

# Open Meetings FAQs – A Quick Guide to Maryland’s Open Meetings Act

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## 1. What’s the Open Meetings Act?

The Open Meetings Act is a Maryland statute. It states the goal that “public business be conducted openly and publicly” and sets as the policy of the State that, except in certain “special and appropriate circumstances,” the public “be provided with adequate notice of the time and location of meetings of public bodies, which shall be held in places reasonably accessible to individuals who would like to attend these meetings.”

The Act does not set the rules for when public bodies must meet – it just carries out the policy that when public bodies do meet, they must do so openly unless the discussion falls within one of the “special and appropriate circumstances” listed in the Act.

Sometimes, a public body is subject to other laws, for example a county or city charter, that require it to meet in order to address public business, or that impose meetings requirements that are stricter (in favor of more openness) than those in the Act.

## 2. Where can I find the text of the Open Meetings Act?

The Act appears in Title 3 of the General Provisions Article of the Maryland Code. For a link to the text of the Act, go to the “Other Resources” box here: <http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx>.

### 3. When does the Act apply?

The Act applies only when a “quorum” of the members of a “public body” is “meeting.” The Act gives each of these terms a special definition.

### 4. What’s a “public body?”

A “public body” is an entity that consists of members and that was created in any of three ways. First, a multimember entity is a “public body” if it was created by: (a) a law, (the Maryland Constitution, a state statute, or county ordinance); (b) an executive order (an order of the Governor or, for a local government, its chief executive authority); (c) a rule, resolution, or bylaw of a government entity, or (d) an agreement between the State Department of Education and a majority of the county boards of education.

Second, a multimember entity is a “public body” if its members were appointed by the Governor, or by a local government’s chief executive authority, or by someone subject to the executive’s policy direction—but only when at least two members are not employed by the State or local government in question. For example, a citizen task force appointed by the Governor or a state department head will be a “public body” under this definition. A gathering of agency employees will not be a “public body”.

Finally, for state entities only, a multimember entity is a “public body” if its members are appointed by a public body whose members were appointed by the Governor or by an official subject to that appointing entity’s policy direction.

Examples of groups that are *not* “public bodies” include private homeowners associations, a private entity’s board of directors, and various court-related entities. Some entities that would otherwise fall within one of the three definitions are expressly excluded. For that list and details on the “public body” definition, see the Open Meetings Act Manual, Chapter 1, Part A.

### 5. What’s a quorum?

A quorum is a majority of the public body’s members unless the law applicable to that particular public body sets a different number.

### 6. What’s a “meeting?”

A “meeting” occurs whenever a public body’s quorum convenes to discuss public business. An occasion that starts out as a purely social event is a “meeting” only if a quorum uses it to discuss the public body’s business. A gathering at which a quorum discusses public business is a “meeting” no matter where it occurs and no matter whether the quorum takes an action.

Generally, a quorum can be present either in person or by telephone. Email communications among a quorum, as opposed to between individual members, might

constitute a meeting if the emails are so close in time as to show that a quorum was in on the discussion together. For details on “meetings,” see the Open Meetings Act Manual, Chapter 1, Part B.

## 7. Are there times when a public body’s meetings are *not* subject to the Open Meetings Act?

Yes. The Act classifies the work of public bodies by “function,” and three functions are excluded from the Act, with one exception. The excluded functions are the judicial function (generally, the functions performed by the courts), the quasi-judicial function (generally, a public body’s determination of a case that can be appealed to a court), and the administrative function (very broadly speaking, not one of the other functions, not the formation of new policy, and the performance of tasks such as the application of set policies to a set of facts). However, the Act *does* apply to most land-use and licensing matters. The functions are best understood through examples and are discussed in the Open Meetings Act Manual, Chapter 1, Part C.

If a public body only performs an excluded function in a meeting, that meeting is generally not subject to the Act. However, a reporting requirement applies when a public body recesses a meeting that is subject to the Act in order to perform an administrative function.

If a public body is meeting to perform any other function, or to conduct public business that does not seem to fall into any function, the meeting is subject to the Act. However, the Act permits the public body to exclude the public from some discussions, as explained in #11 below.

## 8. When the Open Meetings Act applies, what does it require the public body to do?

The Act requires the public body to give “reasonable advance notice” of its meetings, to make an agenda available in advance except in cases of emergency, to hold its meetings openly, to adopt minutes, and to retain them for 5 years. The Act also lists topics that a public body may discuss behind closed doors after the public body has disclosed the topics and the basis for its decision to exclude the public from the discussion and has voted in public to close the meeting. And, as discussed in #13, there is a general training requirement for every public body and a particular training requirement for public bodies that meet in closed sessions.

A “Compliance Checklist” is posted under “Sample Forms and Checklists” at <http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx>. It lists the requirements for meetings subject to the Act.

## 9. What’s “reasonable advance notice?”

That depends on the circumstances. Ordinarily, a public body should use notice methods that are likely to reach its constituency, including the members of the press who regularly

report on the public body or the activities of the government of which the public body is a part. The Act gives examples of reasonable methods, including the use of a website that the public body ordinarily uses to provide information to the public.

As for the timing of the notice, a public body that has scheduled a meeting should not delay posting notice, unless the meeting was scheduled so far in advance that it would be more effective to post notice closer to the meeting date. The Act does not set a deadline for posting notice and thus does not prevent public bodies from meeting on short notice in emergencies. In emergencies, the public body must provide the best notice feasible under the circumstances.

The Act does set minimum requirements for what a notice must contain: the time, date, and place of the meeting, and, if the public body expects to close part of the meeting to the public, an alert to that fact. In order to plan the meeting space, a public body may include in its notice a request that members of the public contact the public body if they wish to attend. For details on notice requirements, see Chapter 2 of the Open Meetings Act Manual.

Public bodies must make an agenda available before each meeting, either when notice is posted, if the items of business are known then, or as soon as practicable, but no later than 24 hours before the meeting. There is an exception for meetings held in response to emergencies.

## 10. What does it mean to meet “openly?”

The Act’s policy statement refers to the ability of the “public, its representatives, and the media to attend, report on, and broadcast meetings of public bodies” and to “witness the phases of the deliberation, policy formation, and decision making of public bodies.” The Act also sets the policy that meetings “be held in places reasonably accessible to individuals who would like to attend” them.

These provisions raise a number of logistical questions, which are discussed in detail in Chapter 3 of the Open Meetings Act Manual. Generally, the meeting place must be accessible to the public, but members of the public may be required to cooperate with the security procedures of the building in which the meeting room is located. Generally, the press and other attendees may film the meeting, but that does not mean that attendees may do so disruptively. Public bodies are to adopt meeting rules, and, if the presiding officer determines that someone is disrupting an open session, the public body “may have the individual removed.”

The Act does not require public bodies to allow public comment during a meeting, except that a member of the public may object to a public body’s decision to discuss a topic in closed session. A particular public body might be subject to other laws that entitle the public to comment.

## **11. When may a public body meet in a session that is closed to the public?**

As of October 1, 2018, the Act lists 15 topics that a public body may choose to discuss behind closed doors if the public body has met specific conditions. The topics, referred to as “exceptions,” include such subjects as personnel discussions about particular individuals, the receipt of legal advice from the public body’s attorney, and subjects that must be kept confidential under other laws.

Each closed session must be preceded by an open session for which the public body has given notice. In the open session, the presiding officer must conduct a recorded vote on a motion to close the session. The presiding officer must also prepare a written statement, or “closing statement,” that cites the part of the Act that contains the applicable exception, lists the topics to be discussed in the closed session, and gives the public body’s reason for excluding the public. A member of the public in attendance may object to the decision and inspect the closing statement. A public body may not meet in a closed session until it has designated one or members to take training in the Act. Further, a designated member must attend the open session beforehand, or, if no designated member can attend, the public body must complete the compliance checklist (see #8) and attach the checklist to its minutes.

When the public body meets in closed session, the members may not discuss topics other than those listed on the closing statement. Likewise, their discussion of the topics that they did disclose must fall within the scope of the exception that they claimed. For the disclosures that a public body must make after a closed session, see #12, below.

Model closing statement forms are posted at <http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx>, under the heading for “Sample Forms and Checklists.” They list the 15 exceptions and contain spaces for the required information. The form “with instructions” explains what the public body must do. For details on the exceptions and conditions, see Chapters 4 and 5 of the Open Meetings Act Manual.

## **12. What minutes and other records must a public body create, and may the public inspect them?**

Public bodies must draft and adopt minutes for any meeting subject to the Act, whether open or closed. The public body must also create and retain written meeting notices and closing statements. The Act requires public bodies to retain its minutes and any tape recording of a meeting for at least five years.

Open-session minutes can be in either of two forms: written, or “live and archived video or audio streaming.” Written minutes are to be adopted “as soon as practicable after a public body meets.” Under the Act, they are to be posted online if that is practicable. Also, minutes are to be open to public inspection during the public body’s regular business hours. A member of the public who wants to inspect numerous or old sets of minutes might find it

helpful to contact the public body in advance so as to avoid delays at the public body's office. A public body may charge for copies but not for producing the minutes for inspection. Generally, closed-session minutes are written, sealed and not available for public inspection. For details on public access to minutes, see Chapter 6, Part B(6) of the Open Meetings Act Manual.

When a public body has met in a closed session, it must disclose some details about the session in the minutes of its next open session. Information on the required content of minutes, including closed-session summaries, and on timeliness can be found in Chapter 6, Part B, of the Open Meetings Act Manual.

As described in #11, public bodies must prepare and adopt a closing statement before each closed meeting. Members of the public may inspect that document at the time that the meeting is closed, and it should also be available for inspection when someone comes to the public body's office and asks to see it.

The Act does not address public access to written notices of past open sessions, but they may be requested under the Public Information Act.

### 13. What's the training requirement, and is there a course I can take?

Each public body must designate a member, officer, or employee to take training in the Act. Public bodies that wish to hold closed meetings must designate a member for training, as explained in #11 above. The training must be through one of three types of courses: the course on open meetings offered by the Maryland Association of Counties or Maryland Municipal League through the Academy for Excellence in Local Governance, the online course made available by the office of the Attorney General and the University of Maryland's Institute for Governmental Service and Research, or the open meetings course offered by the Maryland Association of Boards of Education through the Boardmanship Academy. The online course is available to the public at no cost.

A link to the online course can be found under the "Other Resources" heading at <http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx>.

More detail on the training requirement can be found in Chapter 7, Part A(4) of the Open Meetings Act Manual.

### 14. What can I do when I think a public body has violated the Open Meetings Act?

As a practical matter, you might begin by gathering the facts on whether the Act applies to the gathering in question, and, if so, what happened. Often, the entity's staff or a member can help address questions and concerns, as might the constituent services staff for an elected official, and the entity's website might provide background on how it was created.

The Act itself provides two routes. First, you may file a complaint with the Open Meetings Compliance Board to seek an advisory opinion on whether the public body violated the

Act. The public body then has 30 days in which to respond, and the Compliance Board usually issues an opinion within 30 days after that. The Compliance Board has no budget of its own and does not have investigative powers. Its three members are appointed by the Governor and serve without compensation. The Compliance Board's procedures are posted at <http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx>. It does not address Public Information Act complaints.

The Compliance Board's opinions are not enforceable orders; that complaint route instead is a way of seeing that the public body gets relatively prompt guidance on how to comply with the Act. However, when the Compliance Board finds a violation, a member of the public body must summarize the opinion in the next open meeting, a majority of the members must sign a copy to acknowledge that they have received it, and the violator is identified on the webpage used by the Compliance Board for publishing its opinions. The public body must send a signed copy of the opinion to the Compliance Board. The Compliance Board route is free and also faster and more informal than litigation.

Second, you may sue the public body in the circuit court where the public body is located. The Act sets deadlines for lawsuits filed under the Act's provisions. You may file a complaint both with the Compliance Board and in court. Court rules, not the Compliance Board's rules, govern actions filed in court.

The Act does not give the Office of the Attorney General a role in enforcing the Act's provisions. As explained on the Attorney General's website, the Office acts as the legal advisor to departments, officials, boards, and institutions of State government. The Office provides the Compliance Board with legal counsel and administrative support. For more information on the approaches you can take, see Chapter 7, Parts A and B of the Open Meetings Act Manual.