

PREFACE

As United States Supreme Court Justice Louis D. Brandeis famously said, “Sunlight is said to be the best of disinfectants.” In that spirit, the Maryland Open Meetings Act was adopted so that government bodies in the State would open their meetings to the public. Beyond that straightforward premise, however, lie important implementation considerations. Some arise from the rules that govern meetings subject to the Act. Others arise from the exceptions, exclusions, and special definitions that carry out the General Assembly’s decisions on which entities in the State do not have to discuss their business in public, which types of public business do not have to be conducted in public, and which topics do not have to be discussed in public.

Some of the provisions of the Act are easy to understand and apply; some are not. A few have been construed and explained by the courts; most have not. The overall policy of the Act—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”—can get lost in the details.

In 1991, fourteen years after the first version of the Act took effect, the General Assembly recognized that public bodies needed guidance on compliance with the Act, and it amended the Act to establish an independent board, the Open Meetings Compliance Board, to provide that guidance. The Board was directed to provide guidance by issuing advisory opinions in response to complaints from the public and by conducting educational programs for the staffs and attorneys of public bodies and the local government associations. The Office of the Attorney General was directed to share the education responsibilities and provide staff for the Board. Over the years, the Board has issued advisory opinions on almost every aspect of the Act. Under the aegis of this Office and as resources allow, the Board’s staff have conducted seminars on the Act, developed forms and other written guidance, indexed and published the Board’s opinions, and, in a collaborative effort with the Institute for Governmental Service and Research at the University of Maryland, developed the online course that public bodies’ designees may take to fulfill the training requirement now set by the Act.

This latest edition of the Open Meetings Act Manual supplements those efforts. Although it is not a substitute for advice from a public body’s own counsel, we hope it gives public bodies some practical guidance on how to comply with the Act. We hope also that this manual, along with the FAQs - A Quick Guide to Maryland’s Open Meetings Act, provides members of the media and the public with information on what they may expect.

Anthony G. Brown
Attorney General

TABLE OF CONTENTS

Introduction

A.	The Open Meetings Act – its policy and purpose	i
B.	Other laws	ii
C.	How to use this manual	ii
D.	A note about § 3-307.....	iii

Chapter 1: Applicability of the Act

Chapter summary	1-1
A. Is the entity a “public body” subject to the Act?	1-1
B. Is the public body holding a “meeting,” or did the members instead gather merely by chance, for social reasons, or for some other occasion not intended to evade the Act?	1-9
C. Is the meeting subject to the Act because the public body is performing a “function” subject to the Act, or instead exempt because the public body is performing one of the three “functions” expressly excluded from the Act?	1-20

Chapter 2: Notice and Agendas

Chapter summary	2-1
A. Timing	2-2
B. Format and contents	2-3
C. Methods of posting notice	2-5
D. Agenda requirement.....	2-7

Chapter 3: Open Meeting Requirement

Chapter summary	3-1
A. The right to “observe” a meeting	3-1
B. Access to a physical meeting space	3-3
C. Access to a teleconference or to a virtual meeting space.....	3-5
D. Regulation of videotaping and recording; meeting rules.....	3-7
E. Role of the presiding officer; disruptions	3-8

Chapter 4: Permissibility of Closed Sessions — The Exceptions

Chapter summary	4-1
A. The “personnel matters” exception	4-2
B. The “privacy or reputation” exception	4-3
C. The “real property acquisition” exception	4-4
D. The “business location” exception	4-5
E. The “investment of public funds” exception	4-5
F. The “marketing of public securities” exception	4-6

G. The “legal advice” exception.....	4-6
H. The “pending or potential litigation” exception	4-7
I. The “collective bargaining” exception	4-8
J. The “public security” exception	4-8
K. The “scholastic, licensing and qualifying examination” exception	4-9
L. The “investigative proceeding regarding criminal conduct” exception	4-9
M. The “other law” exception	4-9
N. The “procurement” exception	4-10
O. The “cybersecurity” exception.....	4-11

Chapter 5: Conditions for Closing a Meeting

Chapter summary	5-1
A. Before the closed session: closing statement and vote	5-2
B. During the closed session, the duty to discuss only the disclosed topics	5-6
C. After the closed session, the disclosure of the events of the session	5-6

Chapter 6: Meeting Documents

Chapter summary	6-1
A. Written meeting notice	6-2
B. Meeting minutes – open and closed sessions	6-3
C. Content of Minutes.....	6-4
D. Closing statement (see also Chapter 5)	6-11

Chapter 7: Guidance, Judicial Enforcement, and Training

Chapter summary	7-1
A. The Compliance Board	7-2
B. The courts—judicial enforcement of the Act.....	7-7
C. The Office of the Attorney General	7-8