



## Fact Sheet: Open Meetings Act

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Additional, more detailed information about Maryland's Open Meetings Act (OMA) and interpretation of the act by the courts, the Attorney General, and the Open Meetings Compliance Board (OMCB) can be found in the *Open Meetings Act Manual* and other materials on the website of the Office of the Attorney General (OAG) [here](#).

### In General

OMA establishes that “it is essential to the maintenance of a democratic society that, except in special and appropriate circumstances, public business be conducted openly and publicly, and the public be allowed to observe the performance of public officials and the deliberations and decisions that the making of public policy involves.” To that end, OMA requires State and local public bodies to hold their meetings in a manner that is open to the public, to give the public adequate notice of those meetings and their expected content, and to make minutes and any recordings of the meetings available to the public afterward. In certain circumstances, public bodies may discuss some topics confidentially in a “closed session.”

### Applicability

OMA applies only when a “quorum” of the members of a “public body” is “meeting” to perform a function that is not otherwise excluded from the Act's requirements:

- **"Public body"** – While subject to additional definition, complexity, and certain exclusions (see Chapter 1 of the [Open Meetings Act Manual](#)), “public body” includes any entity that

(1) consists of at least two individuals and (2) is created by State or local law (or rule, resolution, or bylaw), by executive order of the Governor or of the chief executive authority of a political subdivision, or by other executive appointment under certain circumstances. A government agency is not considered to be an entity that “consists” of the employees who work for it and therefore agency staff meetings are not generally subject to OMA.

- **“Meeting”** – While subject to additional detail described in Chapter 1 of the [Open Meetings Act Manual](#), a “meeting” occurs whenever a public body’s quorum convenes to consider/discuss public business, regardless of where the meeting occurs (or whether it occurs via audio or video conference call), whether the meeting is planned or occurs by chance (*e.g.*, at a social event), and whether or not the quorum takes an action. In addition, email or text exchanges among a quorum of a public body that have characteristics of a meeting (*e.g.*, conversation-like exchanges within a relatively short period of time) can be deemed a “meeting” subject to OMA.
- **“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.
- **Excluded functions** – Certain, limited functions performed by a public body are not subject to OMA – specifically judicial, quasi-judicial, or administrative functions that do not involve licensing, permitting, or land use decisions (meetings involving licensing, permitting, and land use decisions are explicitly subject to the Act). Any other functions performed by a public body are subject to the Act, including legislative, quasi-legislative, and advisory functions (*i.e.*, actions studying, recommending, or establishing public policy, including budgets and contracts).

## Notice and Agenda

OMA requires public bodies to “give reasonable advance notice” before meeting in an open or closed session and gives examples of acceptable means of giving notice, such as by posting the notice on a website ordinarily used by the public body to provide information to the public if the public body has previously given public notice that that method will be used. OMCB (an advisory body, discussed below) has indicated that (1) notice should be given as soon as is practicable after the public body has set the date, time, and place of the meeting; (2) meetings should not be held on short notice on nonurgent matters; and (3) extra efforts may be necessary to provide reasonable notice of an urgently-called meeting.

The Act also requires public bodies to make an agenda available when they post the meeting notice. If the agenda has not been determined at the time of notice, public bodies must make the agenda available as soon as practicable, but, for most public bodies, at least 24 hours before the meeting (see below, under *Enhanced Open Meeting Requirements*, for a 48-hour requirement applicable to certain public bodies). The agenda must include known items of business or topics to be discussed at the portion of the meeting that is open and indicate whether the public body expects to close any portion of the meeting. If a public body is unable to comply with deadlines for the release of a meeting agenda because the meeting is scheduled in response to an

emergency, a natural disaster, or any other unanticipated situation, the public body must make available, on request, an agenda of the meeting within a reasonable time after the meeting occurs.

## **Open Meeting Requirement**

When a public body meets in open session, the general public is entitled to attend. While this requires the public to be able to observe the body's deliberative process and decision-making, it does not entitle the public to participate or be heard. When a public body meets in a physical space it must do so in a facility that admits the public and is reasonably accessible to all who wish to attend (including being large enough to accommodate the expected audience). A public body that meets remotely, whether by telephone, videoconference, or other electronic means, must provide the public with the opportunity to observe the meeting while it is in progress.

OMA requires public bodies to "adopt and enforce reasonable rules regulating the conduct of persons attending its meetings and the videotaping, televising, photographing, broadcasting, or recording of its meetings." OMCB has found that a prohibition on videotaping is not a "reasonable rule."

## **Closed Sessions**

A public body may hold a closed session for various reasons listed in OMA, such as to discuss personnel matters, consider the investment of public funds or marketing of public securities, consult with counsel to obtain legal advice, or discuss certain public security, cybersecurity, or investigative matters. A public body may not meet in closed session unless it has designated at least one member to take training in the requirements of the Act. To close a meeting, a public body must meet in open session, the presiding officer must make a written statement of the specific reason (from among those listed in OMA) for closing the meeting and the topics to be discussed (the "closing statement"), and the public body must conduct a recorded vote to close the meeting.

During the closed session, the public body must confine its discussion to the scope of the reason given in the closing statement. After the session, the public body must disclose, in the minutes of the next open session, a listing of the topics discussed, persons present, and each action taken during the session, in as much detail as possible without compromising the confidentiality of the session.

## **Minutes and Any Recordings**

As soon as practicable after a meeting, a public body must prepare minutes of the meeting. The minutes must reflect each item that the public body considered, the action it took on each item, and each vote that was recorded. The *Open Meetings Act Manual* notes that OMCB has indicated that meeting the "as soon as practicable" requirement involves striking a balance between the goal of promptly informing members of the public who cannot attend the meeting of the events that

occurred there and the practical constraints faced by the public body that must prepare and adopt the minutes. In the case of public bodies that meet regularly, the minutes will generally be adopted at the following meeting of the public body.

A public body does not need to prepare written minutes of an open session if (1) live and archived video or audio streaming of the open session is available or (2) if the public body votes on legislation and the individual votes taken by each participating member of the public body are promptly posted on the Internet.

In general, with limited exceptions, minutes of a public body must be available for public inspection during normal business hours. A public body must retain a copy of the minutes of each session and any recording for at least five years and, to the extent practicable, post the minutes or recordings online.

Minutes must be prepared for closed sessions, but the minutes and any recordings of closed sessions are sealed and not open to public inspection, with the exception of (1) minutes and any recordings of meetings closed to consider the investment of public funds or marketing of public securities, once the funds have been invested or the securities have been marketed and (2) minutes and any recording of any other closed session that a majority of members of the public body present and voting vote in favor of unsealing.

## **Enhanced Open Meeting Requirements**

Certain economic development organizations and other specified public bodies such as the Maryland Stadium Authority (MSA), Maryland Transportation Authority (MDTA), Public Service Commission, State Board of Elections, and State Ethics Commission are subject to certain enhanced requirements under OMA. These requirements include (1) making available on the public body's website each open meeting agenda and other specified documents at least 48 hours in advance of a meeting unless the meeting is being held due to an emergency, natural disaster, or other unanticipated situation and (2) offering live video streaming of each portion of a meeting held in open session (subject to limited exceptions for MSA and MDTA).

## **Compliance and Enforcement**

Each public body must designate at least one of its employees, officers, or members to receive training on the requirements of OMA, and a public body that will conduct closed sessions must designate a member to receive the training. Within 90 days after designation, the designated individual must complete a training course specified under the Act.

OMCB, a three-member board appointed by the Governor, issues advisory opinions in response to complaints of violations. The board may not require or compel any specific actions by a public body. Although the board is not part of OAG, the office provides the board with administrative staff and legal advice and also publishes its opinions and notices on the OAG website.

Subject to limited exceptions, if a public body fails to comply with OMA, a person may file a petition with the circuit court – whether or not a complaint has first been filed with OMCB – to compel compliance or to void an action of the public body that was taken when not in compliance with OMA. A public body that willfully meets with knowledge that the meeting is being held in violation of OMA is also subject to a civil penalty.

## **Other Law**

Some public bodies may be subject to other laws, such as a county or city charter, that impose meeting requirements that are stricter (in favor of more openness) than those in OMA. The Act provides only the minimum requirements for openness and when another law contains a provision that is more stringent that provision applies. In State law, there is a St. Mary’s County Open Meetings Act codified separately from OMA. It is applicable to St. Mary’s County public agencies and, similar to OMA, prevails over another statute, ordinance, regulation, or rule unless the other statute, ordinance, regulation, or rule is more stringent.