



Center for Local Government Excellence

Open Meetings and Public Records

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Course Objectives

- **Open Meetings Law**
 - Definitions
 - General Requirements
 - Executive Sessions
 - Special Notice Provisions
- **Public Records Law**
 - Define and Identify Public Records
 - Common Exceptions
 - Duty of Custodian of Public Records

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Article XII, §3

- “No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.”
- Foundation for the Open Meetings Law and Public Records Law often called the “**Sunshine Laws.**”

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Open Meetings Law

R.S. 42:11, et seq.

- The provisions of the **Open Meetings Law** shall be construed liberally in favor of public observation and participation in the deliberations and decision making of public policy.
- A copy of the **Open Meetings Law** statutes are required to be posted by all public bodies.

R.S. 42:12

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Open Meetings

Definitions:

- Meeting
- Public Body
- Quorum



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Open Meetings

Meeting

- Gathering:
 - To deliberate or act on a matter over which the public body has supervision, control, jurisdiction, or advisory power.
 - By the public body or by another public official to receive information regarding a matter over which the public body has supervision, control, jurisdiction or advisory power.

Does not include chance meetings or social gatherings at which no vote or other action is taken, such as formal or informal polling of members; however, such gatherings should be avoided if possible.

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Open Meetings

Public Body includes:

- Municipal governing authorities;
- Parish governing Authorities;
- School Boards;
- Levee Boards and Port Commissioners;
- Boards of Publicly Operated Utilities;
- Planning, Zoning, and Airport Commissions;
- Any other State, Parish, Municipal, or Special District boards, commissions, or authorities, and those of any political subdivision thereof which has policy making, advisory, or administrative functions; and
- Any committee or subcommittee of any of the above.

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Quorum

- **A simple majority of the total membership of a public body**
 - Often incorrectly identified as 50% +1.
 - Specific statutory definition of quorum for a public body can be higher or lower than the default definition.
 - Vacant positions count in determining quorum.
 - Public bodies should be aware that violations often occur when discussions happen through a **“walking quorum.”**



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Open Meetings Law

- **General Requirements**
 - Open to Public
 - Voting Procedures
 - Notice
 - Agenda
 - Minutes
 - Public Participation/Commenting
- **Executive Sessions**
- **Special Provisions**

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Open Meetings



- Every meeting of a public body must be open to the public unless the law specifically provides an exception such as executive sessions under R.S. 42:16, 42:17, or 42:18.

R.S. 42:14(A)

Note: Exceptions may also be found elsewhere in the law.

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Open Meetings

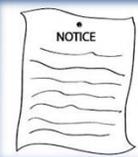


Voting

- Must be physically present and viva voice (oral or electronic machine displaying vote and identifying who cast the vote).
- May not utilize proxy voting unless the law specifically authorizes it.
- Secret Balloting, Straw Polling, and other means of circumventing a public vote are strictly prohibited.
- All votes shall be recorded in the minutes, journal, or other official, written minutes of the body.
- Public commenting must be afforded prior to action being taken on an item.

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Open Meetings



Notice

- **Public Entity must provide written public notice of all of its meetings**
 - Written **notice** for regular meetings established by law, resolution, or ordinance must be given at the beginning of each calendar year.
 - Written **notice** must also be given no later than 24 hours, exclusive of weekends and legal holidays, before any regular, special, or rescheduled meeting.
 - A copy of the **notice** must be placed at least 24 hours, exclusive of weekends and legal holidays, prior to the meeting:
 - At the place of the meeting or the official office of the body, or
 - Published in the official journal of the public body
 - If the public body has a website, a copy of the **notice** must also be posted on the website no less than 24 hours, exclusive of weekends or legal holidays, immediately preceding the meeting.
 - Mail a copy of the written **notice** to members of the news media who requests notice of meetings.

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Open Meetings



Notice (continued)

- **The written notice must contain:**
 - Date, Time, and Location
 - Copy of the Agenda; and
 - If an executive session will be held regarding a strategy session or negotiations for collective bargaining or litigation, the following must also be attached:
 - Statement identifying court, docket number, and parties relative to pending litigation; or
 - Statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation for which formal written demand has been made.

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Open Meetings

Agenda

- Descriptive language
- Each item shall be listed separately
- Presiding officer shall read aloud a description of the item prior to action being taken
- No changes made within 24 hours, exclusive of weekends and legal holidays, preceding the meeting
- The public body may amend the agenda and take up additional matters during the meeting, but shall do so only after a unanimous vote of members present

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Open Meetings



Minutes

- Must keep written minutes of all open meetings
 - Often Legal duty is prescribed to the Secretary, Clerk, etc.
- Must include:
 - Date, time, and place of meeting;
 - Members of the public body recorded as present or absent;
 - The substance of all matters decided, and at the request of any member, a record, by individual member, of any votes taken; and
 - Any other information that the public body requests be included or reflected in the minutes.
- Minutes are a public record and must be made available within a reasonable time after the meeting, except at otherwise provided for by law.

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Open Meetings

Minutes (continued)

- Minutes need not be verbatim but should provide sufficient description to a reader as to what matters were considered, the outcome of votes, and identify that all legal procedures were complied with on taking up and adopting the matter.
- Municipalities, Parish Governing Authorities, School boards, and other political subdivisions are required to publish their minutes in their official journal according to R.S. 43:143 or 43:171.
- If the public body has a website, they must publish their minutes online within 10 days from their publication in the official journal and must be maintained online for at least 3 months.
 - If the public body is not required to publish its minutes in an official journal, then it must post the minutes online within a reasonable time after the meeting.

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Open Meetings

Public Participation/ Commenting

- Public entities shall afford a public commenting period in all meetings prior to action being taken on agenda items which require a vote.
 - School boards must afford a separate public commenting period prior to action on each individual agenda item.

R.S. 42:14(D) & R.S. 42:15(A)

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Open Meetings

Public Participation/ Recording

- All of the proceedings in a public meeting, with the exception of proceedings held in an executive session, may be video or tape recorded, filmed, or broadcast live.
 - The public entity shall establish standards for the use of lighting, recording or broadcasting equipment to ensure proper decorum in the meeting.

R.S. 42:23

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Open Meetings

Public Participation/Recording (continued)

- Nonelected boards or commissions which have the authority to levy a tax shall video or audio record, film, or broadcast live all proceedings of their public meetings, except for those as part of an executive session.
- **R.S. 33:9099.2** was enacted by Act 338 of the 2014 Regular Session exempts the governing authorities of crime prevention and security district, improvement district, or other districts created by or pursuant to Chapter 29 of Title 33 of the Revised Statutes from the requirements of R.S. 42:23(A), which otherwise would require an unelected board with the power to levy taxes to record the proceedings of their minutes.

R.S. 42:23

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Open Meetings



Executive Sessions

- **Public body** may only hold a closed executive session for one of the matters authorized under R.S. 42:17 or as otherwise provided for by law.
- Notice of the **public body's** intention to enter into executive session on a matter should be clearly noted in the agenda and written notice.
- **Public body** is required to vote to enter into executive session through a two-thirds vote of members present and the vote and the reason(s) for entering into executive session shall be entered into the minutes.
- No votes or final determinations shall be made while the **public body** is in executive session.

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Open Meetings

Executive Sessions (continued)

- Executive sessions are authorized under R.S. 42:17 for the following reasons:
 - Discussion of the character, professional competence, or physical or mental health of a person, except in regard to appointment of the individual to a public body or discussing the award of a public contract, or if the individual requires that the discussion be public;
 - Strategy sessions or negotiations with respect to collective bargaining, prospective litigation after formal written demand, or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public body;

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Open Meetings



Executive Sessions (continued)

- Discussion regarding the report, development, or course of action regarding security personnel, plans, or devices;
- Investigative proceedings regarding allegations of misconduct;
- Cases of extraordinary emergency, which is limited to natural disasters, threats of epidemics, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude;

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Open Meetings

Executive Sessions (continued)

- Certain meetings of the State Mineral and Energy Board;
- Discussions between a city or parish school board and the individual students or parents/tutors of students of the school system regarding problems of the students or their parents/tutors, unless the parent/tutor or student require the discussion to be public;
- Presentations and discussions at meetings of civil service boards of test questions, answers, and papers produced and exhibited by the office of the state examiner, municipal fire and police civil service;

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Open Meetings

Executive Sessions (continued)

- Certain portions of meetings of the Second Injury Board regarding settlement of workers' compensation claims; or
- Other matters as provided for by the Legislature.
- Hospital Service Districts may enter into executive sessions regarding discussions concerning their marketing and strategic planning under the Enhanced Ability to Compete Act, R.S. 46:1071, et seq.

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Open Meetings



Special Provisions (Taxes)

- R.S. 42:19.1 provides for additional notice requirements which must be undertaken when a public body seeks to levy a new ad valorem property tax or sales and use tax, or increase or renew any existing tax, or authorize the calling of an election for submitting of such question to the voters.
- Written public notice must be published in the official journal no more than 60 days nor less than 30 days prior to the meeting and announced during the course of a public meeting.
- Notice must provide the date, time, and location.
- If cancelled or postponed, an additional notice of the new meeting must be published at least 10 days prior to the new meeting.

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Open Meetings

Special Provisions – Continued

- Additional notice must be provided through hand delivery or email to each voting member of any governing authority of a political subdivision that is required to approve tax related measures previously adopted by another governing authority and to each state senator and representative in whose district all or a portion of the political subdivision is located.
- No additional notice is required for meetings, subsequent to adoption of a tax, in which the only action taken is to either reduce the rate or term of the tax and thereby reduce the total amount of the tax to be collected or substantially reduce the cost to the political subdivision of any bond or debt obligation incurred by the political subdivision.
- Does not apply to “roll forward” actions which have their own notice provisions under R.S. 47:1705(B)(2)(c)&(d).

<http://www.la.gov/assessorsMillages/>

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Open Meetings



Violations

- Actions taken in violation of the Open Meetings Law may be voidable if legal action is commenced within 60 days of the action
- Civil Penalties of up to \$100 per violation may also be assessed, as a personal liability of the violator

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Open Meetings

Recent AG Opinions

14-0065 –
The AG discusses the restrictions against the polling of a majority of members of a public body and regarding the private messaging between members of a public body during a public meeting.

14-0172 –
The AG discusses the “reasonable specificity” requirements under R.S. 42:19 in regard to description of agenda items , and the use of the term “Discuss other matters properly brought before this committee” regarding public discussion of potential future agenda items.

13-0221 –
The AG discusses who is responsible for preparing the agenda for a town meeting and the requirements for public comment periods.

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Open Meetings

Group Activity



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Public Records Law
R.S. 44:1, et seq.

**The provisions of the
Public Records Law
shall be interpreted liberally
in favor of public review**

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Public Records Law

Definitions:

- Public Record
- Public Body
- Custodian



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Public Records Law



Public Record:

- Books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment:
 - Used, being used, or prepared, possessed, or retained for the use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which has been conducted, transacted, or performed by or under the authority of:
 - The Constitution or laws of the State;
 - Any ordinance, regulation, mandate, or order of any public body; or

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Public Records Law



Public Record: (Continued)

- Receipt or payment of any money received or paid by or under the authority of the Constitution or laws of this State.
- The list of items enumerated is illustrative not exclusive.

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Public Records Law



A Public Record is Basically:

- Anything that is created, prepared, possessed, or retained as a result of a duty or function carried out under the authority of the Constitution, Statutes, Ordinance, Regulation, Mandate, or Order of a public body, **OR**
- Anything related to the receipt or payment of money received or paid by or under the authority of the Constitution or laws of the State.

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Public Records Law



Public Body:

- Any branch, department, office, agency, board, commission, district, governing authority, political subdivision, or any committee, subcommittee, advisory board, or task force thereof;
- Any other instrumentality of State, Parish, or Municipal Government, including a public or quasi-public nonprofit corporation designated as an entity to perform a governmental or proprietary function; or
- An affiliate of a housing authority.

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Public Records Law

Custodian:

- The Public official or head of any public body having custody or control of a public record; or
- A representative specifically authorized by him/her to respond to requests to inspect any such public records.

House Concurrent Resolution 129 of the 2013 Regular Session directs each public body to post the identity and contact info of the designated custodian of public records on the public body's website.



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Public Records Law

Exceptions to the Public Records Law

- The Public Records Law provides various exceptions, exemptions, and limitations to the Public's Right of Access and Review of Public Records;
- R.S. 44:4 provides that various documents or records are exempted from application of the Public Records Law;
- R.S. 44:4.1 incorporates by reference statutory exceptions to the Public Records Law, the Attorney Client Privilege, and Work Product Privilege;
 - **In order for a statutory exception to the Public Records Law to be effective, it must be included within the Public Records Law, the Constitution, or incorporated by reference in R.S. 44:4.1.**
- Provisions of the Louisiana Constitution, such as the Right to Privacy, may also provide additional exceptions, exemptions, or limitations to the Public's Right of Access to Records.

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Public Records Law

Common Exceptions:

- Records concerning pending criminal litigation or criminal investigations
- Proprietary and Trade Secret Information
- Records of the Governor (2015 Changes)
- Hospital/Health Related Records (HIPAA)
- Personnel Records
- Economic Development
- Tax Returns
- Student Records (FERPA)
- Professional Licensing Boards

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Public Records Law

Duty of Custodian of Public Records

- Maintaining and Preserving Public Records; and
- Responding to Public Records Requests

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Public Records Law



Maintaining Public Records

- All public entities or persons having custody or control of public records shall preserve documents in accordance with their formal records retention schedule developed and approved by the Secretary of State's Office.
- In the absence of a formal retention schedule, public records shall be preserved at least three years from the date on which the public record was made.
 - Other State and Federal Law may require retention of certain records for periods of greater than three years, even in the absence of a formal records retention schedule.
- Recordings of Public Meetings required under R.S. 42:23 shall be preserved and maintained for at least 2 years from the date on which the public record was made.

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Public Records Law



Responding to Public Record Requests

- **Who can request a public record?**
 - Any person of the age of majority (18 or older) may inspect, copy, or reproduce any public record.
 - Does not include individual in custody, post-sentencing for a felony conviction, who has exhausted their appellate remedies and the record requested is not limited to certain grounds under which post conviction relief can be obtained.
 - Any person may obtain a copy or reproduction of any public record.
 - The custodian has the burden of proving that a public record is not subject to inspection, copying, or reproduction.

R.S. 44:31

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Public Records Law

Responding to Public Record Requests

- The custodian shall not make any inquiry of any person requesting a public record, including the reasons for the request.
- The custodian may however ask to verify the age and identification of the person, and may require the person to sign a register.
- The request may be in person or in writing, and need not include the specific name or type of document requested. A reasonable description of information sought is sufficient.

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Public Records Law

Responding to Public Record Requests

- What may be charged for copies of public records?
 - *The custodian may charge a reasonable fee for providing copies of public records, but may not charge for any in person inspection of records during regular office or working hours.*
 - State Agencies are required to comply with the Uniform Fee Schedule for Copies of Public Records found in Section 301 of Title 4, Part I of the Louisiana Administrative Code.
 - Local political subdivisions may utilize this schedule in determining a reasonable fee, but are otherwise free to develop their own fee schedules.
 - Clerks of Courts have their own civil fee rules under R.S. 13:841.

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Public Records Law

Responding to Public Record Requests

- How long does a custodian have to respond to a public records request?
 - If the public record requested is not currently in use and is available for inspection, the custodian must allow for immediate examination of the record.
 - The custodian however has an obligation to segregate out any non-public or confidential information prior to providing copies or allowing examination of a public record.
 - If the record requested is not immediately available or is currently in use, then the custodian shall certify the unavailability of the record to the requestor in writing and fix a day and hour within 3 days, exclusive of weekends or legal holidays, from the receipt of the request at which time the requestor may examine the record.

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Public Records Law

Responding to Public Record Requests

■ What if the custodian does not have the record requested?

- The custodian must certify in writing that they do not have the record requested in their possession, citing why the record is not currently under their possession or control, the current location of the record, who has the current custody or control of the record, and the exact time at which the record was taken from their custody or control, to the best of their knowledge and belief.

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Public Records Law

Denial of Public Record Request

■ What may a requestor do if they are denied a public record?

- Any person who has been denied the right to inspect, copy, reproduce or obtain a public record under the Public Records Law, by either:
 - Determination of the Custodian; or
 - Passage of (5) days exclusive of weekends and legal holidays from the date of request without determination or estimate of time from custodian.

May institute a lawsuit in the district court for the parish where the custodian is located seeking a writ of mandamus, injunctive or declaratory relief, attorney's fees, costs and damages as provided for by law.

R.S. 44:35

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Public Records Law

Responding to Public Record Requests

- What if the custodian believes that the requested record is not a public record?
 - The custodian shall within three days, exclusive of weekends and legal holidays, from receipt of the request notify the requestor in writing their determination that the requested record is not public and shall reference the basis under the law which the custodian has determined exempts the record, or any part of the record from inspection, copying, or reproduction.

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Public Records Law



Penalties for violations of the Public Records Law possibly include:

- Actual Damages;
- Civil Penalties, not to exceed \$100/day;
- Attorney fees and costs of litigation to enforce rights under the Public Records Law; and
- Possibility for personal liability for custodian.

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Public Records Law

Group Activity and Questions

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