



**State of New York
Department of State
Committee on Open Government**

One Commerce Plaza
99 Washington Ave.
Albany, New York 12231

(518) 474-2518
Fax (518) 474-1927

OML AO 5666

January 29, 2024

By Electronic Mail Only

The Committee on Open Government is authorized to issue advisory opinions. The ensuing advisory opinion is based solely upon the information presented in your correspondence unless otherwise indicated.

Dear Mr. :

Thank you for reaching out to the Committee on Open Government (Committee) seeking advice about the applicability of the Open Meetings Law (OML) to the proceedings of the Commission on Prosecutorial Conduct (CPC).

As you may know, the OML governs meetings of public bodies and that term is defined, in relevant part, as “any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof . . . or committee or subcommittee or other similar body consisting of members of such public body.” Given the statutory responsibilities of the CPC, it is our view that it meets the definition of “public body.” In addition, it is our view that the three person panels established pursuant to Judiciary Law § 499-e would also constitute “public bodies.”

The OML applies to any gathering of a quorum of a public body for the purpose of conducting public business. However, § 108 of the Law states in relevant part that:

Nothing contained in this article shall be construed as extending the provisions hereof to . . . judicial or quasi-judicial proceedings, except proceedings of the public service commission and zoning boards of appeals . . . and . . . any matter made confidential by federal or state law.

In our opinion, the hearings conducted by the CPC pursuant to Judiciary Law § 499-f would constitute both a “quasi-judicial proceeding” and, unless otherwise demanded by the subject prosecutor, a “matter made confidential by . . . state law.” See Judiciary Law § 499-f(4) (“The hearing shall not be public unless

January 29, 2024

Page 2 of 2

the prosecutor involved shall so demand in writing”). Given the clear statutory intent, it is our opinion that any hearing conducted by the CPC would be exempt from the requirements of the OML.

Pursuant to Judiciary Law § 499-g, “all complaints, correspondence, commission proceedings and transcripts thereof, other papers and data and records of the commission shall be confidential and shall not be made available to any person except pursuant to section four hundred ninety-nine-f of this article.” In general, while the Committee has advised that proceedings and discussions relating to matters made confidential by state or federal statute are exempt from the requirements of the OML, we have also advised that any actions taken by a public body resulting from such exempt discussions and hearings, which involve the approval of a majority of the body’s members, must occur in an open meeting. However, here, although the CPC meets the definition of a public body, because by statute *all* of its proceedings are confidential, in our opinion, meetings of the CPC and its panels are exempt pursuant to § 108 of the OML.

Thank you for your inquiry.

Sincerely,

Kristin O’Neill
Deputy Director and Counsel