

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
 CIVIL ACTION-LAW

SPOTLIGHT PA,)
 Plaintiff,)
 v.)
 BOARD OF TRUSTEES OF THE)
 PENNSYLVANIA STATE UNIVERSITY,)
 Defendant.)

No. 2023-CV-2998-CI

Attorney for Plaintiff:
Attorney for Defendants:

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Christopher J. Conrad, Esq.
Gary H. Dadamo, Esq.

Marshall, J.

ORDER

Presently before the Court are the Preliminary Objections to Second Amended Complaint, filed by the Board of Trustees of the Pennsylvania State University (the “Board” or “Defendant”) on July 11, 2024. In reaching its decision, the Court also considered: (i) the Second Amended Complaint, filed by Spotlight PA (“Plaintiff”), on June 21, 2024, (ii) the Brief in Support of Preliminary Objections, filed by Defendant on August 9, 2024, and (iii) Plaintiff’s Brief in Opposition to Preliminary Objections to Second Amended Complaint, filed by Plaintiff on September 12, 2024. The Court held oral argument on the preliminary objections on September 13, 2024. Upon review of the filings and arguments of the parties, as well as the applicable law, the Court finds as follows:

BACKGROUND

Plaintiff is a Pennsylvania nonprofit investigative news organization with a State College bureau in Centre County that reports on Pennsylvania State University’s (“PSU”) operations,

including “how journalists’ and the public’s inability to attend Penn State Board meetings has hampered meaningful understanding of how Penn State operates and upholds its obligations to the community and beyond.” See, e.g., Wyatt Massey, *Regular Private Meetings Among Top Penn State Trustees May Be Violating Pa.’s Transparency Law*, Spotlight PA (Sept. 15, 2022), <https://perma.cc/VQ5T-7DFE>.

Defendant is the Board of Trustees of the Pennsylvania State University, which is responsible for the governance and welfare of PSU and all the interests pertaining thereto. In the exercise of its responsibilities, the Board of Trustees delegates day-to-day management and control of PSU to the university President, with certain reserved powers as set forth in the PSU’s bylaws. See *Role of the Board of Trustees in University Governance*, <https://trustees.psu.edu/purpose>. The Board of Trustees is comprised of thirty-eight (38) individual Trustees, each of which belongs to one of nine distinct groups: members ex officio (including the President of PSU and the Governor of Pennsylvania, as non-voting members), Trustees appointed by the Governor, Trustees elected by the Alumni of PSU, Trustees elected by delegates from agricultural societies, Trustees elected by the Board Representing Business and Industry, Trustees elected by the Board at large, a single Student Trustee, a single Academic Trustee, and the immediate past president of the Alumni Association. See *Current Trustees*, <https://trustees.psu.edu/trustees>.

On December 6, 2023, Plaintiff initiated this action by filing its Original Complaint in this Court, asserting five counts relating to Board conferences, executive sessions, and working sessions on November 9 and 10, 2023.¹ On March 6, 2024, Plaintiff filed its First Amended Complaint, asserting the same five causes of action set forth in the Original Complaint, and adding

¹ The five counts raised by Plaintiff in its Original Complaint were re-raised in the Second Amended Complaint: improper use of the “conference” exception (Count I), improper use of the “executive session” exception (Count II), failure to adhere to executive session procedure (Count III), deliberating at non-public meetings (Count IV), and taking official action at non-public meetings (Count V).

purported violations of the Sunshine Act arising out of Defendant's February 15 and 16, 2024 conferences, executive sessions, and working sessions. On June 21, 2024, with leave of Court, Plaintiff filed the instant Second Amended Complaint asserting the same five claims, and adding purported violations on unspecified dates based upon statements made during the meetings of the full Board and the Board's Committee on Finance, Business and Capital Planning, on May 21, 2024 related to a pending proposal for renovations to the PSU football stadium, Beaver Stadium.

The allegations in Plaintiff's Second Amended Complaint relate to five specific meetings: (i) the November 9, 2023 Board Committee Sessions with the Committee on Audit and Risk and the Committee on Finance, Business and Capital Planning; (ii) the November 10, 2023 Board conference and/or privileged executive session; (iii) the February 15, 2024 meeting of the Board Subcommittee on Compensation and the Committee on Audit and Risk; (iv) the February 16, 2024 Board conference session; and (v) the May 21, 2024 meeting of the Board Committee on Finance, Business and Capital Planning, at which Plaintiff was made aware that the Board purportedly met "many times" for indeterminate lengths of time in order to deliberate and discuss Beaver Stadium renovations.

The factual circumstances of each meeting, as described by the parties in their pleadings, are as follows:

November 9, 2023 Meeting

On November 5, 2023, the Board advertised the November 9 and 10, 2023 Board meetings and sessions in the Centre Daily Times and PennLive. *See Preliminary Objections*, Ex. B (Legal Notices and Proofs of Publication for November 9 and 10, 2023 Board meetings and sessions). On November 9, 2024, the Board held a meeting at the Eric J. Barron Innovation Hub at 123 South Burrowes Street, State College, which Plaintiff-employee Wyatt Massey attempted to attend.

According to Plaintiff, Massey entered Room 603 of the Eric J. Barron Innovation Hub about 15 minutes prior to the scheduled start time of 3:30pm and was told by Shannon Harvey, secretary of the Board, that the Board was meeting in executive session and that Massey needed to step out of Room 603. Shortly thereafter, Harvey returned and informed Massey that the executive session had ended, and the Audit and Risk Committee's public meeting was beginning. Plaintiff avers that the Audit and Risk Committee's public meeting lasted fewer than ten minutes, and the committee then went into an "executive session" at approximately 3:30pm. The Board did not explain the purpose of the two executive sessions on November 9, 2023, though the chair of the Committee on Audit and Risk summarized the Committee's November 9, 2023 public meeting at the broader meeting of the Board on November 10, 2023. In its Answer, Defendants agree that the Committee on Audit and Risk held executive sessions prior to, and after, the Committee's public meeting on November 9, 2023, and that Plaintiff-employee Massey attempted to attend those executive sessions.

November 10, 2023 Meeting

The aforementioned November 5, 2023 publication notice for the November 9 and 10, 2023 meetings provided that – on November 10, 2023 – a "Trustee Conference and/or Privileged Executive Session will occur at 8:00am." See *Preliminary Objections*, Ex. B (Legal Notices and Proofs of Publication for November 9 and 10, 2023 Board meetings and sessions). Following that 8:00am meeting, the full Board of Trustees was scheduled to meet at 1:30pm on November 10, 2023.

Plaintiff alleges that an employee of Plaintiff attempted to enter the advertised location of the Trustee Conference and/or Privileged Executive Session at 7:38am on November 10, 2023. Upon arrival, the Plaintiff-employee was told by Thomas J. Oziemblosky, the Board's associate

director, that the Board was meeting for a closed “conference” in the morning and that a public Board meeting was to occur later that day, as scheduled. Plaintiff avers that during that afternoon’s public meeting, Chairman Schuyler indicated that the Board had met “in executive session to discuss various privileged matters” that morning.

February 15, 2024 Meeting

On February 5, 2024, the Board advertised the February 15 and 16, 2024 Board meetings and sessions in the Centre Daily Times and PennLive. *See Preliminary Objections*, Ex. C (Legal Notices and Proofs of Publication for February 15 and 16, 2024 Board meetings). According to Defendant, various subcommittees of the Board held meetings and sessions on February 15, 2024, including the executive session of the Subcommittee on Compensation at 12:45pm, the Subcommittee on Compensation’s public meeting at 1:30pm, the Committee on Audit and Risk’s public meeting at 3:00pm, and the closed working and executive sessions of the Committee on Audit and Risk that took place after the 3:00pm public meeting.

Plaintiff alleges that, during the public meeting of the Subcommittee on Compensation which lasted fewer than two minutes, a representative of the Subcommittee stated that the Subcommittee on Compensation “met in closed session prior to the public meeting to review compensation changes for Penn State President Bendapudi.” Plaintiff also alleges that, at the conclusion of the Committee on Audit and Risk’s 3:00pm public meeting, Committee chair Randall Black said that the following two meetings would be closed to the public as working and executive sessions, stating that “during the executive session the committee will meet individually and privately with management, the Plante Moran representatives, and the internal audit director. The committee will not take any official action following the working session or the executive session.”

February 16, 2024 Meeting

Plaintiff alleges that the Board met privately on the morning of February 16, 2024 in a meeting that was not noted on the Board's website. Upon arrival, an employee of Plaintiff was told by Defendant's General Counsel Tabitha Oman that the Board was meeting in a conference. When asked what federal or state agency was present to relay information to the trustees, Plaintiff avers that General Counsel Oman stated that the Board was meeting for informational purposes only and that Oman was confident the meeting was in compliance with the Sunshine Act.

In the afternoon of February 16, 2024, two employees of Plaintiff attended an open Board meeting. Plaintiff avers that, at that meeting, Chairman Schuyler shared that the Board had met on January 29, 2024 in executive session to discuss Board initiatives and noted that the Board did not take any action following that executive session. Chairman Schuyler allegedly also shared that the "Board also met this morning [February 16, 2024] in conference session and received informational updates on a variety of topics including Penn State's health enterprise, strategic initiatives related to President Bendapudi's university road map for the future, philanthropy, and Penn State's upcoming campaign, and the governor's budget."

May 21, 2024 Meeting

On May 16, 2024, the Board gave legal notice of the meetings to be held by the Board and the Committee on Finance, Business and Capital Planning on May 21, 2024. *See Preliminary Objections*, Ex. D (Legal Notices and Proofs of Publication for the May 21, 2024 Board and Committee on Finance, Business and Capital Planning meetings). On May 21, 2024, a reporter of Plaintiff virtually attended the meeting of the Committee on Finance, Business and Capital Planning and the meeting of the full Board of Trustees held immediately thereafter.

At the public portion of the May 21, 2024 committee meeting, Chair Schuyler announced that “the Board held an executive session prior to this meeting to review and discuss elements of the Beaver Stadium renovation that, if conducted in public, would lead to the disclosure of information or confidentiality protected by law.” Plaintiff further alleges that Chairman Schuyler limited trustees to one question per turn speaking and that, following some back and forth with several trustees on the Beaver Stadium renovations, Chairman Schuyler stated that the trustees have had “many, many sessions to discuss this” and that “we’ve had months and months of dialogue on this and years of discussion.” In support thereof, Plaintiff had a transcript of the May 21, 2024 meeting prepared. *See Second Amended Complaint*, Ex. C (Transcript).

DISCUSSION

I. The Sunshine Act

The Pennsylvania Sunshine Act, 65 Pa.C.S. §§701 *et seq.* (the “Sunshine Act”) requires that official action and deliberations by a quorum of the members of an agency take place, with certain specified exceptions, at a meeting open to the public. In enacting the Sunshine Act, the General Assembly “declare[d] it to be the public policy of this Commonwealth to insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon as provided [in the Sunshine Act].” 65 Pa.C.S. §702(b). Importantly for the instant matter, included in the definition of the term “agency” in the Sunshine Act are “the boards or councils of trustees of all state-owned, state-related, and state-aided colleges and universities.” 65 Pa.C.S. §703. Therefore, Defendant is an agency as that term is defined in the Sunshine Act and, accordingly, it is subject to the general requirement that official action and deliberations by a quorum of the members of Defendant take place at a meeting open to the public.

The party asserting a violation of the Sunshine Act has the burden of proving such a violation and rebutting the “presumption of regularity and legality that obtains in connection with proceedings of local agencies.” *Kennedy v. Upper Milford Tp. Zoning Hearing Bd.*, 834 A.2d 1104, 1115 (Pa. 2003); *see also Smith v. Township of Richmond*, 54 A.3d 404 (Pa. Commw. Ct. 2012) (*order aff’d*, 623 Pa. 209, 82 A.3d 407 (2013)).

Section 704 (Open meetings) of the Sunshine Act is the general requirement for open meetings and provides that:

Official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public unless closed under section 707 (relating to exceptions to open meetings), 708 (relating to executive sessions) or 712 (relating to General Assembly meetings covered).

65 Pa.C.S. §704.

Section 707 (Exceptions to open meetings) provides three exceptions to the general mandate that an agency hold open meetings, which are:

- (a) **Executive session.**—An agency may hold an executive session under section 708 (relating to executive sessions).
- (b) **Conference.**—An agency is authorized to participate in a conference which need not be open to the public. Deliberation of agency business may not occur at a conference.
- (c) **Certain working sessions.**—Boards of auditors may conduct working sessions not open to the public for the purpose of examining, analyzing, discussing and deliberating the various accounts and records with respect to which such boards are responsible, so long as official action of a board with respect to such records and accounts is taken at a meeting open to the public and subject to the provisions of this chapter.

65 Pa.C.S. §707.

In determining whether a particular meeting was an executive session, Section 708 (Executive sessions) enumerates six (6) instances when an agency can rely on the Executive Session exception to the open meeting requirement:

- (1) To discuss any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of performance, promotion or disciplining of any specific prospective public

officer or employee or current public officer or employee employed or appointed by the agency, or former public officer or employee, provided, however, that the individual employees or appointees whose rights could be adversely affected may request, in writing, that the matter or matters be discussed at an open meeting. The agency's decision to discuss such matters in executive session shall not serve to adversely affect the due process rights granted by law, including those granted by Title 2 (relating to administrative law and procedure). The provisions of this paragraph shall not apply to any meeting involving the appointment or selection of any person to fill a vacancy in any elected office.

- (2) To hold information, strategy and negotiation sessions related to the Sunshine Act negotiation or arbitration of a collective bargaining agreement or, in the absence of a collective bargaining unit, related to labor relations and arbitration.
- (3) To consider the purchase or lease of real property up to the time an option to purchase or lease the real property is obtained or up to the time an agreement to purchase or lease such property is obtained if the agreement is obtained directly without an option.
- (4) To consult with its attorney or other professional advisor regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed.
- (5) To review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of the law and quasi-judicial deliberations.
- (6) For duly constituted committees of a board or council of trustees of a State-owned, State-aided or State-related college or university or community college or of the Board of Governors of the State System of Higher Education to discuss matters of academic admission or standings.

65 Pa.C.S. §708.

Legal challenges to open meetings must occur within 30 days of the date of the offending meeting, or within 30 days from the discovery of any action that occurred at a meeting which was not open, provided that no legal challenge to a closed meeting may be commenced more than one year from the date of said meeting. 65 Pa.C.S. §713. Should the court determine that a meeting did not meet the requirements of the Sunshine Act, it may in its discretion find that any or all official action taken at such meeting shall be invalid. *Id.* Should the court determine that a meeting

met the requirements of the Sunshine Act, all official action taken at such meeting shall be fully effective. *Id.*

II. Alleged Violations of the Sunshine Act

In the instant matter, Plaintiff alleges five violations of the Sunshine Act by Defendant: improper use of the “conference” exception (Count I), improper use of the “executive session” exception (Count II), failure to adhere to executive session procedure (Count III), deliberating at non-public meetings (Count IV), and taking official action at non-public meetings (Count V). In its prayer for relief, Plaintiff asks this Court for declaratory judgment that Defendant violated the Sunshine Act, an injunction preventing Defendant from wrongfully invoking the executive session or conference exceptions, an order requiring Defendant’s receive Sunshine Act training, and attorney’s fees.

i. Count I – Improper Use of the Conference Exception

The Sunshine Act defines a conference as “[a]ny training program or seminar, or any session arranged by State or Federal agencies for local agencies, organized and conducted for the sole purpose of providing information to agency members on matters directly related to their official responsibilities.” 65 Pa.C.S. §703. Section 707(b) authorizes agencies such as Defendant to hold closed door conferences, provided that it meets the Sunshine Act definition of “conference,” and that deliberation of agency business does not occur at such conference.

Plaintiff avers that there is no evidence that the Board held a conference, as defined in the Sunshine Act, on November 10, 2023 because no state or federal agencies were identified as being present, nor was any topic provided to the public about an alleged course of programming or training. Plaintiff alleges the same with respect to the February 16, 2024 conference, and avers that Defendant conducted agency business in both closed sessions.

ii. Count II – Improper Use of the Executive Session Exception

The Sunshine Act’s “executive session” exception may be employed to exclude the public from meetings that would otherwise be open. 65 Pa.C.S. §708. The “executive session” exception is comprised of six specific instances in which an agency may legitimately claim it is holding an “executive session.” *See* §708(a)(1)-(6), *supra*. Importantly, official action on discussions held in executive session shall be taken at an open meeting. §708(b).

Plaintiff avers that there is no evidence that Defendant adhered to any of the seven topics that justify holding an executive session during its November 9, 2023 closed meeting held until approximately 3:20pm. Plaintiff also avers that there is no evidence that the Board’s Audit and Risk Committee adhered to any of the seven topics that justify an executive session during its November 9, 2023 closed meeting that began at approximately 3:30pm.² Plaintiff avers there is no evidence that the Board adhered to any of the seven topics during the Subcommittee on Compensation’s 12:45-1:30pm meeting on February 15, 2024, or during the Subcommittee on Risk’s 3:45-4:00pm meeting on the same day. Finally, at the meeting on May 21, 2024, Plaintiff avers that a Trustee stated that the Board discussed financial models and projections for the stadium renovation during executive sessions in the past, and that another Trustee challenged that those deliberations were not held in compliance with the Sunshine Act.

iii. Count III – Failure to Adhere to Executive Session Procedure

The Sunshine Act requires an agency to announce, “[t]he reason for holding the executive session,” from among the six topics enumerated in §708(a)(1)-(6) “at the open meeting occurring immediately prior or subsequent to the executive session.” 65 Pa.C.S. §708(b). Plaintiff avers that

² The Court interpreted Plaintiff’s repeated reference to “seven topics” that justify an executive session to mean the six topics that justify an executive session under §708(a)(1)-(6), or a legitimate conference session pursuant to §707(b).

Defendant violated the act by failing to provide proper and specific justifications for the executive sessions held on November 9, 2023, November 10, 2023, February 15, 2024 (12:45-1:30pm), February 15, 2024 (3:45-4:00pm), and May 21, 2024 in accordance with 65 Pa.C.S. §708(b).

iv. Count IV – Deliberating at Non-public Meetings

When a quorum of an agency body engages in deliberation, it must publicly advertise and hold that meeting, as well as keep minutes. 65 Pa.C.S. §§704, 706. Further, pursuant to §707(b), “[d]eliberation of agency business may not occur at a conference.” The Sunshine Act defines “deliberation” to mean “[t]he discussion of agency business held for the purpose of making a decision” and defines “agency business” to mean “[t]he framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities, but not including administrative action.” 65 Pa.C.S. §§703.

Plaintiff avers that Defendant used the “conference” exception to improperly close the November 10, 2023 meeting, arguing that no state or federal agencies were identified by Defendant as being present, nor was any topic provided to the public about an alleged course of programming and training. Plaintiff argues the same with respect to the February 16, 2024 “conference,” and further argues that PSU General Counsel Tabitha Oman’s communication to an employee of Plaintiff that the meeting was “informational ... only” was not sufficient under the Sunshine Act, nor was Chairman Schuyler’s general statement that the Board met in conference to discuss a “bevy of topics.”

Finally, Plaintiff argues that, on May 21, 2024, the Board admitted to deliberating at an unspecified number of non-public executive sessions. In support thereof, Plaintiff supplied a transcript of the May 21, 2024 meeting.

v. Count V – Taking Official Action at Non-public Meetings

The Sunshine Act provides that official action on discussions held in an executive session shall be taken at an open meeting. 65 Pa.C.S. §708(c). In fact, §708(c) explicitly provides that “nor shall any executive session be used as a subterfuge to defeat the purposes of section 704 (relating to open meetings).” With respect to the November 10, 2024 meeting, Plaintiff argues that there is no evidence that the Board adhered to any of the six justifications for holding an executive session outlined in §708(a)(1)-(6), and that the Board’s explanation that it met in a closed session to “discuss various privileged matters” is too vague and fails to identify with specificity which of the six executive session justifications, or the conference exception, applied. Plaintiff argues the same with respect to the February 15, 2024 meeting from 3:45-4:00pm and the February 15, 2024 meeting from 12:45-1:30pm, adding that there is not enough public information to know that official action was avoided at those meetings.

III. *Preliminary Objections*

“Preliminary objections may be filed by any party to any pleading.” Pa. R.C.P. No. 1028. Answers and preliminary objections are among the pleadings allowed by Pa. R.C.P. No. 1017. The grounds for a preliminary objection are limited to:

- (1) lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint;
- (2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;
- (3) insufficient specificity in a pleading;
- (4) legal insufficiency of a pleading (demurrer);
- (5) lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;

(6) pendency of a prior action or agreement for alternative dispute resolution;

(7) failure to exercise or exhaust a statutory remedy; and

(8) full complete and adequate non-statutory remedy at law.

Pa. R.C.P. No. 1028.

To rule on a preliminary objection, the court must accept as true all material facts set forth in the challenged pleading and all inferences reasonably deducible therefrom. *Foster v. UPMC South Side Hosp.*, 2 A.3d 655, 662 (Pa. Super. 2010).

With respect to each of the five Counts of Plaintiff's Second Amended Complaint, Defendant raises preliminary objections in the form of a demurrer pursuant to Pa. R.C.P. No. 1028(4) and for insufficient specificity in a pleading pursuant to Pa. R.C.P. No. 1028(3). Defendant also raised preliminary objections in the nature of a demurrer with respect to any claims arising from the January 29, 2024 executive session and for any claims arising from the April or May 2023 executive sessions, conferences and/or working sessions, though Plaintiff notes that it made no claims with respect to those meetings and agrees any such claims would be time-barred. The Court declines to make any finding with respect to any claims arising out of the January 29, 2024 executive session or sessions occurring in April or May 2023.

The Court now considers Defendant's preliminary objections to the five counts alleged in Plaintiff's Second Amended Complaint.

i. Preliminary Objection – Demurrer

In ruling on a preliminary objection in the nature of a demurrer, the trial court is required to accept as true all well-pleaded allegations of material fact and all reasonable inferences deducible from those facts and resolve all doubt in favor of the non-moving party. *Taylor v. Pennsylvania State Corr. Officers Ass'n*, 291 A.3d 1204, 1208 (Pa. Super. 2023). The question

presented is whether, on the facts averred, the law says with certainty that no recovery is possible. *Id.* It is well-established that a plaintiff must provide sufficient factual averments in his or her complaint to sustain a cause of action. *Feingold v. Hendrzak*, 15 A.3d 937, 942 (Pa. Super. 2011); *see also Foster v. UPMC South Side Hosp.*, 2 A.3d 655, 666 (Pa. Super. 2010) (“Pennsylvania is a fact-pleading state; a complaint must not only give the defendant notice of what the plaintiff’s claim is and the grounds upon which it rests, but the complaint must also formulate the issues by summarizing those facts essential to support the claim.”) (quoting *Lerner v. Lerner*, 954 A.2d 1229, 1235 (Pa. Super. 2008)). However, where the crucial facts are in the exclusive knowledge of the defendant, and the plaintiff so pleads, he should be given considerable latitude. *Line Lexington Lumber & Millwork Co. v. Pa. Publ’g Corp.*, 301 A.2d 684, 689 (Pa. 1973). A court need not accept as true conclusions of law, unwarranted inferences, or expressions of opinion. *Bayada Nurses, Inc. v. Comm., Dept. of Labor and Industry*, 8 A.3d 866, 884 (Pa. 2010).

Defendant asserts that Plaintiff’s Second Amended Complaint is legally insufficient under Pa.R.Civ.P. No. 1028(a)(4). Defendant argues that Plaintiff makes unsupported allegations and does not set forth any specific facts to support its claims, relying instead on “conclusions of law, unwarranted inferences, or expressions of opinion.” Plaintiff contends that the facts pled are sufficient to overcome the presumption of regularity and legality that attaches to agency proceedings. In its Brief in Opposition to Preliminary Objections, Plaintiff further notes that Defendant is the party with the “exclusive knowledge” of whether the proceedings that occurred behind closed doors were violative of the Sunshine Act and, therefore, Plaintiff should be afforded broad latitude in crafting its pleadings.

Although Plaintiff makes a number of factual allegations in its Second Amended Complaint “upon information and belief,” the Court cannot rely solely on Plaintiff’s “information and belief”

to allow this suit to proceed. Defendants point out that, just because there is a lack of evidence that the Board adhered to the Sunshine Act, does not mean that, necessarily, there has been a violation of the Act. Further, while Plaintiff asserts in its Brief in Opposition that Defendant is the party with “exclusive knowledge” of crucial facts necessary to maintain this suit, Plaintiff must raise that fact in its opening pleading in order to survive a preliminary objection in the nature of a demurrer. When an impurity of information is properly plead on the face of a complaint, a plaintiff may be entitled to some leniency in crafting its allegations. *See Line Lexington, supra*, at 688. For these reasons, Defendant’s preliminary objections in the nature of a demurrer, with respect to each of the five Counts in Plaintiff’s Second Amended Complaint, are SUSTAINED.

ii. Preliminary Objection – Insufficient Specificity

Defendant asserts that Plaintiff’s Second Amended Complaint lacks specificity pursuant to Pa.R.Civ.P. No. 1028(a)(3). The pertinent question under Rule 1028(a)(3) is “whether the complaint is sufficiently clear to enable the defendant to prepare his defense,” or “whether the plaintiff’s complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question upon what grounds to make his defense.” *Ammlung v. City of Chester*, 302 A.2d 491, 498 n. 36 (Pa. Super. 1973) (quoting 1 Goodrich–Amram § 1017(b)–9). In light of the Court’s ruling sustaining Defendant’s demurrer preliminary objections, the Court declines to make a finding with respect to the sufficiency of the specificity provided in Plaintiff’s complaint.

Accordingly, the Court enters the following Order:

ORDER

AND NOW, this 26th day of November, 2024, Defendant's Preliminary Objections are hereby ruled on as follows:

1. Defendant's Preliminary Objection in the nature of a demurrer is hereby SUSTAINED.
2. Plaintiff's Second Amended Complaint is hereby DISMISSED without prejudice. Plaintiff shall have thirty (30) days to cure those deficiencies identified herein and re-file an amended complaint.

BY THE COURT:



Brian K. Marshall, Judge