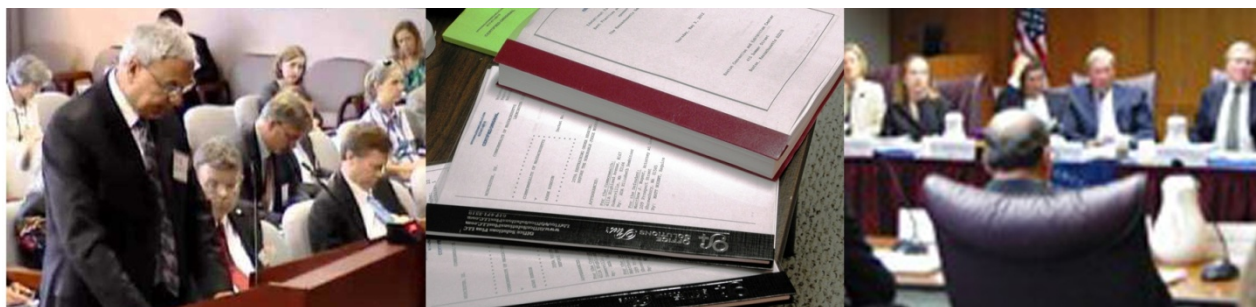




OS+ Quick Guide¹ To: The Massachusetts Open Meeting Law



PART 1: WHEN DO OPEN MEETING RULES APPLY

THE DECEPTIVELY SIMPLE ANSWER

When members of a public body in Massachusetts deliberate with each other regarding matters under the jurisdiction of that public body, the exchange (verbal, written, or electronic) has to be open to the public.

DETAILS BEHIND THE SIMPLE ANSWER

On its face, the Massachusetts Open Meeting Law is a pretty all-encompassing blunt instrument. The underlying intent of the law is clear: both the decisions and the decision-making processes of public bodies must be open to the public.

- Does this law create additional burdens on public bodies? You bet it does.
- Does this law slow things down and make government less efficient? It clearly has such an impact but Lawmakers concluded that such costs are outweighed by the benefits of public participation.
- Does this law enable public bodies to exercise discretion in its implementation? The statute is not a *suggestion* from the Legislature, it is the *law*.

¹ This Quick Guide is intended for summary reference only and does not purport to comprehensively address all aspects of this law. For additional and complete details on the Massachusetts Open Meeting Law, readers are directed to the Massachusetts Attorney General's website: <http://www.mass.gov/ago/government-resources/open-meeting-law/>



What is a public body?

Any multi-member government entity – state, county, district, city, region, or town - established to serve a public purpose is subject to the law. In short, all government panels, committees, boards, or commissions involved in creating or implementing policies or actions are subject to the law. The list of exceptions is short: the Judicial Branch; the Legislature & its committees; and individual government officials (e.g., a police chief) & their staffs.

What is considered a deliberation?

In one of the fuzziest aspects of the law, a deliberation is defined as the exchange of relevant information involving a quorum, or simple majority, of the public body. In other words, communications between *less* than a quorum are not subject to the law. This proviso, of course, opens up potential avenues to evade the law, and Courts have held that the law applies when such attempted evasion is detected.

There are five exceptions to what would otherwise be meetings subject to the law:

- On-site inspections, provided no deliberations occur.
- Conferences, training, & events, provided no deliberations occur.
- Meetings of another public body, provided only open participation & no deliberations occur.
- Adjudicatory proceedings by quasi-judicial boards & commissions.
- Town Meetings.

What are the Public Notice requirements?

Advance notice of at least two business days (48 hours) shall be given to the public by the public body. Public notice for emergency meetings must be issued as early as practicable before the meeting.

Because of the wide range of public bodies (local, county, regional, district, state) covered by the law, the requirements for the actual posting of public notices varies by jurisdiction. However, these requirements uniformly demand that the notices be visible to the public 24-hours-a-day whether on a website, bulletin board, or 24-hour facility.

The contents of public notices are to include meeting details (date, time, place) and a reasonably detailed description of the topics expected to be addressed.

Can public body members attend meetings remotely?

A policy governing remote participation must first be adopted by the public body's jurisdictional executive power. Depending on the jurisdiction, this may be the mayor, board of selectmen, city council, county commissioners, or a majority of the public body itself.

Following adoption of a remote participation policy, any member can participate remotely if approved by the chair for one of the following reasons:

- Personal illness
- Personal disability
- Emergency
- Military Service
- Geographic distance

Remote participation requires that the meeting attendees and the remote member be clearly audible to each other. Any technology that meets this requirement is acceptable, while texting, emails, and non-audible web chat are not. *Importantly, a quorum that includes the meeting's chair must be physically present at the meeting location.*



How can the public participate in meetings?

Members of the public can attend public meetings but are excluded from validly called Executive Sessions. Additionally, the public may make audio and/or video recordings of the meeting after informing the meeting's chair. The law does not grant the public a right to address the meeting, which authority remains with the meeting's chair.

PART 2: WHEN ARE EXECUTIVE SESSIONS OK?

SPECIFIC EXCEPTIONS TO THE OPEN MEETING LAW

Although the Open Meeting Law requires that all meetings by public bodies be open to the public, it recognizes that discussion of certain topics may appropriately be held in executive, or closed, sessions. The list of valid/approved executive session topics is limited and very specific, and the process for entering executive session is well defined.

Prior to an executive session, the chair of the public body convenes an open meeting, states the reason for and subject(s) of the executive session, indicates if an open session will be held afterwards, and takes a roll call vote of the public body to enter executive session.

While in executive session, the public body can only discuss the topics specified, can only vote through roll call, and has to keep an accurate record of the meeting.

THE 10 REASONS FOR CLOSING AN OPEN MEETING

In keeping with its intent to eliminate discretion regarding open public meetings, the Law specifies only ten (10) approved "Purposes" for holding an executive session. No other Purpose beyond this list is considered valid.

1. To protect the rights & reputation of individuals.

Executive sessions can be called to discuss an individual's reputation, character, health, discipline or dismissal, and charges/complaints against that individual. If unrelated to these topics, discussions regarding an individual's professional competence, performance, or qualifications are not viewed as an approved Purpose for an executive session. Under this Purpose, the individual to be discussed is notified at least 48 prior to the executive session and can choose to hold the discussion in an open meeting.

2. To conduct labor negotiations.

Executive sessions are approved for collective bargaining sessions (including grievance hearings), contract negotiations with non-union personnel, and to discuss negotiating strategy with nonunion personnel. While final contracts & agreements may be agreed upon by the parties in executive session, votes by the public body to approve/ratify such contracts & agreements must take place in open session.

3. To discuss collective bargaining or litigation strategy.

To justify an executive session under this Purpose, the public body must declare that an open public discussion would have a detrimental effect on its negotiating position.

4. To discuss strategy & deployment of security personnel & devices.

5. To investigate criminal misconduct or consider filing criminal complaints.

Executive sessions are approved for these discussions that generally precede the formal criminal process in court.



6. **To discuss the purchase, exchange, lease, or value of real property.** To justify an executive session under this Purpose, the public body must declare that an open public discussion would have a detrimental effect on its negotiating position.

7. **To comply with a general or special law, or federal grant-in-aid.**

8. **To consider/interview employment applicants via a screening committee.**

If the chair declares that public sessions would be detrimental to attracting qualified candidates, initial screening of employment candidates by a preliminary screening committee may be conducted in executive session for the sole purpose of narrowing the field of applicants down to finalists. The screening committee cannot be comprised of a quorum of the public body, and all discussions following the initial screening must be open to the public.

9. **To confer with a mediator regarding litigation or public business within its jurisdiction.**

Executive sessions are approved for this Purpose provided the decision to participate in mediation and any resulting actions to be taken are deliberated upon and approved at an open session.

10. **To discuss confidential, proprietary, or competitively sensitive information related to governmental supply of energy.**

Executive sessions are approved for government energy suppliers, municipal aggregators, and cooperatives provided such discussions are deemed to adversely impact their business via-a-vis other energy providers.

PART 3: WHAT RECORDS MUST BE KEPT?

GENERAL REQUIREMENTS

Accurate minutes must be created, approved & maintained in a timely manner for all public body meetings, including executive sessions. The record must specify:

1. Date, time, and place of the meeting
2. Members present, members absent, & members participating remotely along with the reason for remote participation
3. Decisions made, actions taken, and a record of all votes
 - a. No votes can be by secret ballot
 - b. Executive session votes must be by roll call & results must be recorded in the minutes
4. The documents & other exhibits used at the meeting

The minutes, documents, and exhibits are part of the meeting's official record and are public records. The Open Meeting Law and/or Public Records Law govern retention and disclosure requirements.

OPEN SESSION MEETING RECORDS

Minutes must be created & approved in a timely manner, and approved or draft minutes must be available to the public within 10 days upon request. Additionally, materials and other exhibits used by the public body in the meeting must also be made available within 10 days upon request.



Exemptions: There are two exemptions to the open session disclosure requirement:

- Performance evaluation materials bearing on an individual's professional competence
- Applications & supporting materials used in deliberations about employment or appointment of individuals

Performance evaluation documents created by members of the public body are subject to disclosure.

EXECUTIVE SESSION MEETING RECORDS

Records of an executive session are not subject to public disclosure if it would defeat the lawful purpose of the executive session. Such non-disclosure, however, is not perpetual. Public bodies must periodically review executive session records to determine if continued non-disclosure is warranted, and their determination must be included in the minutes of their next meeting.

Upon request to inspect or copy executive session records, the public body must respond and release the records promptly if they have been deemed subject to disclosure. If the public body has made no decision regarding disclosure, it must do so by its next meeting or within 30 days, whichever occurs first.

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