



August 20, 2015

VIA ELECTRONIC MAIL

Maryland Open Meetings Compliance Board
c/o Attorney General's Office
200 St. Paul Place
Baltimore, MD 21202
OpenGov@oag.state.md.us.

Dear Members of the Open Meeting Compliance Board:

In follow up to an Open Meetings Act complaint filed with the Board against the Town of Pocomoke City on July 31, 2015, I write again on behalf of the American Civil Liberties Union of Maryland, reporter Stephen Janis, and The Real News Network, regarding additional violations that have since come to our attention, going beyond our prior complaint about the Town's closing of its July 13 Council meeting to the media. This new complaint concerns the Town's transaction of significant public business at unannounced, closed meetings in late June 2015, in violation of procedural protections the Act affords when government officials conduct the people's business behind closed doors.

As with our July 31 complaint, this complaint again relates to Pocomoke City's controversial firing of the Town's first African American Police Chief, Kelvin Sewell.¹ At the time of the firing, no explanation was given for the Town's action, and many in the community – both black and white – were angry or upset. Despite the extensive media attention and community demands for information in the weeks following Chief Sewell's firing, Town officials have remained silent about the process and basis upon which they arrived at their decision to terminate the well-liked chief.

Recently, however, Pocomoke City Councilwoman Diane Downing, the Town's only African American elected official, broke the silence by disclosing details about two secret meetings² held in late June by the Mayor, Council, and City Attorney, at which a majority of Council members voted – over Ms. Downing's vigorous dissent – to fire Chief Sewell. See Stephen Janis and Taya Graham, "Pocomoke Councilwoman Gives Inside Story of How City's First Black Chief was Fired," *The Real News Network*, Aug. 18, 2015.³

¹The Town's firing of Chief Sewell, and the racial tensions it exposed, have received significant media attention in Maryland and nationwide. See, e.g., Sheryl Gay Stolberg, "A Maryland Town Fires Its Black Police Chief, Exposing a Racial Rift," *New York Times*, Aug. 2, 2015; Deneen L. Brown, "Justice Department scrutinizes firing of black police chief in Pocomoke City, Md." *Washington Post*, July 25, 2015.

² Until Ms. Downing spoke out about these meetings in a mid-August interview with the Real News Network, the fact of their occurrence was undisclosed.

³ Story and video available at: http://therealnews.com/t2/index.php?option=com_content&task=view&id=31&Itemid=74&jumival=14508.

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Ms. Downing's disclosures and proof that she provided⁴ reveal that Pocomoke officials made the decision to terminate Chief Sewell's employment in violation of the Open Meetings Act.

Although a municipal government's legislative body may, consistent with the Open Meetings Act, consider personnel matters such as employee discipline in closed session, it must adhere to procedural requirements notifying the public about the closed session before doing so. These requirements include advance notice to the public and the media that the meeting will take place, a public vote approving and explaining the basis of the closed session, and provision to the public of minutes from the closed session. *See* §§ 3-104, 302, 305 Gen. Prov. Art., Md. Ann. Code (Oct. 2014).⁵

⁴For example, Ms. Downing provided a screenshot of the text message sent by Pocomoke Mayor Bruce Morrison privately to the Council and the City Attorney, calling a closed meeting on June 29. (Attachment A) It was at this meeting that the Town's decision to fire Chief Sewell was made.

⁵ Specifically, these provisions state:

§ 3-302. Notice

(a) Before meeting in a closed or open session, a public body shall give reasonable advance notice of the session.

Form

(b) Whenever reasonable, a notice under this section shall:

- (1) be in writing;
- (2) include the date, time, and place of the session; and
- (3) if appropriate, include a statement that a part or all of a meeting may be conducted in closed session.

Method

(c) A public body may give the notice under this section as follows:

- (1) if the public body is a unit of State government, by publication in the Maryland Register;
- (2) by delivery to representatives of the news media who regularly report on sessions of the public body or the activities of the government of which the public body is a part;
- (3) if the public body previously has given public notice that this method will be used:
 - (i) by posting or depositing the notice at a convenient public location at or near the place of the session; or
 - (ii) by posting the notice on an Internet Web site ordinarily used by the public body to provide information to the public; or
- (4) by any other reasonable method.

Copy of notice

(d) A public body shall keep a copy of a notice provided under this section for at least 1 year after the date of the session.

§ 3-305. Closed sessions

d)(1) Unless a majority of the members of a public body present and voting vote in favor of closing the session, the public body may not meet in closed session.

(2) Before a public body meets in closed session, the presiding officer shall:

- (i) conduct a recorded vote on the closing of the session; and
- (ii) make a written statement of the reason for closing the meeting, including a citation of the authority under this section, and a listing of the topics to be discussed.

(3) If a person objects to the closing of a session, the public body shall send a copy of the written statement to the Board.

(4) The written statement shall be a matter of public record.

(5) A public body shall keep a copy of the written statement for at least 1 year after the date of the session.

§ 3-104. Minutes for closed session

If a public body recesses an open session to carry out an administrative function in a meeting that is not open to the public, the minutes for the public body's next meeting shall include:

Maryland courts have made clear that these requirements are not mere technicalities. Rather, the failure of the government to give reasonable advance notice of a closed meeting and/or to conduct a public vote supporting a meeting's closure are serious matters that can result in voiding of any action taken during the secret meeting. *Community and Labor United for Baltimore Charter Committee (CLUB) v. Baltimore City Board of Elections*, 377 Md. 183 (Md. 2003) (voiding ballot measure adopted during an unannounced meeting of a quorum of the Baltimore City Council.)

In a case strikingly similar to the instant matter, involving the Town of District Heights's dismissal of its police chief on a vote taken during an unannounced closed session, the Open Meetings Compliance Board found that the Town's failure to conduct a public vote and to provide a public explanation for the closed session violated the Open Meetings Act. Compliance Board Opinion No. 96-12 (November 20, 1996). "Even if a public body has a basis under the Act's list of exceptions to conduct a closed session, the public body must begin its meeting in open session so that a vote to close the meeting may be taken and the required written statement may be issued." *Id.*, at 193, *citing* Compliance Board Opinion 93-2, at 3 (January 7, 1993); Office of the Maryland Attorney General, *Open Meetings Act Manual* 18 (2d ed. 1995).

Our information is that the Pocomoke City Council held at least two unannounced, closed sessions of the Mayor, Council, and City Attorney: The first meeting was convened by Mayor Bruce Morrison through telephone calls to Council members, and took place on Friday, June 26, 2015, with no notice given to the public or the media, no public explanation for the meeting, and no vote taken publicly by the Council to meet in closed session. The second meeting, convened via the text message shown in Attachment A, occurred on Monday, June 29, 2015, again with no public notice, explanation, or vote. The Town's decision to fire Chief Sewell was made at the June 29 meeting, and Chief Sewell was advised of his termination shortly thereafter. Neither meeting presented "emergency" circumstances that would have precluded the Town from providing public notice that the Mayor and Council intended to hold a closed meeting to consider the termination of one of its employees.⁶ Further, no minutes of these closed sessions were subsequently provided to the public.

In conducting important government business in private, without publicly announcing or explaining its intention or reasons for doing so, either before or after the secret meetings occurred, Pocomoke City officials clearly violated the Maryland Open Meetings Act. In keeping with the Maryland Court of Appeals decision in *CLUB*, actions taken by the Town during its unlawful meetings, specifically including the Town Council's vote to terminate Chief Sewell's employment, should be voided. While we understand that

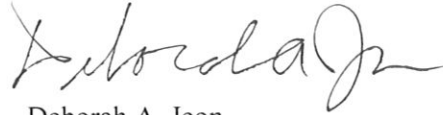
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- (1) a statement of the date, time, place, and persons present at the administrative function meeting; and
(2) a phrase or sentence identifying the subject matter discussed at the administrative function meeting.

⁶In the District Heights case, the Open Meeting Compliance Board counseled that it is insufficient for the government simply to say it intends to close a session to consider a personnel matter. Rather, where the Town was considering dismissal of its Police Chief, it should have specified that a closed session was being held to consider termination of one of the Town's employees.

the Open Meetings Compliance Board does not itself have the power to void the Town's firing of Chief Sewell, we ask the Board to declare that the Town's actions violated the Open Meetings Act, leaving it for the Town voluntarily to reverse its unlawful action or for a court to void Chief Sewell's termination under §3-401(b)(1).

Please let us know if you have any questions about this complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah A. Jeon". The signature is fluid and cursive, with a large initial "D" and a long, sweeping tail.

Deborah A. Jeon
Legal Director

Cc: William Hudson, Esq.

AMERICAN CIVIL
LIBERTIES UNION OF
MARYLAND

To: Bill, Esther, George & 2 more...

Text Message
Sun, Jun 28, 9:49 AM

Bruce Morrison

We need to meet at 9am,
at city hall Monday
morning before we leave
for ocean city for a brief
meeting, thanks and enjoy
the rest of your weekend

George Taylor

Ok be there