

Attorney General: Wilmington council regularly violates open meetings law

Christina Jedra, The News Journal Published Aug. 14, 2017

Guy: Censure compares to 'lynching'

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Wilmington City Councilman Samuel Guy, defiant against a censure vote from his colleagues, said the effort was a badge of honor. William Bretzger/The News Journal



(Photo: Christina Jedra/THE NEWS JOURNAL, CHRISTINA JEDRA/THE NEWS JOURNAL)

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When Wilmington City Council members were planning to publicly condemn one of their colleagues in April, they violated an open meetings law, according to an opinion from the Attorney General's office.

Officials released a public agenda midday on April 5 for a meeting the next day. The Freedom of Information Act requires public bodies to give notice of their regular meetings at least seven days in advance, wrote Deputy Attorney General Michelle E. Whalen.

"We believe that council's interpretation of FOIA's notice requirements is incorrect as a matter of law," Whalen wrote.

The AG's office found the council routinely violates FOIA by posting its agenda 24 hours or fewer before meetings.

"As the conduct giving rise to this FOIA violation appears to be an ongoing pattern or practice of the council, we recommend that the council revise its process moving forward," Whalen wrote in the opinion issued Friday.

The decision is a partial win for Councilman Samuel L. Guy.



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City Councilman Samuel L. Guy leads a meeting regarding prayer at council meetings. (Photo: Christina Jedra/THE NEWS JOURNAL)

The at-large council member filed a petition with the AG's office after his colleagues [voted to censure him on April 6](#). The censure, spearheaded by Council President Hanifa Shabazz, was a [public show of disapproval](#) in response to language from Guy that his colleagues found "abusive, berating, degrading and threatening." The measure passed, 8-5.

In his complaint, Guy said the disregard for the seven-day requirement was "designed to minimize citizen participation." He was further offended that the censure resolution was added to the agenda at 10:30 a.m. the day of the meeting. The agenda available the day before did not mention the censure.

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Guy argued that this "stealthy manipulation" by his colleagues deprived the public of the opportunity to attend the meeting and comment on the proposed censure.

The councilman, who calls himself "the watchman," also alleged that because the censure legislation had eight sponsors, members must have engaged in a private

meeting, which he said would be another FOIA violation. Council denied any such meeting was held.

Council defended the practice of publishing agendas the day before meetings, according to the attorney general's office. Officials noted that they publish a list of regularly scheduled meetings at the beginning of the calendar year, although the list does not include specific agenda items. An internal draft agenda is circulated among council members and staff the Friday before meetings, which are held on Thursdays.

Council said the censure resolution was not included on the original agenda in part because "the council president still had not determined whether the proposed resolution would adequately address the requests of her fellow City Council members that something had to be done to attempt to curb (Guy's) disturbing behavior," the AG's office said.

Since taking office, council members have felt harassed by Guy, who "on several occasions engaged in the proffering of baseless allegations — including unsubstantiated, acrimonious and racially charged language — against members of City Council and City Council staff," the censure resolution said.

Matters escalated the day before the April meeting when Guy posted on Facebook alleging "potentially criminal conduct on the part of a City Council staff member and a fellow council member," the AG's office said.



Councilman Sam Guy was censured on April, 6, 2017. (Photo: William Bretzger, William Bretzger, The News Journ)

Specifically, Guy took aim at Marchelle Basnight, council's chief finance officer, and Councilwoman Rysheema Dixon. He claimed Dixon received \$6,500 in [discretionary funding](#) while he received none, and he said that Dixon had taken "stolen property."

The AG's office decided not to address all of Guy's claims "as we are satisfied that the council violated FOIA in at least one respect in connection with its April 6, 2017 meeting."

The Court of Chancery has stated that the purpose for posting an agenda for government meetings is "to alert the public so that those interested in an agenda item will know to attend the meeting."

"Routinely delaying notice of the specific matters the public body intends to discuss until 24 hours — and at times as little as 6 hours — in advance thereof serves to frustrate that purpose," the AG's office said.

Moving forward, the attorney general's office recommended that council publish an agenda at least seven days ahead of regularly scheduled meetings. The next meeting is Aug. 24.



Wilmington City Council President Hanifa Shabazz takes part in a listening tour. (Photo: William Bretzger/The News Journal)

Shabazz issued a statement on Monday in response to the opinion.

"We appreciate the guidance emanating from the Attorney General's Office regarding its evolving interpretation of FOIA," she said. "We will take the appropriate steps to act in accordance with that guidance."

Ultimately, Guy was not able to undo the censure.

He had suggested, in light of the FOIA issues, that the resolution against him should be considered null and void, the attorney general's office said. But that would be a matter for Chancery Court, Whalen wrote.

"Because censure is a method for a legislative body to regulate the conduct of its members, it is not clear to us whether or to what extent a court would exercise judicial review over the censure resolution," Whalen said. "As such, we decline to request specific remedial action under the circumstances."

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