

SUNSHINE LAWS

Open Meetings and Open Records in Iowa

Government Belongs to the People .





“Whenever the people are well-informed, they can be trusted with their own government.”

Thomas Jefferson



“The liberties of a people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them.”

Patrick Henry



“A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps both.”

James Madison

History

Presumption of Openness

“Ambiguity in the construction or application of this chapter should be resolved in favor of openness.”

(Iowa Code Section 21.1)

History



First enacted July 1, 1967

Tweaked from the 1970's on

Iowa Public Information Board

Created July 1, 2012 and activated July 1, 2013

To provide “an alternative means by which to secure compliance with and enforcement of the requirements of chapters 21 and 22”

But to secure it in “an efficient, informal and cost-effective” process

(Iowa Code Section 23.1)

OPEN MEETINGS 101



Defining a Government Body

Governmental Bodies are:

- ✓ *Boards, Councils and Commissions created by law or appointed by other governing bodies such as city councils, county boards of supervisors, school boards (a,b,c)*
- ✓ *Bodies created by the Board of Regents or a president of a university charged with management or control of athletic programs at the state universities (d)*
- ✓ *Advisory boards, advisory commissions and task forces created by state or local governments to develop and make recommendations on public policy (e)*
- ✓ *Non-profit corporations (other than a fair) who are supported with property tax revenue and licensed to conduct pari-mutual betting (f)*
- ✓ *Non-profit corporations licensed to conduct gambling games pursuant to chapter 99F (g)*
- ✓ *Governing bodies of drainage or levee districts (i)*
- ✓ *Advisory boards, advisory commissions, advisory committees, task forces created through 28E agreements or by statute or executive order of state or subdivision to develop and make recommendations on public policy (h,j)*
- ✓ *Advisory boards of General Assembly and Governor by executive order (e)*

(Section 21.2)

FAQ

Does the definition apply to all task forces, subcommittees, etc?

Yes, if membership includes a quorum of the main body, the group is likely to be covered by the law.

Legal guidelines include the following-

- ✓“Advisory bodies created by school boards and county boards of supervisors and other governmental agencies by executive order to develop and make recommendations on public policy issues” are subject to the provisions of the open meetings law. (Tabor to Stilwill and Sarcone, 93-11-5)
- ✓The Iowa Supreme Court has said that policy-making “is more than recommending or advising what should be done. Policy-making is deciding with authority a course of action.” Mason v. Vision Iowa Bd, 2005
- ✓If they are acting within scope of duty to develop and make recommendations Mason v. Vision Iowa Bd.

Best Practices



While some ad hoc committees, advisory board or task forces may not be required to be open, they are often encouraged to do so as a matter of good public policy. Allowing the public to observe the deliberations will add to the “buy in” necessary to enact any decision or recommendation made by the group.

Defining a Meeting

“...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 (2))

FAQ



Can members get together socially?

Yes, but they cannot discuss business. The Attorney General has said that a gathering becomes a “meeting” when a quorum of officials engage in discussion on matters over which they exercise judgment.

The purpose of the law is to allow citizens to see how their officials arrive at a decision. Citizens need to see the discussion and hear the opinions. Even retreats are public meetings if a quorum is present and policy is discussed.

FAQ

Can members e-mail each other concerning governmental business?

Every situation is fact specific, and it is easy to send an e-mail to all members just to share relevant information on a topic without the intent to avoid the Open Meetings Law. However, if members want to share an opinion or debate policy, they should save that discussion for the open session.

Best Practices

- ✓ Save discussion and opinion of any subject for open meetings.
- ✓ Electronic communication concerning public business is a public record.

Note: Proposed legislation that would prohibit “walking quorums” – serial communication among individual members of a government body, either in person or electronically, with the intent to skirt the open meetings law – has been the topic of much discussion at the Statehouse in recent years.

FAQ



Do members of the public have the right to speak at an open meeting?

While most bodies have a time noted on their agendas for public comment, members of the public have no right to participate in the discussion of an item unless they are on the agenda.

Preparing For a Meeting

Meetings must –

Be preceded by a public notice of at least 24 hours giving the date, time, place and a tentative agenda.

Notice of the meeting must be sent to any news organization requesting it.

The notice must be posted in a prominent place accessible to the public at the government office. If no office is available, notice should be prominently placed where the meeting will be held.

(Sections 21.3, 21.4)

Best Practices

- ✓ E-mail a copy to members of the public who request it and place it on your website.
- ✓ Post any notice in an area, door, bulletin board, etc. where the public is most likely to see it for **at least 24 hours** preceding a meeting. The posting should have continuous access if at all possible.

FAQ

What needs to be included in the agenda?

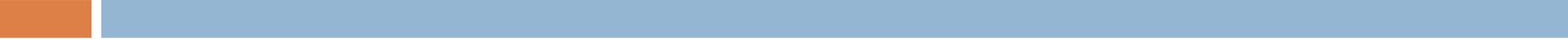
Barebones agenda information such as “approval of old minutes, old business, new business” would **not** be sufficient, nor would using the same agenda for meeting after meeting.

Guidelines provided by the Iowa Supreme Court

(KCOB/KLVN v. Jasper County Board of Supervisors, 1991, and Barrett v. Lode, 1999):

- ✓ The tentative agenda can be subject to change under certain circumstances.
- ✓ The law allows discussion and action on emergency items, but if action can reasonably be deferred to a later meeting, it should be.
- ✓ The information on the agenda must be reasonably sufficient to alert interested people as to the subject matter to be considered.
- ✓ The agenda must specifically state any issues the board intends to discuss in open or in closed sessions.

Minutes



Minutes should show, at a minimum, the date, time and place, the members present and the action taken at any meeting. Votes by each member must be noted individually but a unanimous vote can be so noted as long as all present vote. Minutes become public record as soon as they are complete and must be published as required by law, in the appropriate newspaper. Although not a substitute to publishing, minutes can also be made available online.

(Section 21.3)

FAQ

Can secret or preliminary votes be taken?

No, all votes must be recorded.

Closed Sessions

Closed sessions may be held only by the vote in open session of two-thirds of the members of the body or all members present and only after citing one of the following reasons-

- ✓ To review or discuss a record which is required or authorized by state or federal law to be kept confidential or as a condition to retain federal funding. (a)
- ✓ To discuss application for a patent. (b)
- ✓ To discuss strategy with counsel on matters that are currently or may imminently be in litigation. (c)
- ✓ To discuss contents of a licensing examination, initiate disciplinary investigation or proceeding if the body is involved with licensing or examining. (d)

Closed Sessions

- ✓ To conduct a hearing or discuss whether to conduct a hearing to suspend or expel a student unless the student and/or parent wants the meeting to remain open. (e)
- ✓ To discuss the decision to be rendered in a contested case. (f)
- ✓ To avoid disclosure of specific law enforcement matters which if disclosed would enable law violaters to avoid detection or facilitate disregard of requirements imposed by law. (g,h)
- ✓ To evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered. The individual must request a closed session. (i)
- ✓ To discuss the purchase or sale of real estate. The minutes and audio recording of the closed session shall be made available when the transaction is dropped or completed. (j)
Noteworthy: this section may require an entity to retain the closed session records longer than as required in 21.5

Closed Sessions

- ✓ To discuss records concerning security procedures and emergency preparedness for the protection of government employees, visitors, people under the care and protection of the government and its property. (k)
- ✓ To discuss patient care quality and process improvement initiatives in a meeting of a public hospital that if disclosed might harm the hospital's competitive position. (l)
- ✓ Other sections of the Iowa Code may permit a government agency to close a meeting OR exempt meetings from the requirements of the open meetings law. (For example, Ch. 279 exempts some meetings and records involving the termination of a teacher from the sunshine laws.)

Procedure During Closed Session

- ✓ No additional topics can be discussed.
- ✓ The session must be recorded and “detailed minutes” must be taken. These records must be retained for at least one year and are not public record. Members who would have otherwise had access to the closed session may get access to the closed session recording and minutes.
- ✓ Final action must happen in open session.

But perhaps the most important thing to remember-

Nothing in this law requires a governmental body to hold a closed session to discuss or act upon any matter.

(Section 21.5(5))

OPEN RECORDS 101



Definitions

All governmental bodies, officials and employees are covered by Chapter 22, examination of public records.

Each body must designate a “lawful custodian” for its records and must **publicly** announce who holds that responsibility.

The term “record” includes all documents, tape or other information stored or preserved in any medium of or belonging to a governmental body. It also includes all records relating to the investment of public funds. It includes electronic communication such as e-mails, websites or blogs.

FAQ

Who has the right to examine public records?

Anyone can examine, photograph or copy a public record without charge while the public record is in the physical possession of the custodian.

The governmental body cannot prevent examination of the records by contracting with a nongovernmental entity to create, hold or store those records. (Section 22.2 (6))

There are two exceptions-

Governmental bodies can control the terms and conditions of the examination of non-confidential records stored within geographic computer databases. Bodies must establish reasonable rates for the examination of these records. (Section 22.2(3)(a))

Data processing software. (Section 22.2(3)(b))

FAQ

When must records be made available?

During customary office hours of the lawful custodian.

If the custodian does not have customary office hours of at least thirty hours per week, such rights “...may be exercised at any time from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m. Monday through Friday, excluding legal holidays, unless the person exercising such right and the lawful custodian agree on a different time.” (Section 22.4)

Confidential Records

There is a list of records that shall be kept confidential under 22.7 of the open records law. Other sections of the Iowa Code and federal law also may contain provisions mandating confidentiality. Know your records and the laws relating to them.

The most common confidential records are-

- ✓ Medical records. (2)
- ✓ Trade secrets protected by law. (Trade secrets are defined in Iowa Code Chapter 550),(3)
- ✓ The work product of an attorney related to litigation by or against a public body. (4)
- ✓ Peace officers' investigative reports, except for date, time, specific location, and immediate facts and circumstances surrounding a crime or incident. (5)
- ✓ Appraisal information concerning the sale or purchase of property for public purposes prior to announcement of the project. (7)

Confidential Records

- ✓ Certain personal information such as age, race, sex, address and Social Security, home telephone numbers, reason for sick leave held in confidential personnel records of government employees. This does not include the dates and times of use of sick or vacation leave. 22.7(11) and (32)
- ✓ Information that if released would cause the loss of federal funding (22.9)
- ✓ Information submitted which is not required by law and submitted from someone outside government, and the lawful custodian could reasonably believe those persons would be discouraged from submitting. Unless the person consents to its release or the identifying information can be redacted to keep the identity of the individual confidential. 22.7(18)

Confidential Records

In 2011, the Legislature amended Ch. 22.7(11) to require the following information to be made public:

- ✓ The name and detailed information about compensation of an employee, including any written agreement about terms of employment. This covers anything of value given to an employee, including pay, benefits, vacation, severance payments and retirement benefits.
- ✓ Employment dates, positions held, educational background and previous employment.
- ✓ The fact that the employee was discharged as the result of a disciplinary action.

In 2002, Legislature enacted several exemptions related to homeland security.

Confidential Records



The public records law allows the release of confidential information when “ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information...”

Confidential Records

When a government entity is involved in a legal dispute, including an allegation that the entity violated a rule or statute, after the dispute is resolved, the government body must prepare a summary that indicates the identity of the parties involved, the nature of the dispute and the terms of the settlement. This summary and the settlement agreement are public records. (Section 22.13)

Records custodians can withhold “tentative, preliminary, draft, speculative, or research material, prior to its completion for the purpose for which it is intended.” However, this exception does not apply to public records that are actually submitted for use by government bodies or that are used in the formulation, recommendation, adoption of government policy or action. (22.7(65), effective July 1, 2013)

FAQ

How much time does a custodian have to respond to a record request?

Most requests are routine and will be handled immediately or as soon as practically possible.

However, a good faith delay is allowed to determine whether the record in question is a public record or confidential. *(Section 22.8(4))*

A reasonable delay for this purpose ordinarily should not exceed 10 business days and cannot exceed 20 calendar days. *(Section 22.8(4))*

Record custodians should work with requesters to ensure that the correct records are released in as timely a manner as possible.

FAQ

What about records held on databases?

While the software used to run a database is confidential, the records contained on a database can be open or a combination of open and closed.

Records cannot be withheld because they contain both non-confidential and confidential material. Bodies cannot acquire any system that impairs the examination of a public record and therefore need to find a way to remove or redact confidential material from any record requested. (Section 22.3A(2))

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Supervision and Fees

Record requests do not have to be made in person; officials shall fulfill requests made in writing, by telephone or by electronic means.

Examination and copying shall be done under the supervision of the record custodian; the custodian should not relinquish control of the records. *(1982 Op. Att'y. Gen. 76)*

The lawful custodian shall adopt reasonable rules to safeguard the records.

The custodian shall provide a suitable place for the work or move to a separate location, if necessary.

The custodian shall provide a reasonable number of copies. Most governmental bodies fulfill a simple request for free.

Supervision and Fees



The lawful custodian may charge a reasonable fee for the services of the custodian and for the copies. Any fees should be applied uniformly.

Fulfillment of a request may be made contingent upon payment of a fee and estimated expenses shall be communicated to the requestor.

Fees cannot exceed the actual cost of providing the service and cannot include the costs of ordinary expenses such as employment benefits, depreciation, maintenance, electricity or insurance associated with the administration of the office.

Data Manipulation

“If it is necessary to separate a public record from data processing software in order to permit the examination or copying of the public record, the government body shall bear the cost of separation of the public record...” (Section 2.3A(2))

However...”The amount charged for access to a public record shall be not more than that required to recover direct publication costs, including but not limited to editing, compilation, and media production costs, incurred by the government body in developing the data processing software and preparing the data processing software for transfer to the person.” (Section 22.3A(2))(a))

“The government body shall, if requested, provide documentation which explains and justifies the amount charged.” (Section 22.3A(2)(a))

Fair Information Practices

State agencies are required and local governments are strongly encouraged to create an information policy that includes the following-

- ✓ They must be clearly defined and subject to public review and comment.
- ✓ The nature and extent of the personally identifiable information collected, its legal authority to do so, and a description of how it will be stored. (Section 22.11(1)(a))
- ✓ A description of which of its records are public, confidential or a combination of the two. (Section 22.11(1)(b))
- ✓ Procedure for providing access to the public records. (Section 22.11(1)(c))
- ✓ A procedure to allow a person to review the records about that person and have additions, dissents or objections entered in that record unless the review is prohibited by statute. (Section 22.11(1)(d))

Fair Information Practices

- ✓ A procedure where the subject of a confidential record can have the record released to a named third party. (Section 22.11 (1)(e))
- ✓ A procedure that notifies the persons supplying information to the agency of its use. (Section 22.11 (1)(f))
- ✓ Whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. (Section 22.11 (1)(g))

Fair Information Practices



Other bodies that are not state agencies may choose to adopt this practice, but the policies must be adopted by the elected governing body, and the policies, if adopted by the elected governing body, must be kept in certain offices of that body.

(Section 22.12)

Penalties

- ✓ The law provides for civil lawsuits.
- ✓ A court can issue an injunction ordering a government body to comply, assess damages between \$100 and \$500, order payment of costs and attorney fees, and remove repeat violators from office. (Section 22.10(3))
- ✓ If a member of a governmental body knowingly participated in a violation, damages increase to \$1,000-\$2,500. (Section 22.10(3)(b))
- ✓ Ignorance of the law is not a defense, but damages will not be assessed against officials who voted against the violation, refused to participate in the violation, engaged in efforts to resist the violation, or relied upon a formal opinion of the attorney general, or the advice of an attorney provided in writing or memorialized in a meeting. Government officials who rely on advice from the Iowa Public Information Board are also protected. (Section 22.10(3)(b))

The Iowa Public Information Board



The Iowa Public Information Board provides an official, efficient and free legal resource for citizens and government officials with questions about Iowa open meetings and records laws, and for citizens with complaints about alleged violations of the laws. The board is also one of the few such agencies in the nation with the authority to not only advise but to enforce the state sunshine laws.

The Iowa Public Information Board

The nine board members are appointed by the governor subject to confirmation by the Iowa Senate. No more than three members shall represent the media, and not more than three represent cities, counties or other local governments. The members serve staggered four-year terms, and the board is balanced by political party and gender. The board appoints a chair from among its members, and it is authorized to hire at least one employee, an attorney who serves as executive director.

The board is an independent agency.

The Iowa Public Information Board

The board is authorized by statute 23.6 ...

- ✓ To issue advice, or declaratory orders with the force of law, regarding the applicability of the open records and open meetings laws.
- ✓ To receive and investigate complaints alleging violations of the laws and seek resolution through informal assistance, mediation and settlement.
- ✓ If a complaint cannot be resolved informally, and the board has probable cause to believe the law has been violated, to prosecute the government body or official in a contested-case proceeding under the Administrative Procedures Act.

The Iowa Public Information Board

The board is authorized by statute 23.6 ...

- ✓ To issue subpoenas to investigate complaints and prosecute cases, and to issue orders with the force of law to require compliance with the sunshine laws.
- ✓ To offer training in Chapters 21 and 22 to government bodies, to disseminate information to the public, and to submit an annual report to the governor and Legislature, making recommendations relating to access to government information.

The Iowa Public Information Board

The board does not have jurisdiction over the judicial or legislative branches, or over the governor and governor's office. 23.12

The board also is limited to addressing issues involving Chapters 21 and 22 of the Iowa Code 23.1

Complaints must be made within 60 days of the alleged violation of those laws 23.7 (1)

Declaratory orders issued by the board, determining the applicability of the open meetings or records law to specific fact situations, have the force of law.

The Iowa Public Information Board

Amendments to both Chapter 21 and 22 provide protection to government officials who rely on written advice of the Public Information Board, the attorney general or the government body's attorney.

The board can assess damages, void action taken in violation of the open meetings law, and require a government body or official to take any appropriate remedial action.

23.10(3)(b)

The board does not have the authority to unilaterally remove a person from office, but it may file an action to remove someone from office under Chapters 21 or 22, which include “two strikes and you’re out” provisions that direct the court to order the removal of an official upon his or her second violation during a term. 23.10(3)(c)

The Iowa Public Information Board

Any person, the attorney general or county attorney seeking to enforce open meetings and records laws can bring the complaint before the board, or the individual can bring an action in state district court, as under current law. If more than one party simultaneously brings an action before the board and in court, the court shall stay the case pending resolution of the complaint by the board. A final board order is subject to judicial review. 23.5



To repeat-

“Ambiguity in the construction or application of this chapter should be resolved in favor of openness.”

Suggested Iowa Resources

Iowa Public Information Board

Website www.ipib.iowa.gov ;

email IPIB@iowa.gov or phone 515-725-1781

The attorney for the government body or government association

The county attorney

Suggested Iowa Resources

Iowa Office of Ombudsman: 888-426-6283. www.legis.iowa.gov/ombudsman

Office of the Iowa Attorney General: 515-281-5165 or www.iowaattorneygeneral.gov. The Attorney General's website also includes copies of the office's "Sunshine Advisories" on open meetings and records issues, and outlines of Chapters 21 and 22 with applicable case and AG's opinion citations.

The Iowa Freedom of Information Council: Kathleen Richardson, executive director; 515-271-2295 or kathleen.richardson@drake.edu; www.ifoic.org

Suggested Iowa Resources

Iowa League of Cities: 515-244-7282 or www.iowaleague.org

Iowa State Association of Counties: 515-244-7181 or www.iowacounties.org

Iowa Association of School Boards: 1-800-795-4272 or www.ia-sb.org

Iowa judicial branch: www.judicial.state.ia.us

Iowa Newspaper Association (INA): 515-244-2145 www.inanews.com