Let the Sun Shine In

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Open Meetings and Open Records
OVERVIEW

Open Meetings Law - Definitions
Public Notice and Minutes
Closed Sessions and Exemptions
Process for Holding a Closed Session
Formal Meetings by Electronic Means
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OVERVIEW

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Recent Legislative Amendments (SF 430)
Section 21.3, Meetings of Governmental Bodies.

Meetings of governmental bodies shall be . . . held in open session unless a closed session is expressly permitted by law.

Section 21.2, Definitions.

As used in this chapter:

3. “Open session" means a meeting to which all members of the public have access.
Section 21.2, Definitions.

As used in this chapter:

2. "Meeting" means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties.
Section 21.2, Definitions.

As used in this chapter:

2. (cont’d) Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter.
Section 21.3, Meetings of Governmental Bodies. Meetings of governmental bodies shall be preceded by public notice (including date, time and place of meeting and tentative agenda)

2011 Legislative Amendment:

Section 21.4 now requires notice of a reconvened meeting unless reconvened within four hours, time and place announced at the initial meeting, and no change to the agenda
Section 21.3, Meetings of Governmental Bodies.

Each governmental body shall keep minutes of its meetings showing the date, time and place, members present, and action taken. The minutes shall be public records open to public inspection.
Section 21.5, Closed Session.

1. A governmental body may hold a closed session only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting.
OPEN MEETINGS LAW
REQUIREMENTS FOR CLOSED SESSION

Section 21.5, Closed Session.
2. The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption must be announced publicly at the open session and entered in the minutes.
Section 21.5, Closed Session Exemptions

(c) To discuss litigation strategy with counsel

(i) To evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session
(j) To discuss the purchase or sale of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property or reduce the price the governmental body would receive for that property.
OPEN MEETINGS LAW
PROCESS FOR HOLDING A CLOSED SESSION

• Put it on your council agenda
  • Include the specific closed session exemption by reference to the Iowa Code Section
  • Not required to include the case name, if it is litigation
• Ask your city attorney whether it is lawful to go into closed session for that purpose
• Council meeting minutes must include the attorney’s oral opinion that it is lawful
OPEN MEETINGS LAW
PROCESS FOR HOLDING A CLOSED SESSION

• Each member’s vote on the question of holding the closed session must be announced publicly at the open session and entered in the minutes
• Keep detailed minutes and an audio recording
• Only discuss relevant matters
• Don’t take final action during closed session
• Don’t talk about the closed session publicly
**OPEN MEETINGS LAW**  
**FORMAL MEETINGS BY ELECTRONIC MEANS**

**Section 21.8, Electronic Meetings.**

1. When a meeting in person is impossible or impractical, a government body may conduct a meeting by electronic means if –

- Notice of the time, date, place and agenda of the meeting is given.
- The governmental body provides public access to the conversation of the meeting;
- The place of the meeting is the place from which the communication originates or where public access is provided to the conversation;
- Minutes are kept of the meeting.
Section 21.2, Definitions.

2. "Meeting" means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties.
Walking quorums and serial meetings have been determined to be an open meetings law violation in some states.

An informal gathering ("meeting") by electronic means can occur, either by telephone or by email, if a majority of the council engage in collective deliberation on a matter within the scope of the council's policy-making duties.
Section 21.6, Enforcement

1. Any aggrieved person, taxpayer to, or citizen of, the state of Iowa, or the attorney general or county attorney, may seek judicial enforcement of the requirements of this chapter.
Section 21.6, Enforcement

3. Upon finding a violation, a court:
   Shall assess each member of the body, who participated in the violation, damages of not more than five hundred dollars nor less than one hundred dollars.

2011 Legislative Amendment:
Shall assess each member of the body who knowingly participated in the violation damages of not more than two thousand dollars nor less than one thousand dollars.
OPEN MEETINGS LAW
ENFORCEMENT

A member is not to be assessed damages if the member:

• Voted against the closed session
• Believed facts indicating compliance with the law
• Reasonably relied on a court decision, attorney general’s opinion or opinion of the governmental body’s attorney
• The governmental body attorney’s opinion must be in writing, or if oral must be included in meeting minutes
OPEN MEETINGS LAW
ENFORCEMENT

Section 21.6, Enforcement

Upon finding a governmental body has violated this chapter, a court:

- Shall order payment of costs and attorney fees by the violating members who were ordered to pay damages, or by the governmental body
- Shall void the action taken, if the suit is brought within six months and the court makes certain findings
- Shall order a member removed from office if it is a second violation during that member’s term of office
Section 22.2. Right to Examine Public Records - Exceptions.

1. Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record.
Section 22.1. Definitions.

3. ...., "public records" includes all records, documents, tape, or other information, stored or preserved in any medium, of or belonging to this state or any county, city,..., or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.
Section 22.7. Confidential records.

The following public records shall be kept confidential, unless otherwise ordered by a court, (or) by the lawful custodian of the records: 

4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body.
Section 22.7. Confidential records.
(cont’d)

5. Peace officers' investigative reports,...
However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential..., except...where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.
Section 22.7. Confidential records.
(cont’d)

7. Appraisals . . . concerning the sale or purchase of real or personal property for public purposes, prior to execution of a contract for such sale or submission of the appraisal to the . . . owner or interest holders . . .
Section 22.7. Confidential records. (cont’d)

11. Personal information in confidential personnel records of public bodies,... except for the following:

- Name and compensation including any written agreement
- Date the individual was employed by the government body
Section 22.7(11) (cont’d)

- Positions the individual holds or has held
- Educational institutions attended by the individual, including diplomas and degrees
- Names of previous employers, positions held, and dates of employment
- Any final disciplinary action taken resulting in discharge
Section 22.7. Confidential records.
(cont’d)

18. Communications...made to a government body...by identified persons outside of government, to the extent that the government body...could reasonably believe that those persons would be discouraged from making them...if they were available for general public examination.
Section 22.10. Civil enforcement.

(synopsis)

The Open Records Law provides essentially the same enforcement remedies as are available for violation of the Open Meetings Law, including:

- assessment of damages;
- assessment of costs and attorneys fees; and
- removal from office.
SENATE FILE 430

- Adds confidential record protection for tentative, preliminary, draft or research materials prior to completion
- These draft materials are generally not subject to open records laws
- Creates the Iowa Public Information Board
IOWA PUBLIC INFORMATION BOARD

• The 9 member board is comprised of: no more than 3 members of the media, no more than 3 members that represent cities, counties, or other political subdivisions

• Purpose of the board is to provide an alternative means to secure compliance with open meetings and open records law

• Aggrieved persons, including any taxpayer or citizen of Iowa, the attorney general or any county attorney may seek enforcement
IOWA PUBLIC INFORMATION BOARD

- Board does not have jurisdiction over the judicial or legislative branches of state government or the governor’s office
- Reliance on an opinion of the Iowa Public Information Board can be used as a defense in open meetings violation case or public records violation case
- Board can issue declaratory orders with the force of law subpoenas and institute civil fines
IOWA PUBLIC INFORMATION BOARD

- Can issue subpoenas for the purpose of investigating complaints
- Can issue orders with the force of law determining if there has been a violation of Chapter 21 or Chapter 22
- Impose civil penalties and other appropriate remedies calculated to declare, terminate or remediate any violation of those chapters.
IOWA PUBLIC INFORMATION BOARD

• Make training opportunities available for persons who have responsibilities in relation to Chapter 21 or Chapter 22
• Make recommendations to the governor and general assembly
QUESTIONS???

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