and has “complete supervision over the financial administration of the town government.” *Id.* § C4-3.A through D. But the Charter also authorizes the Council to appoint a Town Manager, in which case the Manager assumes these duties. *Id.* §§ C4-3.E, C5-1, C5-5. “Neither the Mayor nor any member of the Council shall receive [an] appointment [as Town Manager] during the term for which he shall have been elected nor within one (1) year after the expiration of his term.” *Id.* § C5-1.

In late June 2024, the Town Manager submitted his resignation to the Town Council. The Council did not immediately fill the vacancy but, rather, opted for the Town Manager’s duties to revert to the Mayor.

On September 3, 2024, the Town Council convened and voted to enter closed session under the Act’s so-called personnel matters exception, which allows a public body to meet 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).¹ During this closed session, the Council approved a stipend for the Mayor as compensation for assuming the duties once performed by the Town Manager.

Discussion

The Complainant alleges that the Town Council violated the Act by not providing enough details in its disclosures to the public before and after the Council met in closed session.

A. Public disclosures before meeting in closed session

The Act generally requires that a public body conduct its meetings in the open, § 3-301, except when the public body carries out a function outside the scope of the Act,² or discusses a matter that falls within one of fifteen exceptions that allow for closed meetings, § 3-305(b). Before meeting in closed session under one of the exceptions, however, the presiding officer must “make a written statement of the reason for closing the meeting, including a citation of the authority under [§3-305(b)], and a listing of the topics to be discussed.” § 3-305(d).

As noted above, the Town Council voted to enter closed session under the personnel matters exception in § 3-305(b)(1). The written closing statement cited that statutory provision. In a space for the topic of discussion and reason for the closure, the closing statement listed “(1)(i) Personnel.” The closing statement, apparently updated after the closed session, also indicated that, during the closed session, “[t]he Town Council voted on a stipend for the Acting Town Manager.”

The Complainant’s grievance focuses on the Town Council’s description of the action taken in the closed session. The Complainant alleges that the Council violated the

¹ Except as otherwise noted, 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 carrying out administrative, judicial, or quasi-judicial functions. § 3-103(a); *see also* § 3-101(b) (defining “administrative function”); § 3-101(e) (defining “judicial function”); § 3-101(i) (defining “quasi-judicial function”).

Act by omitting from that description “the designation of the Mayor as the ‘Acting Town Manager’ and the associated financial implications.”³ We find no violation as to this allegation, because the Act does not require the written closing statement to make any disclosures about what takes place during the closed session.

We do, however, find that the Town Council violated § 3-305(d)(2)(ii) by failing to disclose on the written closing statement the topic of discussion and the reason for the closure. “As we have previously explained, ‘each of the three items in the written statement’”—the statutory authority for closing the meeting, the topic of discussion, and the reason for discussing this topic in a closed session—“serves a distinct purpose and must be included.” 15 *OMCB Opinions* 99, 100 (2021) (quoting 10 *OMCB Opinions* 46, 49 (2016)). “[T]he written statement of the topics to be discussed and reasons for closing allows the members [of a public body] 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 whether the members adhered to the topics they identified.” *Id.* at 49. Thus, “[s]omeone reading the written statement ought to have the answer to two questions: what are the [members of the public body] planning to talk about (‘topics to be discussed’), and why should this topic be discussed in closed session (‘the reason for closing the meeting’).” 4 *OMCB Opinions* at 49.

Here, for the topic of discussion and reason for closure, the written closing statement said only “(1)(i) Personnel.” This was plainly insufficient. “We have long said that ‘the mere parroting’ or a rote paraphrase of the applicable exception is not acceptable as a topic description.” 18 *OMCB Opinions* 105, 108 (2024) (quoting 4 *OMCB Opinions* 142, 145 (2005)). “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)). Here, the Town 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).

³ The Complainant asserts that the Council’s action in closed session appears to conflict with town ordinances and charter provisions governing the Mayor’s compensation and who may serve as Town Manager. But “[o]ur authority is limited to interpreting the Open Meetings Act.” 18 *OMCB Opinions* 84, 86 n.6 (2024). Thus, we will not consider whether the Council violated the Town charter or Town ordinances.

The Town Council also failed to disclose *why* the body felt it necessary to discuss this matter in closed session. *See, e.g., 17 OMCB Opinions* 42, 46 (2023) (noting that “closing a meeting under any exception in § 3-305(b) is discretionary, not mandatory”). The Council’s response to the complaint indicates that the meeting was called “to discuss [a Council member’s] concerns about the current performance of the [Town]’s senior staff members and the CEO [i.e., the Mayor], in light of the workload and staffing levels.” To comply with the Act,

the [Town Council] did not have to say much, but it had to say *something* about the reason for excluding the public, for example, that the particular matter[] under discussion [was] 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 [Council] members “to discuss the qualifications of [individuals] 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).

18 OMCB Opinions at 108. Here, the Town Council offered no explanation for why it felt it necessary to meet in closed session. The omission of a sufficiently detailed description of the topic of discussion and the reason for the closure violated § 3-305(d)(2)(ii).

B. Public disclosures after meeting in closed session

The Complainant also alleges a violation of the Act based on the Town Council’s public disclosures after its September 3 closed session.

“If a public body meets in closed session,” the Act requires that “the minutes for the body’s] next open session” include the following:

- (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 alleges that the closed-session summary “lacked detailed information regarding deliberation topics and actions taken.” Specifically, the Complainant alleges that the minutes “did not reflect the authorization of a substantial increase in the mayor’s compensation.”

We agree that the Town Council’s closed-session summary violated the Act by failing to include required details. But before getting into how the *content* of the disclosure was deficient, we address the *location* of the disclosure. It appears that the Council disclosed details of the closed session in two separate places: in the minutes of the September 3 meeting in which the body entered closed session, and on the written closing statement. Although the plain language of § 3-306(c)(2) requires a closed session summary to appear in the minutes of the public body’s “next open session,” we have said that “these disclosures may be included in the minutes for the meeting at which the closed session actually occurred—even if the public body does not return to open session that day.” 15 *OMCB Opinions* 46, 47 (2021). We thus see no problem with the Town Council summarizing the closed session in the September 3 minutes. Putting a summary in the written closing statement, however, did not comply with the Act. As we have said before, “the closed-session summary that a public body adopts as part of its meeting minutes constitutes the members’ statement to the public that the summary reflects what happened behind closed doors.” 14 *OMCB Opinions* 66, 69 (2020). “Unless a public body incorporates into its minutes the entries that someone has made on the worksheet portion of a closing statement, those entries are merely one person’s notes.” *Id.* Here, it is not clear that the Council incorporated the written closing statement into the minutes. *See* 13 *OMCB Opinions* 5, 8 (2019) (recognizing that “the Act requires the summary to be part of the minutes, or at least incorporated in such a way that a person reading the open-session minutes has quick access to it”).

Regardless, the content of the summary is deficient. Collectively, the written closing statement and September 3 minutes indicate who attended the closed session, how each member of the Council voted on the motion to close the meeting, and the statutory authority the Council invoked to enter closed session. But the Council did not disclose the other required details, including the topic of discussion. The minutes describe the topic only as “personnel,” which is insufficient. As with written closing statements, “the summary of a closed meeting must go beyond a mere parroting of the statutory exception,” 3 *OMCB Opinions* 173, 178 (2002), and “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)); *see also* 11 *OMCB Opinions* 12, 17 (2017) (“A closed-session summary that merely repeats the words of the statutory exception seldom provides enough information about the topics discussed.”).

We also find the description of the action taken deficient. We see no action described in the minutes, and the written closing statement indicates that the Council “voted on a stipend for the Acting Town Manager.” The statement does not indicate, however, the outcome of that vote. But the Town Council’s response to the complaint asserts that the body *approved* the stipend. Because the Town Council failed to provide this and other details required of a closed-session summary, we find a violation of § 3-306(c)(2).

Conclusion

We conclude that the Town Council violated § 3-305(d)(2)(ii) before meeting in closed session by failing to include in the written closing statement adequate descriptions of the topic to be discussed in closed session and the reason for closing the meeting to have that discussion. We also conclude that the Council violated § 3-306(c)(2) by failing, after the closed session, to include all the details required of a closed-session summary.

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

Open Meetings Compliance Board*

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* Compliance Board member Jacob Altshuler did not participate in the preparation or issuance of this Opinion.