

# New York Coalition



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# New York Coalition For Open Government, Inc.

Non-Profit

Non-Partisan

*Advocating for timely access to information & meaningful  
citizen participation*

[www.nyopengov.org](http://www.nyopengov.org)

# The Open Meetings Law Applies to Public Bodies

Any entity for which a quorum is required to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, ... **or committee or subcommittee or other similar body consisting of members of such public body or an entity created or appointed to perform a necessary function in the decision-making process...**

Bodies which have only advisory or recommendation power are not typically subject to the Open Meetings Law.

# Meeting Notice Requirements

- For a meeting scheduled a least a week in advance, notice to the public and media must be provided at least 72 hours prior to meeting.
- For a meeting scheduled less than a week in advance notice must be provided to the extent practicable.
- If a meeting will be live streamed the public should be informed of where on the Internet the meeting can be viewed.

# What Constitutes a Meeting?

The official convening of a body for the purpose of  
conducting public business

Work Sessions are a meeting

Pre-Board meetings are a meeting

# **Meeting Documents Must Be Posted Online at Least 24 Hours Before A Meeting Occurs**

This Applies to All Public Bodies Such As the City Council, Zoning Board, Planning Board, School Board, etc.

# **Meeting Minutes or a Recording Must Be Posted Online Within Two Weeks of a Meeting**

There Is No Requirement To Approve Minutes

Draft Minutes Can Be Posted

# Executive Sessions

- Should not be scheduled in advance
- Motion for an Executive Session must occur in public with a specific reason stated
- Simply stating to discuss “Litigation” is insufficient
- Simply stating to discuss a “personnel matter” is insufficient
- Simply stating to discuss “Collective Bargaining Negotiations” is insufficient



# **An Executive Session Motion Stating:**

the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;

**Is Improper**

**Executive sessions should be rare**

**&**

**Held for the right reasons**

# New Law

Hybrid meetings can now occur with a majority of members present in person and other members participating remotely

- Must adopt a local law authorizing remote attendance & must establish written procedures of “extraordinary circumstances” for members to participate remotely.
- Such as: disability, illness, caregiving responsibilities, or any other significant or unexpected factor which precludes physical attendance.

- Participating remotely by audio only is not allowed.
- The public body must provide the opportunity for members of the public to view the meeting, using remote technology or in person, in real time.
- If a public body allows for public comment for those who attend in-person, it must allow the same for those who attend remotely.
- Meeting minutes must reflect which members of the public body participated remotely

- Each meeting conducted using videoconferencing shall be recorded
- Such recordings must be posted or linked on the public website of the public body within five business days following the meeting
- Recordings shall remain so available for a minimum of five years thereafter.

**Under The NY State Freedom of Information Law  
(FOIL)**

**All Government Records Are Presumed**

**To Be**

**Available To The Public**

# The Freedom Of Information Law Applies To

“any state or municipal department, board, bureau, division,

commission, committee, public authority, public corporation,  
council, office

or other governmental entity performing a governmental or  
proprietary

function for the state or any one or more municipalities thereof,

**except the judiciary or the state legislature.”**

# **Every governmental entity should have a designated Records Access Officer**

Who is responsible for processing FOIL requests

Often the Town Clerk or City Clerk

Also a designated FOIL Appeals Officer

Often an Attorney



## **FOIL Allows You To Request Records**

"Record" means any information kept, held, filed, produced or reproduced by, with or for an agency ... in any physical form whatsoever including, but not limited to,

reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

# Time Limits

- Within 5 business days your request should be acknowledged in writing
- Government has 20 business days from acknowledgment to provide information which can be extended for reasonable circumstances with a deadline date provided
- You have 30 calendar days to appeal a denial or being ignored
- 10 business days for Agency to respond to appeal

# There Are Several Exemptions Under The Law That Allow A FOIL Request To Be Denied

- (a) documents are specifically exempted from disclosure by state or federal statute;
- (b) if disclosed would constitute an unwarranted invasion of personal privacy;
- (c) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;
- (d) are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise;
- (e) are compiled for law enforcement purposes and which, if disclosed, would: i. interfere with law enforcement investigations or judicial proceedings; ii. deprive a person of a right to a fair trial or impartial adjudication; iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;
- (f) if disclosed could endanger the life or safety of any person;

(g) are inter-agency or intra-agency materials which are not: i. statistical or factual tabulations or data; ii. instructions to staff that affect the public; iii. final agency policy or determinations; or iv. external audits, including but not limited to audits performed by the comptroller and the federal government; or

(h) are examination questions or answers which are requested prior to the final administration of such questions;

(i) if disclosed, would jeopardize the capacity of an agency or an entity that has shared information with an agency to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures;

# Fees

Two Fee Structures (Cannot be combined!):

1. \$.25 per photocopy for copies up to 9x14 inches

May not charge for search or review time

2. Actual cost of reproduction for all other records

Two hour rule

Cost of electronic storage device

Cost of having copy made by third party vendor

May not charge for search or review time

# Best Practices You Can Do

- 1) Establish a Notify Me Link, Where People Can Sign Up To Receive Email Notification Of Meetings
- 2) Post Meeting Documents Online More Than 24 Hours In Advance Of A Meeting
- 3) Don't Require People To Sign Up To Speak Prior To The Meeting Night. Don't Require People To State Their Full Name And Address
- 4) Post Draft Meeting Minutes Online **And** A Recording As Soon As Possible, Before The 14 Day Legal Deadline

# Best Practices You Can Do

- 5) Include A Summary Of Public Comments In Your Meeting Minutes
- 6) Have Information Regarding The Right To File A FOIL Request Posted In A Visible Place On Your Website
- 7) Explain How To Do A FOIL Request, Provide Your Email Address To Accept Requests By Email
- 8) Don't Require People To Use Your Particular FOIL Form

# Best Practices You Can Do

- 9) Communicate Regularly And Timely Regarding FOIL Requests
- 10) Provide Information As To How To File a FOIL Appeal And Information On Whom The Appeal Goes To
- 11) Send A Copy Of The Appeal Documents To The New York State Committee On Open Government



# The New York Coalition For Open Government Is Here to Help

[www.nyopengov.org](http://www.nyopengov.org)

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