

New Legislator's Law School

State Bar of Michigan
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Transparency v. Privacy in Government Information

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OMA Basics

- All meetings of a public body must be open to the public and be held in a place available to the general public.
- All decisions of a public body must be made at a meeting open to the public.
- All deliberations of a public body must take place at a meeting open to the public except for the limited circumstances described below.

Closed sessions only for the following purposes:

- to consider the dismissal, suspension, or discipline of, or to hear complaints about, or to conduct a routine performance evaluation, if the employee requests a closed meeting.
- to consider the dismissal, suspension, or disciplining of a student if the student or the student's parents or guardian requests a closed hearing.
- to consider strategy and negotiations involved in collective bargaining.

Closed Sessions Cont.

- to consider strategy and negotiations involved in collective bargaining.
- to consider the purchase (not the sale) or lease of real estate.
- to consult with attorney regarding specific pending litigation if an open meeting would have a detrimental financial effect on the position of the public body.

Closed Sessions Cont.

- to review and consider the contents of an application for employment or appointment to a public office if the candidate requests the application remain confidential. However, all interviews for such positions must be held in public.
- to consider material exempt from disclosure by state or federal statute (such as written attorney-client privileged communications).

Committees and penalties.

- Committees and subcommittees of public bodies in most cases are required to comply with the Act.
- Notices of meetings must be posted and minutes taken as required.
- Criminal penalties for intentionally violating the Open Meetings Act.

OMA Issues

- Judicially created “constructive quorum” doctrine has expanded reach of the OMA.
- Disconnect between OMA & FOIA regarding confidentiality of applications for employment.
 - OMA - yes
 - FOIA – no
- Disconnect between OMA & FOIA regarding confidentiality of personnel issues.
 - OMA – yes
 - FOIA - NO

OMA Issues

- Balancing public's right to know how their business is being conducted against the public's interest in having its business conducted properly, e.g., confidentially when in the public interest.
- Practical problems in applying OMA to certain delegated administrative functions.
 - Superintendent interviewing/hiring school employees.
 - Individual administrator as a public body.
 - Schwab v. Sterling Standish Schools (2009)

FOIA POLICY

- It is the public policy of this state that all persons . . . are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them . . . consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

FOIA BASICS

- Generally, all documents are public records subject to FOIA.
- Certain documents may be exempted from disclosure if those documents fall into certain categories described in FOIA.
- Exemptions are interpreted narrowly.

FOIA ISSUES

- Right to privacy issues.
- Employment/hiring issues.
 - Unsuccessful job applicant's rights to privacy.
- Preliminary communications and notes.
 - Frank communications.
 - Preliminary drafts.

Thank you for your time.

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