



City of Rockville
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March 28, 2016

VIA ELECTRONIC MAIL to opengov@oag.state.md.us

Open Meetings Compliance Board
c/o Ann MacNeille
Assistant Attorney General
Counsel, Open Meetings Compliance Board
200 Saint Paul Place
Baltimore, MD 21202

RE: Complaint of Max A. van Balgooy dated February 12, 2016

Dear Open Meetings Compliance Board:

This letter is in response to the letter dated February 16, 2016, from Assistant Attorney General Ann MacNeille to The Honorable Bridget Donnell Newton, forwarding the above referenced complaint which was received by the City on February 18, 2016. On March 8, 2016, the City was granted a 5-day extension to respond to the complaint.

Background

The City of Rockville's City Clerk's Office prepares the minutes for both the Mayor and Council and the Board of Supervisors of Elections meetings. The City Clerk's Office has been extremely short staffed since August, 2014. The City Clerk resigned from the City on August 8, 2014 and an Acting City Clerk was appointed on August 11, 2014. On May 14, 2015, the Deputy City Clerk left City employment. Since May, 2015, the City Clerk's Office has been staffed by one full-time employee, who is the Acting City Clerk, with the assistance of a temporary employee. During this time the City held its biennial election, in addition to maintaining the extensive normal duties of the office. The Mayor and Council are in the process of hiring a new City Clerk.

The Complaint

By letter dated February 12, 2016 Max A. van Balgooy requests:

your opinion whether the Mayor and Council of the City of Rockville violated the Open Meetings of the State of Maryland because they failed to have written minutes or a video recording prepared in compliance with §3-306 of the Open Meetings Act of the following sessions:

January 25, 2015 (closed session; written minutes not provided at the next open session on January 26, 2015); April 18, 2015; June 6, 2015; and December 3, 2015

MAYOR
Bridget Donnell Newton

COUNCIL
Beryl L. Feinberg
Virginia D. Onley
Julie Palakovich Carr
Mark Pierzchala

ACTING CITY MANAGER
Craig L. Simoneau

ACTING CITY CLERK
Sara Taylor-Ferrell

CITY ATTORNEY
Debra Yerg Daniel

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He further requests:

your opinion whether the Board of Supervisors of Elections of the City of Rockville violated the Open Meetings Act of the State of Maryland because it failed to give reasonable advance notice (§3-302) and because it failed to have written minutes or a video recording of the following sessions (§3-306):

March 12, 2015; March 26, 2015; April 13, 2015; April 30, 2015; June 11, 2015; October 8, 2015; October 24, 2015; October 25, 2015; October 26, 2015; October 30, 2015; November 2, 2015; November 3, 2015; November 4, 2015; November 6, 2015; November 9, 2015, November 10, 2015, November 19, 2015; December 3, 2015; and December 15, 2015.

Because the complaint alleges that both the Mayor and Council of Rockville and the Board of Supervisors of Elections have violated the Open Meetings Act, this response will address each public body separately.

Mayor and Council

January 25, 2015

On Sunday, January 25, 2015, the Mayor and Council held an executive session pursuant to Section 3-305(b)(1)(i) of the General Provisions Article of the Annotated Code of Maryland to discuss the employment, assignment, compensation, and performance evaluation of the City Manager, an employee over whom the Mayor and Council has jurisdiction. The very next day, Monday, January 26, 2015 the Mayor and Council held a regular meeting beginning at 7:00 p.m. The minutes of the January 25, 2015 Executive Session and the minutes of the January 26, 2015 regular meeting were approved on March 21, 2016.

April 18, 2015 and June 6, 2015

The meetings of April 18, 2015 and June 6, 2015 were “walking town hall” meetings. These are meetings where Mayor and Councilmembers walk around neighborhoods and meet with neighborhood citizens. The minutes for these meetings were approved on March 21, 2016.

December 3, 2015

As set forth on the Mayor and Council’s agenda for the December 3, 2015 meeting, this meeting was an interjurisdictional meeting regarding the planning for Bus Rapid Transit in the Rockville/Gaithersburg area hosted by the Montgomery County Executive and

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the Montgomery County Council. This meeting was attended by all members of the Mayor and Council. The Mayor and Council participated in the meeting and the minutes were approved on March 21, 2016. A video of this meeting can be viewed on Montgomery County's website at the following address:
<http://www.montgomerycountymd.gov/COUNCIL/OnDemand/index.html>.

Board of Supervisors of Elections

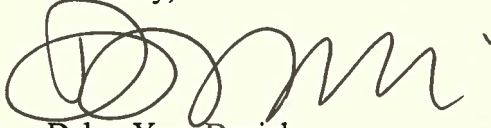
A majority of the meetings listed in the February 12, 2016 complaint occurred during the 2015 election cycle. The Rockville election was held on November 3, 2015, and the City served as a pilot for new voting equipment to be used by Montgomery County and the State of Maryland in the upcoming primary and general elections. The City also conducted early voting for the first time on October 24 and October 25, 2015. The priority of the City Clerk's Office was running the election. Throughout this time period, as set forth above, the City Clerk's Office had only one full-time employee who was the Acting City Clerk.

During the City's 2015 election cycle, the Board of Supervisors of Elections was meeting almost daily and would often schedule its next meeting during the current meeting. Notice was posted in accordance with §3-302 of the General Provisions Article of the Annotated Code of Maryland. Generally, notice was posted as soon as practicable under the circumstances.

In regards to the minutes of the meetings listed on the complaint, the meetings from March 12, 2015, through November 4, 2015, were approved on March 23, 2016. The Board of Supervisors of Elections is working to catch up on the remaining minutes.

The Board of Supervisors of Elections is in the process of implementing steps to streamline the approval process for its minutes including assigning the initial draft of minutes to a Boardmember. Once the Board is caught up on its minutes, it intends to approve minutes from one meeting at its next meeting.

Sincerely,



Debra Yerg Daniel
City Attorney

cc (via electronic mail): Max A. van Balgooy
The Mayor and Council of Rockville
The Board of Supervisors of Elections