STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE BOARD

May 20, 2013

Barbara Zektick, Chair
Baltimore City Automated Traffic Violation
Enforcement System Task Force
417 E. Fayette Street, 5th floor
Baltimore, Maryland 21020

Re: Baltimore City Automated Traffic Violation Enforcement System Task Force

Dear Ms. Zektick:

Enclosed please find the Compliance Board's opinion in this matter.

Very truly yours,

Ann MacNeille
Assistant Attorney General
Counsel, Open Meetings Compliance Board

cc: Louis M. Wilen
Eugene Simmers
Thomas Barrett
Hilary Ruley, Esquire
Elizabeth Nilson, Esquire
Courtney J. McKeldin
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STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE BOARD

8 *Official Opinions of the Compliance Board 188* (2013)

Re: Baltimore City Automated Traffic Violation Enforcement System Task Force
(*Louis Wilen, Eugene Simmers, Thomas Barrett, Complainants*)

May 20, 2013

We have considered the complaint of Thomas Barrett, Eugene Simmers, and Louis Wilen, ("Complainants") that the Baltimore City Automated Traffic Violation Enforcement System Task Force ("Task Force") violated the Open Meetings Act (the "Act") in seven ways in 2012 and 2013. The Task Force was created by the Mayor of Baltimore City on September 28, 2012 and comprises eight members, at least two of whom are not City employees. In its response, the City properly assumes that the Task Force is a public body subject to the Act.

The allegations can be grouped into three topics: failure to give "reasonable advance notice" of the Task Force's six meetings, as required by State Government Article ("SG") § 10-506; the improper exclusion of the public from its meetings; and the failure to produce minutes. The complaint appears to have been set in motion by two alleged circumstances: the alleged failure of the Task Force Chair to reply to one complainant's inquiries about meeting dates and requests for minutes, and the exclusion of reporters from a meeting held at the facility of Brekford Corporation, a vendor of speed cameras, on March 20, 2013.

As set forth below, we find that the Task Force violated the Act by failing to give "reasonable advance notice" of its meetings, by meeting, however briefly, in a place that was not "reasonably accessible to individuals who would like to attend [its] meetings," and by failing to prepare minutes "[a]s soon as practicable." *See, respectively,* SG § § 10-506, 10-501(c), and 10-509(b). We encourage the members of the Task Force to follow the steps we set forth below, and we encourage the City to support the Task Force in that endeavor. As we have done before, we urge officials and government bodies that create task forces to provide a level of staffing that will enable the members to do their work without violating the Act.

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DISCUSSION

A. "Reasonable advance notice"

The Act requires public bodies to give "reasonable advance notice" of their meetings and, "[w]henever reasonable," to do so "in writing." SG § 10-506(a), (b). Public bodies may use various methods. Among other things, they may post their notices on their website, if they have given notice of that method, or by "delivery to members of the news media who regularly report on sessions of the public body," or "by any other reasonable method." SG § 10-506(c). In any event, they are to keep copies of their meeting notices "for at least 1 year after the date of the session." SG § 10-506(d). Complainants allege that the Task Force failed to give notice of its meetings, and they cite, as evidence, that the Chair did not respond to one complainant's inquiries about meeting dates. They allege, in the alternative, that the Task Force did not keep copies of its notices.

The City responds that the meeting dates were posted on the Department of Transportation page on its website and suggests that notice must have been given because reporters knew about the meetings. No entry for the March 20, 2013 meeting appears on the City's events calendar, which can be searched for "Transportation" events, no press releases for it appear now on the Department's portion of the website, and we have not been provided with any other form of written notice for that meeting. The City has not established, for example, that it delivered written notice to the press. So, while the City asserts in its response that the Task Force "invited the media and the general public to attend all of its meetings," and has provided us with the work orders that demonstrate an attempt to publish notice on the City's website, it remains unclear to us just how that was done.

We recognize that task forces composed of members from various constituencies or agencies often lack dedicated staff and websites. The result, often, is that the posting of notice becomes improvisational at best. For the City's consideration, we suggest that the announcement of the creation of such task forces presents an opportune time for informing the public where the City will post its meetings notices. We therefore encourage the City to routinely include that information in its press releases.

In the meantime, it appears likely that the Task Force has not succeeded in giving reasonable advance notice of its meetings, or, if it chose to give notice through delivery

of written notice to the reporters who cover the issues it addresses, it failed to keep copies of those notices.

To comply with the Act and also to be able to demonstrate its compliance with the Act, the Task Force should take the following steps: (1) post its meetings notices on the City's events calendar, or, otherwise, on a webpage that can be found by a person who might not know to look on a departmental webpage for a mayor's committee; (2) ensure that staff print out a screenshot of the written notice and of any e-mailed notice given to the media, record the date of the print-out, and retain it; (3) before meeting, determine whether notice was actually given; and (4), if notice was not given, postpone the meeting until that can be done.

B. "Reasonably accessible" meeting place

The Act requires a public body to meet in a place "reasonably accessible to individuals who would like to attend [its] meetings." SG § 10-501(c). As explained in 78 *Opinions of the Attorney General* 240, 247 (1993), the Act does not require a private entity to admit the public onto its premises. The Act does, however, require the public body to hold its meetings, when they are subject to the Act, at a place where the public will be admitted. *Id.* Complainants allege, and the video to which they refer us appears to show, that the public was not allowed to enter the privately-owned building in which the Task Force met on March 20. Reportedly, a Brekford employee told reporters that they could not enter the building because it was a "secure facility." The City states that the Task Force adjourned its meeting when its members learned that the public was being excluded, and that fewer than a quorum remained. One member of the Task Force, however, reportedly stated that the meeting continued.

Either way, the circumstances were problematic: when a public body is performing a function subject to the Act, excluding the public from the discussion violates the Act, and avoiding the Act by reducing the members present to below a quorum is hardly ideal. *See C.L.U.B. v. City of Baltimore,* 377 Md. 183 (2003). The question, then, is what should the Task Force have done?

First, the Task Force should have arranged in advance for the admission of the public. To make those arrangements, a public body may include in its meeting notice a request that people who want to attend the meeting should contact the public body in advance. Here, we do not have a written notice or other facts that suggest that the Task Force made any efforts in this regard.

Second, a public body must refuse to meet at a private facility when the owner will not admit the public. The Act would be meaningless if it were interpreted to allow public bodies to meet secretly at private facilities.

Third, if the exclusion of the public were necessary to protect the corporation's confidential commercial information, or, if applicable, the public's security, the Task Force could have properly closed the meeting on those grounds, after a vote in public to do so, so long as it avoided any discussion of non-confidential matters while at the facility, *see* SG § 10-508(a)(10),(13), and made the post-meeting disclosures required by the Act. SG § 10-509(c)(2).

And, fourth, members of public bodies should be made aware at the outset that their public service includes the duty of openness, and specifically, that the public must be given a meaningful opportunity to attend their meetings. Especially when there is doubt about the administrative staffing for a task force of members from various constituencies, the members might avoid unwittingly participating in an illegal meeting by satisfying themselves beforehand that the public has been given a meaningful opportunity to attend.

We find that the Task Force violated the Act by convening at a place not reasonably accessible to the public.

C. Preparation of minutes "[a]s soon as practicable after a public body meets"

The Act requires a public body to have "written minutes prepared," unless it keeps minutes in the other formats permitted by the Act, "[a]s soon as practicable." SG § 10-509(b). Under SG § 10-509 (c), minutes must "reflect: [1] each item that the public body considered; [2] the action the public body took on each item; and [3] each vote that was recorded." The Act does not address the most basic elements of any set of minutes: the presence of at least the presiding officer and the convening of the meeting. In our view, the term "minutes" assumes that the provision of that information. The Act entitles a person to inspect minutes at the office of the public entity, SG § 10-509(d), but a request that copies be sent by mail or e-mail falls under the Public Information Act and outside our purview. So, we will discuss the minutes themselves and not the alleged failure to respond to one complainant's "multiple requests" by "telephone and email message."

The City states that the "[Department of Transportation] employee representative on the Task Force, who operates as its principal staff, has changed since the creation of

the body, necessarily resulting in some administrative transitions. However, meeting minutes have now been finalized. . . ." The City enclosed the "Agenda/Minutes" for the six meetings it held between late October 2012 and late March 2013. The "minutes" of the November and January meetings contain only the agenda and the words "No actions were taken." The others add a column of "notes," ranging in length from three lines to 21 lines of phrases; they appear, in fact, to be someone's notes. The method by which the minutes were adopted is unclear, as "no actions were taken" at any meeting;[1] the attendees of the meetings are not listed; the chair or other presiding officer is not identified; the presence of a quorum is not stated.

To comply with the Act, the Task Force should do the following: (1) assign a person or persons to take notes or record each meeting; (2) assign a person to draft minutes that will reflect the events of the meeting, preferably including the attendees; (3) adopt the minutes for each meeting at the next meeting, or, if the next meeting will occur so far in the future as to deprive the public of information about the events of the meeting, adopt them by circulating documents or make draft minutes available;[2] and (4) establish a place, in a public office, where the minutes will be kept so that they can be readily produced to a member of the public who asks to inspect them.

CONCLUSION

In summary, we have found violations of the notice, accessibility, and minutes provisions of the Act. We have also advised the Task Force on procedures that would enable it to comply with the Act. We encourage the Task Force to follow those procedures and the City to aid in the endeavor.

Open Meetings Compliance Board

Elizabeth L. Nilson, Esquire
Courtney J. McKeldin
Julio A. Morales, Esquire

[1] The fact that the minutes do not reflect any action to adopt the minutes of prior sessions is not dispositive, as the Task Force might have adopted these documents by circulating them among themselves for approval. When a public body adopts minutes that way, it should document that action somehow so that it can establish its compliance with SG § 10-509 (b).

[2] We recently addressed the timeliness of minutes in three opinions: 8 *OMCB Opinions* 173, 176, and 180.