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STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE BOARD

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Re: Prince George's County Local Development Council
Jay Krueger, Complainant

July 20, 2016

Complainant Jay Krueger alleges that the Prince George's County Local Development Council, a public body, violated the Open Meetings Act on March 21, 2016 by conducting its business in a closed meeting and also by excluding the public from meetings that it has characterized as "work sessions." Complainant also expected the Council to hold another closed meeting in April.

The Council did not respond within 45 days and has not responded to our staff's inquiries. As required by § 3-206(d),¹ we will issue an opinion on the basis of the submissions, which we will supplement with information posted for the Council on the County's website.

The County's website shows that the Council first met on December 16, 2015, in an open session. The website provides this description of the Council:

State law creates a mechanism for ensuring public input in several elements of the new gaming facility. According to law, a Local Development Council (LDC) must be established in each jurisdiction where a gaming licensee is in operation (the sections of state law relevant to the LDC can be found in the Relevant Law section below). This body, composed of 15 individuals representing different stakeholder groups, consults with the county on the following:

¹ Statutory citations are to the General Provisions Article of the Maryland Annotated Code (2014, with 2015 supp.).

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- The development of a multiyear plan for the expenditure of local impact grant funds (see Local Impact Grants below)
 - The review of a master plan-provided by the gaming licensee-for the development of the gaming site
 - The development of a comprehensive transportation plan for the gaming facility
- In addition to 3 representatives from the General Assembly and 1 from MGM, the LDC must be composed of 7 residents of the communities and 4 representatives of the businesses/institutions located in immediate proximity to the facility.

<http://www.princegeorgescountymd.gov/1125/Local-Development-Council> (last visited June 23, 2016).

This information establishes that the Council, as an entity required by law, is a public body subject to the Act. *See* § 3-101(h) (defining “public body”); *see also* Open Meetings Act Manual 5 (2015) (explaining that the Act applies when a law mandates the creation of an entity to perform certain governmental tasks). The Council is thus subject to the Act’s requirement that, “[e]xcept as otherwise expressly provided in [the Act], a public body shall meet in open session.” § 3-301.

Without a response from the Council, we do not know which, if any, express provisions the Council might have relied on for permission to meet behind closed doors in March and April 2016. To give the Council the benefit of the doubt, we will look to see if any such provision might apply to the Council’s work. Broadly speaking, there are two categories of possibilities: the Act’s express exclusions for a public body’s performance of the judicial, quasi-judicial, and administrative “functions,” § 3-103, and the Act’s exceptions, for the discussion of certain topics in a meeting that is subject to the Act. If a public body meets solely to perform an excluded function, the Act does not apply. *Id.* If a public body meets to discuss an excepted topic, it may close the meeting after it has made the required disclosures and voted openly to exclude the public. § 3-305(d).

We begin with the exclusions. The Council plainly does not have judicial and quasi-judicial functions. Potentially more relevant is the exclusion for the performance of an administrative function, especially because the term “work session” is often used by public bodies that perform administrative tasks for the sessions that they devote only to those tasks. The work of the Council, however, is not administrative in nature. Instead, the Council’s duties fall squarely within the “advisory function,” which the Act defines as “the study of a matter of public concern, or the making of recommendations on the matter, under a delegation of

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the other functions, § 3-101(b)(2), and so the Council's business does not fall within the definition. Although advisory bodies may sometimes discuss housekeeping matters that we have deemed administrative, such as choosing their own officers, it appears from the complaint that the Council was very likely discussing the contents of the multi-year plan that it was soon to submit to the County. We find that the Council's closed meetings were subject to the Act.

The next theoretical possibility is that the Council could have closed its meetings under § 3-305 to discuss an excepted topic. To do that, however, the Council would have had to give notice of a public session, disclosed the topics to be discussed and other information, and voted, in public, to exclude the public. § 3-305(d). Nothing suggests that the Council proceeded that way, or, for that matter, that any particular exception might have applied. We therefore conclude that the public was entitled to observe the Council's discussions.

In sum, the Council violated the Act by conducting its business in closed meetings. We find further that the Council violated the Act by failing to respond to the complaint, as required by § 3-206(a)(2). We have yet to receive the Council's designation of an employee, officer or member to receive training in the requirements of the Act, and so the Council has also violated § 3-213. We do not have information on whether the Council posted notice for any of the closed meetings in question and make no finding on whether the Council complied with the notice requirement in § 3-302.

Finally, we advise the Council that this opinion is subject to § 3-211, applicable to public bodies found in violation of the Act.

Open Meetings Compliance Board

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**Note: In a response received after the issuance of this opinion, the Chair states that the Council did not hold any closed meetings in April 2016. He states that members of the Council met on March 21, 2016 that he was not present, that members of the Council have been instructed that their meetings are to be public, and that closed "work sessions" will not occur in the future.*