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## Government in the Sunshine!!!

- Open records vs. open meetings
- Key = public access
  - Open meetings law requires that a public body conducts its meetings openly, allowing the public to attend (includes providing notice to the public – e.g. meeting notices, agendas, recordings, and minutes)
  - Open records law requires that the public may obtain copies of government documents (usually referred to as FOIA = Freedom of Information Act)

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## Examples of Entities Subject to Open Meetings Laws

- The Federal Government and Multi-Member Federal Agencies
- The State and Statewide Public Entities
- State Commissions
- State Educational Institutions
- State Professional Licensing Bodies
- State Boards and Authorities
- Districts and Other Regional Public Entities
- Cities and Towns
- Counties, Boroughs and Parishes
- Local Commissions
- Local Boards
- Other Local Public Bodies

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## “Meeting”

- Any gathering of a **quorum** of the members of a **public body**, at which the members consider, conduct, or advise on public business
- Includes:
  - Hearings
  - Roundtables (whether formal or informal, regular, special, or emergency)
  - Activities where the following occurs (regardless whether held in person, by telephone, electronically, or by other means of communication):
    - gathering information
    - taking testimony
    - discussing
    - deliberating
    - recommending
    - voting

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## Permissible Reasons for Closing a Meeting

- To consult with and obtain legal advice from the attorney representing the body
- To discuss disciplinary matters
- To deliberate upon a decision in an adjudication action
- To plan, discuss, or hear reports concerning ongoing or planned investigations if disclosure to the public would harm the investigation

### WHEN IN DOUBT.....

#### The law in Washington, DC

**"shall be construed narrowly and shall permit closure of meetings only as authorized by this chapter." D.C. Official Code § 2-573.**

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## DC Office of Open Government (OOG)

An independent office under the Board of Ethics and Government Accountability charged with enforcement of the Open Government Act

- **CHARGE**
  - Ensures city-wide compliance with the Open Meetings Act
  - Advocates for fair and efficient Freedom of Information Act (FOIA) processing
- **ENTITIES REQUIRED TO COMPLY**
  - Any government council
  - The Council of the District of Columbia
- **ENTITIES EXCLUDED**
  - Meetings of the Mayor's Cabinet
  - Courts
  - Governing bodies of public charter schools
  - Advisory Neighborhood Commissioners
- **AUTHORITY**
  - To bring suit in the Superior Court of the District of Columbia against any public body, absent the Council of the District of Columbia, which fails to comply with the Open Meetings Act
  - Impose injunctive relief and fines of up to \$250 per violation

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## The Complaint

January 2016 OOG received a complaint alleging that the Board of Medicine failed to comply with the Open Meetings Act (OMA) by failing to publish meeting notices, agendas and meeting minutes detailing the reasons for closed/executive sessions

### OOG conducted an investigation

- Subpoenaed Board of Medicine documents covering a two year period

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### The Findings

- "because the Board has not strictly adhered to the OMA requirements found at D.C. Official Code § 2-575(c) and D.C. Official Code §§ 2-576 and 2-578, the OOG finds merit in the allegations of the complaint. Hence, it is the opinion of the OOG that the Board has violated the Act."
- "The Board's failure to timely publish all draft and final open meeting session minutes and all draft and final meeting agendas violates the "Record of meetings" and "Notice of meetings" provisions of the OMA."
- The Board of Medicine and the other 18 health licensing boards supported by the Department of Health violated OMA.

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### Good News / Bad News

- "The OOG does not find the Board willfully or recklessly disregarded the OMA, and notes the Board fully cooperated with the investigation."
- "The OOG attributes the Board's lack of compliance to misunderstandings, and in some instances, misapplications of the OMA."
- "Equally troubling is that records reviewed by the OOG indicate this problem may be systemic and pervasive to all public bodies under the purview of the Department of Health."
- "It is apparent to OOG that the Board is not alone in the pattern and practice of meeting first in closed/executive session in violation of D.C. Official Code § 2-575(c)."

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### Recommendations

- (1) timely publish all notices, draft and final meeting agendas, and draft and final open session meetings minutes
- (2) correct all future Notice of Hearings, agenda and minutes to reflect the Board meetings begin in open session, and include the proper and complete citation to D.C. Code § 2-575(d) for meeting in a closed/executive session
- (3) strictly adhere to the statutory regime in D.C. Official Code § 2-575(c) to properly enter into a closed/executive session
- (4) review the category of exceptions in D.C. Official Code § 575(c) to ensure that all matters for discussion or consideration in closed/executive session matters fall into one of the category of exceptions
- (5) for the Executive Director of the Board of Medicine, its attorney advisor, and all members of the Board to attend an open meeting within ninety (90) days upon the issuance of this binding opinion
- (6) for the Department of Health to immediately assess OMA compliance of all public bodies under its charge

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**Board Accountable...or Not**

**Two opposite decisions in the same matter:**  
 2 Physicians challenged the Colorado Board of Medicine subpoenas claiming information for the issuance of the document was obtained as the board violated its open meetings law by adopting a rule without notification to the public.

Findings  
 Two appeal panels reached opposite decisions (one valid, another invalid).

Cases now pending before CO supreme court

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**Board Staff Accountable...or Not**

At a 20 minute public meeting, the administrator for Iowa's Warren County Board of Supervisors presented a final personnel reorganization plan which the board voted to approve it without any discussion. Six employees filed suit against the board, the county, and the individual supervisors, claiming the board's actions violated the open meetings law

Finding:  
 The court concluded the evidence established the supervisors deliberated the reorganization through the Administrator. The supervisors intentionally developed a "sophisticated methodology of communicating effectively with one another" about county business outside the public view "by using Administrator as a conduit." The Board cannot circumvent Open Meetings law by utilizing the administrator as the go-between to hammer out consensus away from public eye

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### Board Staff Accountable

June 2019 Newspaper Investigation: Nearly 30 city boards are not sharing information online  
The Ledger-Enquirer found many of the 43 boards and committees under the Columbus Consolidated Government umbrella are out of compliance with the Georgia Open Meetings Act

- 14 agencies listed one or more board members whose terms had expired, some as far back as 2017
- 4 agencies that still had the former Mayor Tomlinson listed as a board member even though she left office 6 months prior to the article
- Only 3 agencies that post agendas online and 3 that post minutes online
- Broken links, which are common on web pages

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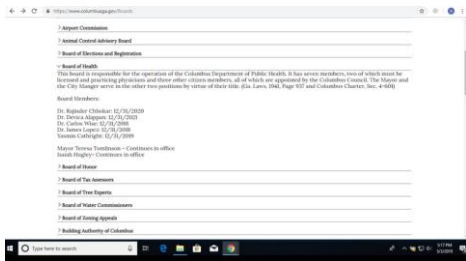
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### Newspaper screenshot



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### Newspaper screenshot



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### Board and Staff Accountable

#### Texas Education Commissioner moved to replace all elected trustees at the Harlandale Independent School District

The investigation findings

- The superintendent might have violated state law when he entered into agreements with an engineering company and approved payments to it without board approval
- Trustees conducted meetings through group text messages, in violation of state open meetings law
- Some trustees have acted outside their scope of office by directing the reassignment of certain employees, and some attempted to intimidate district personnel for the trustees' own benefit, the report states
- "significant dysfunction exists among board of trustees in the form of distrust, in-fighting and bullying, biased bid ranking and alliances among the trustees"
- Both the superintendent and his predecessor reported that they were threatened at one point with losing their jobs by a current and a former trustee

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### The Public Comments

- "Given the inability of the board of trustees... this sanction is necessary to protect the best interests of the district's current and future students,"
- "I'm happy and sad at the same time. I'm sad it had to come down to this, but this board cared more about their power than they did about the students, the employees and the education of our community,"

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### Board and Staff Accountable...or Not

Maryland Board of Medicine issued a cease and desist order to a physician who was found to be prescribing medication to family members, which was posted it on its website

The documents posted contained confidential medical information (names, diagnosis, medications). The document was subsequently removed and information redacted

#### The Board and staff held accountable

- Decision was later overturned citing the board has absolute immunity

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**Lessons Learned**

- Boards are regulated too
- Board members and staff must understand the importance of open meetings
- Not paying attention gets Boards and staff in trouble
- Watchdogs exist
- The public does care
- Good systems for open meetings compliance is essential
- Adhere to the letter of the law

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**Next Steps**

- Review your open meetings act to ensure compliance from your boards and staff
- Trainings, trainings, and trainings – repeated discussions help to reinforce good decisions and review roles
- Foster strong, open relationship among staff, board members, and legal advisors

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**Resource Ideas**

**COMPLIANCE CHECKLIST (MARYLAND OPEN MEETINGS ACT Questionnaire)**

1. Did you give "reasonable advance notice" and keep a copy or screenshot?
2. Did you make an agenda available when notice was posted, or, if not yet determined, as soon as practicable, but at least 24 hours before the meeting?
3. Did you make arrangements for the public to attend?
4. Is someone prepared to keep minutes in writing or, otherwise, to run the equipment for minutes in the form of live and archived video or audio streaming?
5. If part of this meeting might be closed to the public, have you first:
  - Made sure that the topic to be discussed falls entirely within one or more of the "exceptions" that allow the closed session?
  - Given notice of the open meeting to be held right before the closed session, so that the presiding officer can hold the required public vote to close?

- **New Language Used by DC Boards**
  - Upon conclusion of the open session meeting pursuant to the DC Official Code 2-575B and for the purposes set forth therein, the Board will move into the closed executive session portion of the meeting to consult with the Board attorney, discuss disciplinary matters and hear reports concerning violations of the law or regulations

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### Different Perspective

#### • Texas Appeals Court Guts Part of Open-Meetings Law

- A Texas appeals court struck down a provision of the state's open-meetings law that made it a crime for officials to hold meetings without quorum to conduct secret deliberations outside the public eye, calling that part of the statute unconstitutionally vague.

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**BOC** BOARD OF CERTIFICATION FOR THE ATHLETIC TRAINER

**Thank you!**

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 267-530-1726

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