

Open Meetings Act

OMA

Democratic Foundation

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Public's Right To Know

Openness Mandated by State and Federal Law

Openness and Accountability

Introduction and Overview of the Open Meetings Act

General Background:

Nancy Fuller

Public official has a duty to comply – serves to benefit the public

Government meetings are presumed to be open to the public

OMA requires that all government meetings be open to the public

Exceptions: Can only be closed when provided for under statute

Public Notice of:

Time

Date

Place

Subject Matter

Records of meetings must be kept

Civil remedies and Criminal penalties for failure to comply

Purpose of the Open Meetings Act (1967 original enactment)

Citizens are entitled to know...

Citizens should be able to observe how and why decisions are reached

Sharpstown Scandal 1971-1972

Stock fraud (attempted bribery by bank for favorable legislation)

Government officials convicted (Texas Speaker of the House)

Result was extension of OMA to all government bodies

Amendments since 1978

Advanced communication (e.g., e-mail)

Closed "staff briefing" loophole

Open Meetings Act (Government Code 551) 1993

Requirement of government body to hold open meetings:

Governmental bodies, Quorums and Meetings

Under OMA all of a government bodies meetings must be open to the public, unless a law allows a closed meeting.

(Scenario – City Council)

OMA applies to:

Government bodies:

- State agencies
- Counties
- Cities
- School Districts

Some nonprofit corporations

Entities required by law to comply with the OMA:

- Executive or Legislative Branch
- State Board
- Commission
- Department
- Agency (that is within the Executive or Legislative Branch and is directed by at least one elected or appointed official)

County Commissioners Court

Municipal governing body

- Department, agency or subdivision of a county or municipality that has rulemaking or quasi-judicial power

Educational Entities:

- School district board of trustees
- County board of school trustees
- County board of education
- Governing body of open enrollment charter schools
- Governing board of special district

Nonprofit Corporation eligible to receive block grant funds

Nonprofit Corporation that is organized under Chapter 67 of the Water Code and is exempt from ad valorem taxation

Economic Development Corporations

Committee or Subcommittee of a governmental body ~

- If the committee does more than simply advise
- If the committee has the power to make final decisions

Entities NOT subject to the OMA:

- Judiciary
- Advisory committee
- Private nonprofit corporation – Private Entity

**The Public Information Act (PIA) and The Open Meetings Act (OMA)
are two separate and independent laws.**

Definition of Government Body and Meetings

Government Body

Entity that is subject to the OMA

Quorum

Generally refers to the majority of a governmental body

Must be present for the governmental body to take action and make final decisions

Members knowingly meet in numbers less than a quorum in order to avoid having a public meeting

Meeting

2 types, each requires a quorum and occurs when either...

1. A member of a governmental body speaks, or
2. The governmental body calls, conducts or is responsible for the meeting

Examples to consider: Do these qualify as meetings?

Ask the following questions:

Is a quorum present?

Is there a discussion of public business?

Is there deliberation of public business?

OR

Is the governmental body responsible for the meeting?

(Scenarios)

City Council Meeting 1 – Meets the criteria; this is a meeting.

City Council Meeting 2 – Meets the criteria; this is a meeting.

Mayor’s Meeting – Meets the criteria. This is a meeting and is illegal under Open Meetings Act

Unplanned meetings that develop

- a. County judges office – This suddenly becomes a meeting
- b. Texas Case – Informal discussion outside the formal meeting.

Social or informal discussions that do not address governmental business are not subject to OMA “*Walking Quorum*”

City Council Meeting 3 – Meets the criteria; this is a meeting.

City Council Meeting 4 – This staff meeting meets the criteria; this is a meeting.

Mayor's Office – Change of location does not negate the rules.

City Park – Change of location does not negate the rules.

City Council members present at a school board meeting – This is not a meeting of the City Council and is not subject to the OMA.

City Council members present at a school board meeting AND one of the CC members participates – NOW this IS a meeting of the City Council and become subject to OMA.

What other formats can constitute a meeting under OMA?

Non-spoken exchange such as:

Written material

E-mail

Text Messages

Example: Circulated Invoice

If in question: Do not reply.

Generally cannot meet by telephone, etc.

Telephone Call or Conference Call

When in doubt, caution is the prudent action

Notice Requirements for Open Meetings

Written Public Notice of:

Time

Date

Location

Subject Matter

Use specific descriptions

“Personnel” – Is there special public interest?

Do not use general terms such as “old business” or “new business”

(Examples)

Posting Requirements:

Location accessible to the public

At least 72 continuous hours before the meeting

Special Exceptions for statewide jurisdiction

Website posting is required

Special Rules:

Notice of Emergency Meetings

Subject Matter added after original posting

Act according to “Good Faith” Requirement

What is an emergency?

Apply in a case of emergency or urgent public business

Imminent threat to public health and safety
Reasonably unforeseeable situation
Recessing a meeting without reposting can be done if meeting reconvenes the next business day

Record keeping

Minutes or tape recording

Subject

Votes, orders, decision or other action taken

Public records must be made available

Records Retention Act

Rules for retention schedule and destroying records

Open and Closed Meetings:

Procedures for Quorum must be present in meeting room for both types of meetings

Open Meetings:

One that the public is entitled to attend

Accessible to public (including special needs, disabilities...)

Allows public to see government in action

Public Participation

May allow public to speak – governmental body may participate & may limit

Board members may only discuss posted items but may give factual information during public participation

Closed Meetings

Can only take place when authorized by a specific statute

Exceptions to Open Meetings Requirement

Attorney-Client consultation

Seek advice about legal matters

Presence of attorney does not negate any other guidelines about discussing appropriate topics

Deliberations about real property

Only where public discussion would have a detrimental effect on negotiations

Deliberations about security devices

Deliberations about economic development negotiations

Other common exceptions

Personnel exceptions

Who attends a closed meeting?

Only the members of the government body, and the government attorney must be present when the body is using the attorney consultation exception

Board's Discretion to include government officers and employees if their participation is necessary

Conducting a Closed Meeting

Authorized by a provision of the Act

Properly convene in an open meeting

Announce that a closed meeting will be held

Identify the Open Meetings Act provisions allowing for the closed meeting

Posted notice must identify all topics to be covered

Must keep certified agenda or tape recording, record of actions taken
No record is required to be kept of attorney consultation

Keep records for 2 years

Final decision or vote may be made only in an open meeting

Penalties and remedies for violations

Actions taken in an illegal meeting can be voided

An illegal action taken in an otherwise legal meeting can be voided alone – e.g., item not on agenda

Civil remedies

The civil penalty provision of the OMA authorizes any interested person, including a member of the news media, to bring a civil lawsuit to force officials to follow the OMA or to have illegal meeting actions voided.

Court can award

Attorney's fees
Litigation costs

Criminal penalties

Punishable as misdemeanors

“Walking Quorum”

Specifically to discuss items

Secretly discuss a public matter

Goal of avoiding an open meeting

Governmental body subject to civil and criminal liability

If in doubt, consult with legal advisor

See next page for Assistance with the Process

Assistance with the Process

Your attorney, or
Office of Texas Attorney General

Open Government Hotline: 1-877-673-6839
1-877-OPEN-TEX

Office of the Attorney General
Open Records Division
P. O. Box 12548
Austin, Texas 78711-2548

Website: www.oag.state.tx.us
Public Information Handbook

To View the Open Meetings Act Video:

1. Go to website: www.oag.state.tx.us
2. On the right of screen, click on: Open Government Training
3. In middle of screen, click on: Open Meetings Act Training Video