

Citizens' Aide/Ombudsman Office

Overview Open Meetings Law

Presented by:

Angela McBride

Assistant Ombudsman for Public Records, Open Meetings, and Privacy

1112 East Grand Avenue

Des Moines, IA 50311

(515) 281-3592

Course will cover

- General rule of the Open Meetings Law
- Persons and agencies subject to the OML
- Requirements of closed and open sessions
- Accessibility
- Emergency meetings
- Electronic Meetings
- Minutes
- Public Record Officers
- Violations/Enforcement

The Rules: (21.1 and 21.3)

- “Meetings of governmental bodies shall be preceded by public notice...and shall be held in open session unless closed session is expressly permitted by law.” (21.3)
- Declaration of Intent—“This chapter seeks to assure, through a requirement of open meetings...that the basis and rationale of government decisions, as well as those decisions themselves, are easily accessible to the people. Ambiguity in the construction of application of this chapter should be resolved in favor of openness.” (21.1)

To whom does it apply? (21.2)

- Definition of Governmental Body
- Multimember board, council, commission or other governing body of this state or political subdivision expressly created by statute or executive order. And, formally created advisory bodies to those above.
- And, some intercollegiate athletic bodies as well as non-profits conducting pari-mutual wagering or gaming.

Is it a meeting or ministerial? (21.2)

Components of a meeting

1. Gathering of the majority
2. Where there is discussion, deliberation, or action and recommendations
3. On any matter within policy-making duties

Ministerial Components

1. Purely ministerial or social purposes
2. No discussion “that focuses at all concretely on matters over which they exercise judgment or discretion.” *Hettinga*
3. No intent to avoid the purpose of this chapter

Public Notice (21.4)

- **Notice of a meeting shall include the following:**
 1. Time, date, place, and tentative agenda
- **Where should it be provided?**
 1. To those who have requested it.
 2. Bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose.
 3. At the principal office of the body and/or the building where the meeting will be held
- **When should it be provided?**
 1. At least 24 hours in advance

Accessibility (21.4)

- Each notice should be easily accessible to the public
- Each meeting shall be:
 - At a place reasonably accessible to the public
 - At a time reasonably convenient
- Special access to the meeting should be granted to persons with disabilities

Unless there is good cause justifying the departure from the normal requirements and it is stated in the minutes

Emergency Meetings (21.4)

- Only when 24 hour notice is impossible or impractical.
- And, you must provided as much notice as reasonably possible.

Unless for good cause and the nature of the good cause is justified in the minutes.

Electronic Meetings (21.8)

Must be:

- Impossible or impractical and
- Only when there is public access to the conversation (unless closed session),
- It's preceded by notice,
- Minutes state why a meeting in person was impossible or impractical.

Minutes (21.3, 21.4, 21.8)

- Time, date, place, persons present
- Action taken

And, when appropriate

- Why electronic meeting was necessary
- Why 24 hours notice was not possible

Meeting Decorum (21.7)

- The public may record a meeting.
- The government body may make and enforce reasonable rules to keep the meeting orderly and free from interference or interruption.

Who can speak at a meeting?

- The body may allow members of the public to speak.
- Oftentimes, bodies provide 2-5 minutes for the public to speak at the beginning of the meeting or on a particular item.

Going into Closed Sessions (21.5)

- Exempt Session (limited to 21.9 and 20) v. Closed Session (all others)
- May hold a closed session only to the extent necessary for one of eleven sections in Iowa Code section 21.5(1)(a-l).
- By affirmative vote of 2/3 of body or all members present
- State publicly the “specific exemption” (a-l)

In the Closed Session (21.5)

- Audio record the meeting
- Keep minutes
- Maintain minutes and recording for at least one year
- Stay on topic

After the Closed Session (21.5)

- Final action shall be done in open session unless some other provision of the Code expressly permits such actions.
- Final action does not include negotiation strategy by government body and attorney.
- Public does not get access to the minutes or recording; however, the person who would otherwise have access to the closed session does get access even though not present for the closed session.
- Citizens' Aide/Ombudsman may review for administrative investigation.
- Court may review and permit public access.

Violations

- Any aggrieved person, taxpayer or citizen of Iowa, County Attorney, or the Attorney General's Office may seek judicial enforcement.
- **If a violation is found, the court shall:**
 - Order compliance or refrain from future violations.
 - Assess the members damages of not more than \$500 nor less than \$100.
 - Order payment of all costs and reasonable attorney fees in trial and appellate courts.
 - Order removal from office for the third violation with damages.
 - Void any action taken, if suit brought within six months.

Violations

- **Violators shall not be assessed damages if:**
 - the person voted against the closed session
 - had good faith reasons to believe in compliance.
 - relied upon a court decision or the opinion of the attorney general or the attorney for the body.

Who is your Public Records Officer?

- “Each government body shall delegate to particular officials or employees of that government body the responsibility for implementing the requirements of this chapter and **shall publicly announce** the **particular officials or employees to whom responsibility for implementing the requirements of this chapter has been delegated.**”
- Iowa law (21.10) requires information to be provided by the authority which appoints members of governmental bodies about Chapters 21 (Open Meetings) and 22 (Public Records).

Things to Remember

- Establish policies to ensure compliance.
- Provide notice, take minutes, and allow public access.
- In open session state the specific exemption for closed session.
- When in doubt get some legal advise, seek formal opinion of the attorney general.

Resources

- Iowa Freedom of Information Council
 - *Iowa Open Meetings, Open Records Handbook 13th Edition*
 - <http://www.drake.edu/journalism/IFOICWebSite/index.html>
- Iowa Attorney General's Office
 - Monthly "Sunshine Advisories" bulletins
 - http://www.iowa.gov/government/ag/sunshine_advisories/index.html
- Citizens' Aide/Ombudsman Office
 - Complaints and information requests
 - <http://www.legis.state.ia.us/ombudsman/>

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- Persons and agencies subject
- Fees
- Exceptions
- Public Record Officers
- Response time
- Policy requirements and suggestions
- Violations/Enforcement

The Rule: (22.2)

- Every person shall have the right to examine and copy a public record and to otherwise disseminate the record unless otherwise provided for by law.

Record Requests (22.3)

- May be made in person, over the phone, or by electronic means
- Identity is optional, unless required for access to that particular record
- May adopt and enforce reasonable rules regarding the work and the protection of records against damage and disorganization.
- Respond promptly

Who Has to Comply? (22.1)

Definition of Government Body and Lawful Custodians:

- State
- Counties
- Cities
- Townships
- Schools
- Political subdivisions
- Non-profits conducting pari-mutual wagering if supported by property tax
- Any board, commission, council, advisory body, committee, official, or any officer or employee

What information is public record? (22.1)

- All records and information in the possession of, stored or preserved in any medium.
 - Electronic, paper, audio and video tapes, CD's, diskettes, photographs

Who is your Public Records Officer? (22.1)

- “Each government body shall delegate to particular officials or employees of that government body the responsibility for implementing the requirements of this chapter and **shall publicly announce the particular officials or employees to whom responsibility for implementing the requirements of this chapter has been delegated.**”
- Iowa law (21.10) requires information to be provided by the authority which appoints members of governmental bodies about Chapters 21 (Open Meetings) and 22 (Public Records).

Exceptions (22.7)

- Iowa Code section provides for 61 exceptions to the rule. In addition, specific agency records may be confidential under other statutes.
- Under 22.7 the lawful custodian has discretion to release the record.
- The lawful custodian of a record should be able to state the statutory authority for not releasing a record.

Supervision and Copy Fees (22.3)

- Free peek allowed.
- Physical presence not required.
- Identity of the requestor is optional.
- Maintain control of the record.
- May recover the actual costs of retrieving, supervising, and copying of the record.
- Actual costs do not include depreciation of the computer, maintenance, electricity, and insurance
- May require prepayment if estimate of expenses is provided.

Time to Respond (22.8)

- Iowa Code provides a guideline.
 - Most requests are routine and typically a request should be responded to immediately.
 - “Good-faith, reasonable delay” allowed to:
 - Seek injunction against release
 - Determine if confidential
 - Determine if person requesting has right to examine
- A good-faith reasonable delay shall not exceed twenty days and ordinarily should not exceed ten business days.

Violations

- Any aggrieved person, taxpayer or citizen of Iowa, County Attorney, or the Attorney General's Office may sue.
- If a violation is found, the court:
 - _ Shall order compliance or refrain from future violations.
 - _ Shall assess the violator damages of not more than \$500 nor less than \$100.
 - _ Shall order payment of all costs and reasonable attorney fees.
 - _ Shall order removal from office for the third violation.

Violations

- Violators shall not be assessed damages if:
 - _ the person voted against
 - _ refused to participate or tried to stop the violation.
 - _ had good faith reasons to believe in compliance.
 - _ relied upon a court decision or the opinion of the attorney general or the attorney for the body.

When in Doubt

- Contact your supervisor
- Contact the agency's attorney
- Contact the Attorney General's Office
- Contact the Citizens' Aide/Ombudsman's Office

Ignorance is not a defense.

Good Government Policies (22.11)

State Agency

- Iowa Fair Information Act practices requires state agencies to have policies. See your agency's administrative rules.
- Review regularly and update when necessary.

Other Political Sub-Divisions

- Policy not required by law.
- Developing and following a good policy will provide guidelines and possibly prevent mistrust and liability.
- Developing and following a good policy will promote fairness.
- At a minimum—designate someone to be knowledgeable and respond.

Things to Remember

- Read and know your agency's policy.
- Fees should be uniformly applied.
- Fees should not exceed the actual costs for retrieval, supervision, and copying.
- Respond as promptly as possible, generally do not to exceed 10 business days.
- If in doubt, get legal advise.

For More Information

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