

Open Meeting Law and Public Records Law

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Goal for this presentation

- Address frequently encountered situations, issues and problems.
- Discuss requirements of public records laws.
- Discuss legal requirements of the Open Meeting Law

Public Records

Board Governance

Open Meeting Law

Election Law (Overrides
and Bond Elections)

Student Discipline and
Employment Hearings

Attorney-Client
Privilege

Conflict of Interest
Laws

Public Records

- The general policy of this State with respect to public inspection of governmental records is set forth in A.R.S. § 39-121: "Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours."

Personal Documents

- Although most documents in a public officer's possession are public records, documents that relate solely to personal matters and have no relation to official duties are not public records even if a public officer or agency possesses them or uses public funds to create them.
- Emails one specific example

Confidentiality Concerns/Best Interests

- Although there is a presumption in favor of access to public records, this presumption may be outweighed by legitimate government considerations of privacy and the best interests of the State.
- Scottsdale USD v. KPNX- teacher's dates of birth example

Confidential by Statute

- Over 300 laws in Arizona protecting confidentiality
- Teacher evaluations
- Medical data
- Student records
- Executive session minutes
- DCS records

Cumbersome Requests

- If the custodian of public records does not promptly respond to record requests and promptly furnish records that are subject to disclosure, access will be deemed denied. A.R.S. § 39-121.01(E).
- “‘Prompt,’ . . . mean[s] ‘quick to act or to do what is required,’ or ‘done, spoken, etc. at once or without delay.’” *W. Valley View, Inc. v. Maricopa County Sheriff’s Office*, 216 Ariz. 225, 230, ¶ 21, 165 P.3d 203, 208 (App. 2007)

Who is subject to OML (Besides a quorum of the Board)?

- All standing , special, or advisory committees or subcommittees of, or appointed by the Board.
- “Advisory Committee”
 - Officially established by motion or order of the public body or by the presiding officer.
 - Appointed to make a recommendation concerning a decision to be made or considered by the public body.

Does not include a committee established by the Superintendent.

What if we direct the superintendent to establish an advisory committee?

What if we direct who is on the committee?

What if Board members serve on the committee?



A quorum

- Majority
- Vacancies count in determining what your quorum is.

Agendas

- How specific does it have to be? Be as specific as possible, but if it is for executive session, don't defeat the purpose..
- Lists of employees and vouchers.
 - Available at a public place at least twenty-four hours ahead of the meeting.

Agendas

Superintendent and Board Reports.

- Notwithstanding subsection H of this section, the chief administrator, presiding officer or a member of a public body **may present a brief summary of current events** without listing in the agenda the specific matters to be summarized, if:
 1. The summary is listed on the agenda.
 2. The public body does not propose, discuss, deliberate or take legal action at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action.

OML in the Age of Technology

Emails.



One member to all Board members generally a bad idea but okay if:

- From superintendent
- No ongoing discussion;
- one member replies to you personally without sharing;
- But NOT okay if Board member proposes legal action.

OML in the Age of Technology

Text Messages.



- Public record or no? Probably.
- Sending and receiving them during the meeting
- public thinks you are up to something.

OML in the Age of Technology

Twitter, Facebook, and Statements to the press.

Public statement on a position you are going to take is not a violation.

BUT commenting between a quorum would be a violation.

Call to the Public

- Reasonable time, place and manner.
- Crowd control.
 - Recess, recess, recess.
 - Give opportunity to register support or opposition without talking.
- Responding:

At the **conclusion** of an open call to the public, **individual members of the public body** may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. **This does not mean a discussion.**

Executive Sessions

38-341.03(A)

(A)(1) Personnel.

(A)(2) Confidential records.

(A)(3) Legal advice.

(A)(4) Instruct your attorney(s).

(A)(5) Instruct your representatives regarding negotiations with employee organizations regarding salaries, salary schedules or compensation.

(A)(6) international and interstate negotiations.

(A)(7) Instruct your representatives regarding negotiations for the purchase, sale or lease of real property.

Executive Sessions

38-341.03(A)

Who may attend—only those persons “whose presence is reasonable necessary in order for the public body to carry out its executive responsibilities.”

Executive Sessions

38-341.03(A)(1) Personnel

1. Does the employee have a right to attend? No. Just a right to have matter discussed in public.
2. Does the employee have a right to minutes? Yes.
3. Can this paragraph be used to discuss reorganization? Not unless specific employees are discussed.
4. 24 hour notice to employee—does this also apply to non-employee applicants? Yes.

Executive Sessions

38-341.03(A)(2) Confidential Records

1. Student Records.
2. Teacher Evaluations.
3. Medical records

Executive Sessions

38-341.03(A)(3) Legal Advice.

Cannot be used as a ruse to talk to each other.

“Once the members of the public body commence any discussion regarding the merits of enacting the legislation or what action to take based upon the attorneys' advice, the discussion moves beyond the realm of legal advice and must be open to the public.”

City of Prescott v. Town of Chino Valley

Executive Sessions

38-341.03(A)(4) Instructing your Attorney

- When is a vote not a vote?
- Applies to:
 - contracts that are the subject of negotiations,
 - pending or contemplated litigation or
 - settlement discussions conducted in order to avoid or resolve litigation.
- But you should also take the (silly?) step of voting in public. *Johnson v. Tempe Elementary*.
- Minutes should reflect instructions.

And speaking of legal advice . . .

- Of course, e-session discussions are confidential.
- But . . . What happens if attorney advice gets out?
- Only the Board may waive attorney-client privilege.

