



Division of Forensic Science
Submission Advisory Committee Meeting



Wisconsin Department of Justice

Open Meetings Law Essentials

Office of Open Government

Division of Forensic Sciences

Submission Advisory Committee Meeting

Tuesday, March 23, 2021 (Remote Meeting)

Government Transparency

“Transparency and oversight are essential to honest, ethical governance.” *John K. MacIver Inst. for Pub. Policy, Inc. v. Erpenbach*, 2014 WI App 49, ¶ 32, 354 Wis. 2d 61, 848 N.W.2d 862

Wisconsin Open Meetings Law, Wis. Stat. §§ 19.81 to 19.98

- The purpose of the open meetings law is to ensure openness
- Only a few limited exemptions permit confidentiality
- The open meetings law is to be broadly interpreted to promote openness

Transparency During COVID-19

Important: An authority's obligations under the public records law and a governmental body's obligations under the open meetings law **do not cease** because of the COVID-19 public health situation.



Public Policy

“In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that **the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.**”

—Wis. Stat. § 19.81(1)



Essentials

- Generally, the open meetings law requires that all meetings of governmental bodies:
 - must be preceded by **public notice**;
 - AND
 - must be **publicly held** in a place that is **reasonably accessible** and **open** at all times to all members of the public;
 - except in limited situations in which a **closed session** is specifically authorized.
- **Note:** For additional information regarding the open meetings law, including closed sessions, please see ***DOJ's Wisconsin Open Meetings Law Compliance Guide***.

Governmental Body

- “‘Governmental body’ means a state or local agency, board, commission, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order” Wis. Stat. § 19.82(1).
- Translation:
 - Any kind of **collective governmental entity** (state or local level).
 - **Created by** constitution, statute, ordinance, rule or order.
 - Without regard to what that entity is called (i.e., a board, commission, committee, council, etc.).
- **Includes purely advisory bodies**, governmental corporations, quasi-governmental corporations, and formally constituted subunits
- Generally, a governmental body does not include a group of administrative staff of a government agency.

Meeting

- “‘Meeting’ means the **convening** of members of a governmental body for the **purpose** of exercising the responsibilities, authority, power or duties delegated to or vested in the body.” Wis. Stat. § 19.82(1).
- **Showers Test**: Two-part test to determine if a meeting occurred. *State ex rel. Newspapers v. Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987).
 - Members convene for the **purpose** of conducting governmental business
 - **Number** of members present is sufficient to determine the body's course of action
 - Includes **negative quorums**

Meeting, continued

- Meetings are **not** limited to face-to-face gatherings or physical presence together.
 - Includes situations in which members are able to effectively communicate with each other and exercise the body's authority.
 - Examples: written correspondence, telephone calls, emails, texts, video-conferencing chats, other electronic forms of communication
- If members communicate without physically gathering together, the key question is:
 - **To what extent do their communications resemble a face-to-face exchange?**
- **“Walking” quorum**: meeting resulting from a series of gatherings among body members

Notice

- “Every meeting of a governmental body shall be preceded by public notice”
Wis. Stat. § 19.83(1).
- Notice must be communicated **at least 24 hours before** the meeting to:
 - The **public, news media** that have filed a **written request** for notice, and the **official newspaper** for the community in question
- The meeting notice must reasonably inform the public of the **time, date, place,** and **subject matter** of the meeting.

Record Keeping

- All **motions** and **roll call votes** must be recorded and preserved.
- Law does not specify a timeframe in which records of motions and roll call votes must be created.
 - However, it is advisable that motions and roll call votes should be recorded at the time of the meeting or as soon thereafter as practicable.
- Voting records must be open to public inspection to the extent required under the public records law.
- DOJ recommends that bodies keep formal **meeting minutes** although the open meetings law does not itself require bodies to do so.
 - However, minutes are often required by **other statutes** for certain types of bodies, such as city councils, village boards, county boards.

COVID-19 Considerations: Reasonably Accessible

- Under the present circumstances, governmental bodies can typically meet their open meetings law obligations while practicing physical distancing by conducting meetings via **telephone or video conference calls**.
 - However, the **public must be provided an effective way to monitor the calls**.
- **Notices** should include instructions on how to attend, including any required call-in number and/or log-in information.
- The type of access that constitutes **reasonable access** in the present circumstances may be different from the type of access required in other circumstances.
- **Bottom line: Focus** on the **purpose of the open meetings law**—to ensure government **openness and transparency**—during the public health situation.

Further Information

- Download **DOJ Compliance Guides** and other resources at <https://www.doj.state.wi.us/office-open-government/office-open-government>
- Contact the Office of Open Government:
 - Location: AG's Capitol Office, 114 East
 - PROM help line: (608) 267-2220
 - AAG Paul Ferguson: fergusonpm@doj.state.wi.us
 - AAG Sarah Larson: larsonsk@doj.state.wi.us





Thank You!