

Access to Public Meetings

Virginia Freedom of Information Act

Virginia Freedom of Information Advisory Council

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Roadmap

- General presumption
- Definitions
- Meeting Requirements
 - Open Meetings
 - Closed Meetings
- Electronic Meetings
- Remedies

General Presumption

- All meetings of a public body are presumed open unless a specific exemption applies.

Definitions

§ 2.2-3701

- “Public body”
 - Traditional public bodies
 - “[O]ther organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds.”
 - “...any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body.”

Definitions

§ 2.2-3701

- “Public body”
- “Meeting”
 - means the meetings including work sessions, when sitting physically, or through electronic communication means pursuant to § 2.2-3708.2, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.
 - Exceptions

Open Meetings - Requirements

- Notice
- Open to the Public
- Minutes

Notice Contents

- Date
- Time
- Location

Where should notice be posted?

- FOIA requires notice to be posted in three locations:
 1. Official public government website, if any;
 2. Prominent public location in which notices are regularly posted; and
 3. At the office of the clerk of the public body OR at the office of the chief administrator

***State public bodies** must also post notice on a central, publicly available electronic calendar maintained by the Commonwealth.

Are specific people entitled to notice?

- Anyone who annually files a written request for notification with a public body
- Written request must include:
 - Requester's name
 - Address/Zip Code
 - Daytime telephone number
 - E-mail address, if available
 - Organization, if any

When should notice be posted?

- **Regular meetings** → at least three working days prior to the meeting
- **Special, emergency, or continued meetings** → at the same time as the notice that is provided to the members of the public body that are conducting the meeting (reasonable under the circumstance)

What does it mean for a meeting to be open to the public?

- May be attended by the public and the media
- May be recorded, photographed, filmed, or otherwise reproduced

Meeting Minutes

- Only required to be taken at open meetings
- Must include:
 - Date, time, location of the meeting
 - Members of the public body present and absent
 - A summary of matters discussed, deliberated, or decided
 - A record of any votes taken
 - Any motions to enter into a closed meeting and certification after a closed meeting

Agendas

- At least one copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body.

Votes

- All votes taken to authorize the transaction of any public business must be taken and recorded in an open meeting

Closed Meeting Procedures

Motion, Discussion, Certification

Motion to Enter into a Closed Meeting

- Public body must take an affirmative recorded vote in an open meeting approving a motion that:
 1. Identifies the subject matter for the closed meeting;
 2. States the purpose of the closed meeting; **and**
 3. Makes specific reference to the applicable exemption from the open meeting requirements

Closed Meeting Discussions

- Restricted to those matters **specifically exempted** from the provisions of FOIA and **identified in the motion**
- Who may attend?

Certification of a Closed Meeting

- At the conclusion of a closed meeting, public body must certify that the only things heard, discussed, or considered in the closed meeting were:
 1. Public business matters lawfully exempted from the open meeting requirements, and
 2. Such public business matters as were identified in the motion by which the closed meeting was convened
- Extra penalty for improper certification (SB 1554, 2019)

Exemptions

- Discussion of personnel
- Consideration of acquisition or disposition of real property
- Discussion of prospective business or industry
- Consultation with legal counsel
- Actual or probable litigation
- Discussion of award of public contract
- Public safety

Electronic Meetings

- Legislative history → five distinct processes
- Personal matters, medical conditions, regional bodies
 - Quorum, participation policy, voice heard
- State bodies only (quorum required, different process)
- Governor-declared emergency (no quorum, different process)
- Members monitoring/just listening
- Public & staff participation

