



NAVIGATING THE OPEN MEETINGS ACT

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Louis L. Neal, Jr., Chief Counsel
Office of Open Government

OOG:

The Office of Open Government is a component (along with the Office of Government Ethics) under the Board of Ethics and Government Accountability. OOG is overseen by the Director of Open Government, Niquelle M. Allen, Esq., and began operations in April of 2013.

OOG interprets and monitors compliance with:

- (1) the Open Meetings Act (the OMA), which requires that public bodies provide proper notice of, access to, and detailed records of their meetings; and
- (2) the District of Columbia Freedom of Information Act of 1976, which concerns the transparency and availability of public records.

OOG provides guidance (including formal advisory opinions) to public bodies on compliance with the OMA. OOG also conducts training and outreach and can also enforce the OMA on the basis of complaints from the public and its own investigations, and as a last resort may sue public bodies in the Superior Court for injunction, declaration, and/or civil fines.

THE PREAMBLE—

“The public policy of the District is that all persons are entitled to full and complete information regarding the affairs of government and the actions of those who represent them.

“[The Open Meetings Act] shall be construed broadly to maximize public access to meetings. Exceptions shall be construed narrowly and shall permit closure of meetings only as authorized by this act.”

WHAT IS A “MEETING” AS DEFINED BY THE OMA?

- ▶ “A gathering of a quorum of . . . a public body, . . . whether formal or informal, regular, special, or emergency, at which the members consider, conduct, or advise on public business, including gathering information, taking testimony, discussing, deliberating, recommending, and voting, regardless whether held in person, by telephone, electronically, or by other means of communication.”

A “Quorum”!!?

What in the world...!!?

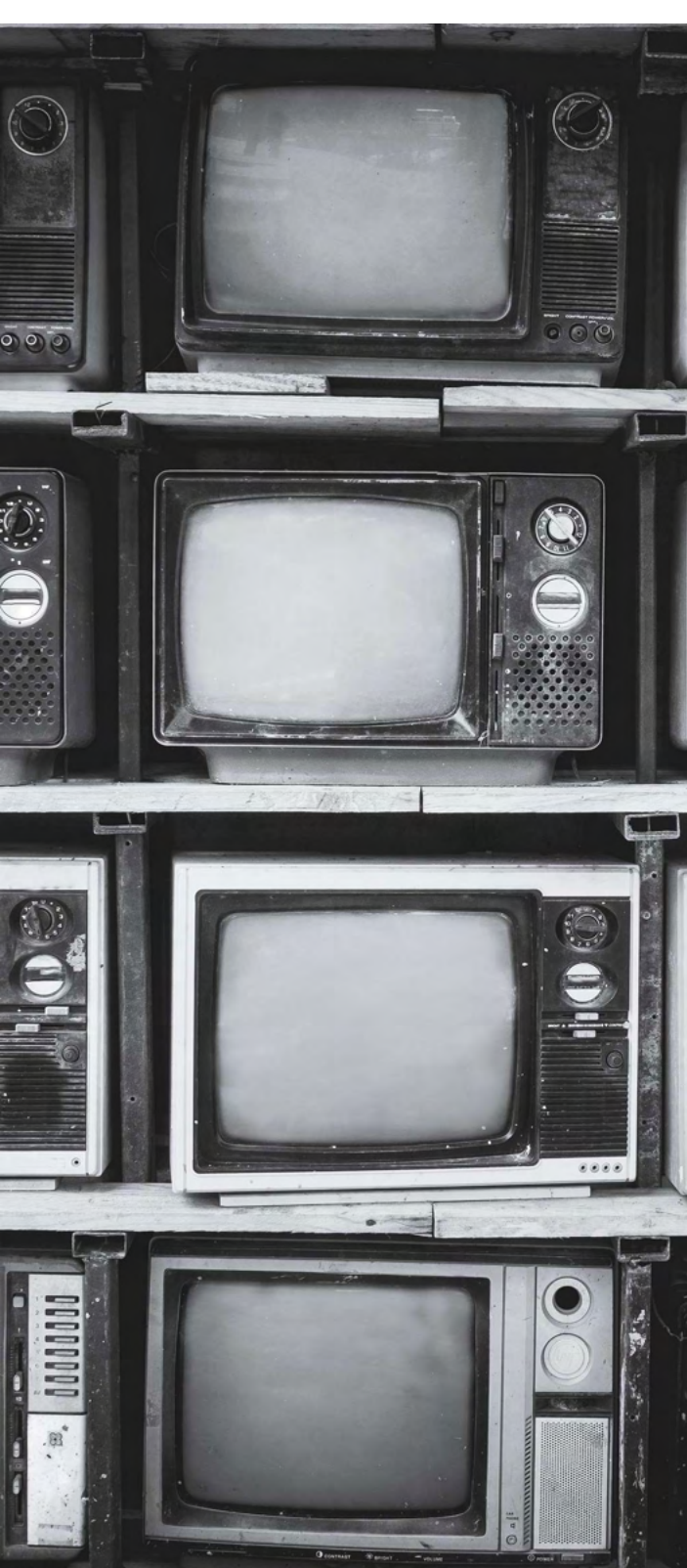
- ▶ The minimum number of members of a public body that can legally meet and conduct business. This is usually a majority of the voting members.
- ▶ **How is a quorum determined?**
- ▶ The OMA defines a quorum as a majority of members unless otherwise specified by law, executive order, or other authorizing provision.
- ▶ The number of members needed for a quorum can vary by organization.
- ▶ Organizations can set their own bylaws to determine the quorum percentage.

PUBLIC BODIES

- “any government council . . . , board, commission, or similar entity, including . . . an advisory body that takes official action by the vote of its members convened for such purpose”
- . . . but not certain excluded groups, such as the local courts and ANCs

A MEETING IS NOT:

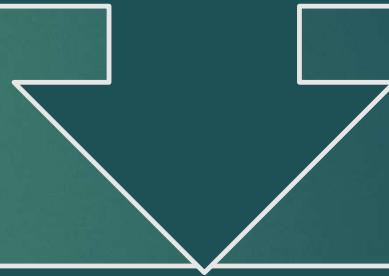
- ▶ A chance or social gathering where no business is discussed
- ▶ A press conference
- ▶ An e-mail exchange



How Open Is “OPEN”?



Meetings (as defined by the
OMA) Must Be Open to the Public
Unless the OMA Permits Closure



Open means:

Public—physical
presence OR have
full electronic
access

News
media—
physical
presence

Television/
streaming

NOTICE OF MEETINGS

- As much notice as possible, but notice must be given at least 48 hours or 2 business days before each meeting, whichever is greater, except for emergencies.(**) “[W]hen a public body finds it necessary to call an emergency meeting to address an urgent matter, notice shall be provided at the same time notice is provided to members....”
- Notice must be posted “[o]n the website of the public body or the District government,” except that, for emergency meetings, public bodies may *either* elect to use the usual internet-posting method or instead post a *physical* (paper) notice “[i]n the office of the public body or a location that is readily accessible to the public.” Also, publish in *D.C. Register*. Consult your governing law to determine if you are required to submit your Planned Agenda for publication in the *D.C. Register* “as timely as possible.” While the OMA does not require a period for public comment, you may choose to allow it, or your governing law may require it.
- “When an **emergency** meeting is convened, the presiding officer shall open the meeting with a statement explaining the subject of the meeting, the nature of the emergency, and how public notice was provided.”

WHAT SHOULD THE NOTICE INCLUDE?

Notice must include:

- **Time**
- **Date**
- **Location** (and/or hyperlink)
- **Planned Agenda**

If there will be a closed meeting or portion of a meeting, include the OMA citation(s) w/ reason(s) justifying the closure.

WHAT (ELSE) SHOULD THE NOTICE INCLUDE?

The following statement must be included below all draft and final agendas:

“This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at open.govoffice@dc.gov.”

CLOSED MEETING JUSTIFICATIONS

- [Full list at code.dccouncil.gov/us/dc/council/code/sections/2-575#\(b\)](https://code.dccouncil.gov/us/dc/council/code/sections/2-575#(b))
- Court-order/statute
- Contract negotiations (including prep/prelim) or trade secrets
- Attorney-client privilege (not just att'y presence)
- Public health or safety where disclosure would endanger public
- “To prevent premature disclosure of an honorary degree, scholarship, prize, or similar award . . . award”
- Certain administrative matters, i.e., exams, personnel, students' PII

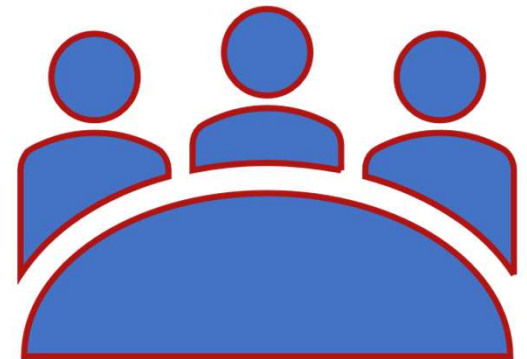
PROTOCOL FOR CLOSED SESSION

--Start the meeting; conduct as much business as you can openly.

--Transition to closure:

The chair must recite “the reason[(s)] for closure,” citations for those reasons, “and the subjects to be discussed” while in closure.

If no discussion, take a vote of the members to move to closed session accordingly.



PROTOCOL FOR CLOSED SESSION (cont'd)

- 4) Only discuss matters noticed in the draft agenda and repeated in the Chair's reading of the draft agenda.
- 5) Electronic recording is still obligatory
- 6) When the closed agenda item(s) are exhausted, the closed body "rises," returning to the public portion of the meeting; when appropriate report out action taken in closure.



RECORDING AND POSTING REQUIREMENTS



AUDIO RECORDING

Always required, unless not feasible, unless substituted for minutes



VIDEO RECORDING

Not required



TRANSCRIPT –

Posted on web no later than 3 business days after the meeting



DETAILED MINUTES

as soon as practicable, but no later than 3 business days after the meeting

MEETING RECORDS

(Additional specifics from OOG regulations)

“Detailed meeting minutes shall contain . . . :

“(a) The date, time, and place of the meeting or session;

“(b) The names of members of the Public Body recorded as either present or absent; and

“(c) Any motions, and amendments thereto, a record of all votes taken, and general description of all matters considered”

3 DCMR § 10409.6

(66 DCR 006673, 006680 (May 31, 2019)).

“FULL RECORD” CONTENTS/ AVAILABILITY REQUIREMENTS

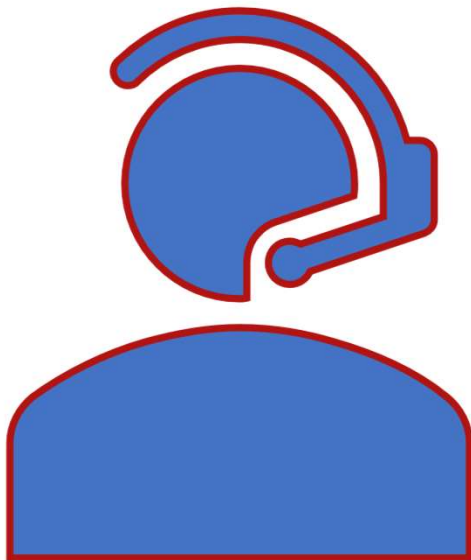
If recording not feasible, YOUR MINUTES (at least the draft version) MUST BE PUBLICLY AVAILABLE NO LATER THAN 3 BUSINESS DAYS AFTER THE MEETING; A NOTATION MUST BE INCLUDED AT THE TOP OF ANY DRAFT MINUTES THAT FINAL MINUTES WILL BE POSTED TO THE WEBSITE ON THE NEXT MEETING DATE

“A copy of the full record, including any recording or transcript, shall be made available for public inspection as soon as practicable, but no later than 7 business days after the meeting.”

PUBLIC COMMENT

- No public comment period is required by the OMA or its regulations.
- Of course, you may choose to allow public comment anyway, or your governing law might require it. But public comment is beyond the scope of the OMA and of OOG.

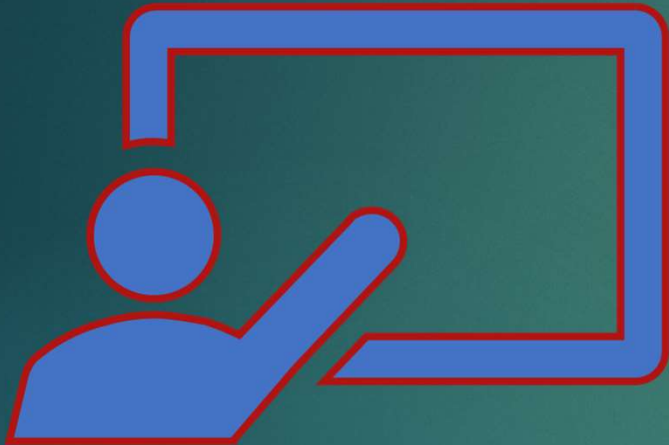
COMPLAINTS



An aggrieved party, including anonymous parties, may complain to OOG for relief.

- May be prospective or may refer to past meetings
- Except with allegations of imminent *prospective* violations, public body gets 30 days to respond (possible extension of up to 5 business days)
- Director may seek to resolve dispute through conciliation; dismiss the complaint; release an advisory opinion; or take any other step permitted by the OMA and its regulations

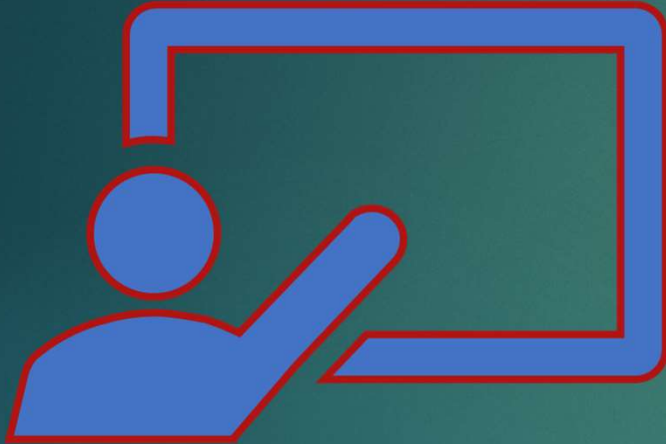
DUTIES OF AN ADMINISTRATIVE POINT OF CONTACT (APC)



Similar to the Freedom of Information Officer with respect to D.C. FOIA, the Office of Open Government regards APCs as the legally responsive personnel to whom we address all OMA violations or other concerns.[+]

Whenever your APC duties change hands, report any new APC's name and contact information to OOG.

DUTIES OF AN APC (cont'd)

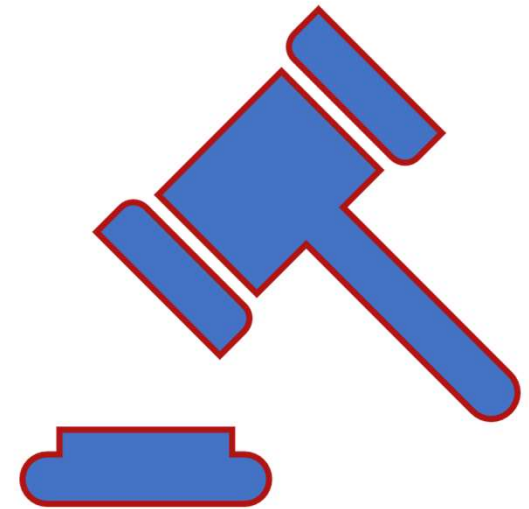


For access to OOG's Central Meeting Calendar (CMC) to post notices and minutes/transcripts, the APC must contact OOG to obtain log-in credentials to access the user-side of open-dc.gov.

(The OMA also permits the use of a public body's *own* site for posting these records. OOG offers the CMC as an alternative and for District-wide convenience and uniformity.)

ENFORCEMENT

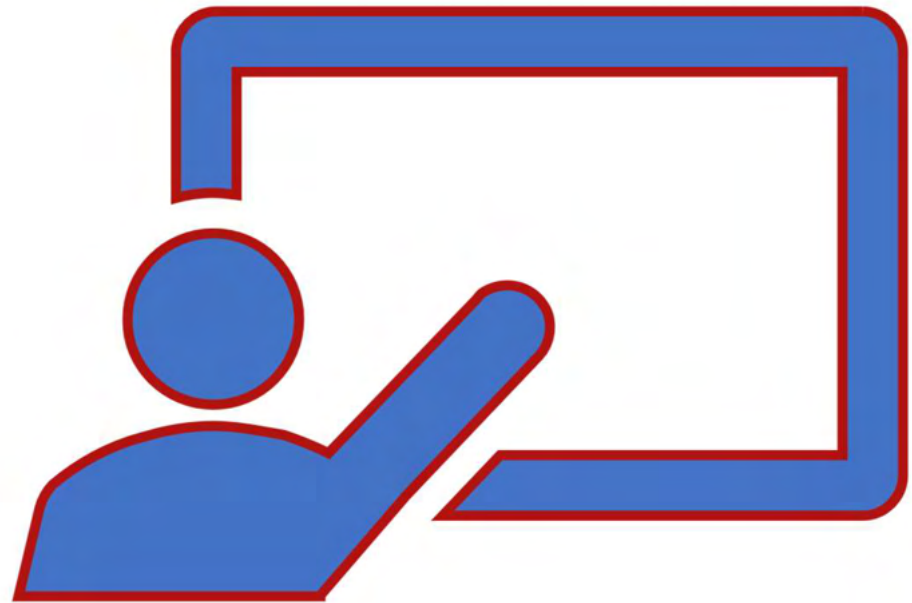
- ▶ The OOG may bring a lawsuit in the Superior Court of the District of Columbia for injunctive and/or declaratory relief for any violations of the OMA BEFORE or AFTER the meeting takes place.
- ▶ The court may order an appropriate remedy, such as requiring additional forms of notice, postponing a meeting, or a fine of up to \$500 per violation.



PARLIAMENTARY LAW/PROCEDURE

“The Director [of Open Government] may provide advice and training on parliamentary procedure upon request.”

3 DCMR § 10408.2.



PARLIAMENTARY SCRIPTS

For common tasks, it's good practice for the Administrative Point of Contact to write a script for the presiding-officer to use to move smoothly through the meeting and ensure compliance with the OMA and the body's internal practices.

References

open-dc.gov

code.dccouncil.gov/us/dc/council/code/titles/2/chapters/5/subchapters/IV
(codification of OMA)

dcregs.dc.gov/Common/DCMR/RuleList.aspx?ChapterNum=3-104
(codification of regulations)

Compliance Checklist:

open-dc.gov/documents/oma-compliance-checklist

ASSISTANCE INFORMATION

For further assistance regarding

the Open Meetings Act

or

the (local) Freedom of Information Act,

please reach us at

(202) 481-3411

or

opengovoffice@dc.gov

OOG CONTACT INFO

Niquelle M. Allen, Esq.,

Director

Niquelle.Allen@dc.gov

(202) 481-3406

Louis L. Neal, Jr., Esq.,

Chief Counsel

louis.neal@dc.gov

(202) 384-2945

Joan Lelma, Esq.

Attorney Advisor

Joan.lelma@dc.gov

(202) 948-3623

Anthony J. Scerbo, Esq.

Attorney Advisor

Anthony.Scerbo1@dc.gov

(202) 731-2926

Brandon W. Lewis, Esq.

Attorney Advisor

Brandon.lewis@dc.gov

(202) 579-1043

Kimberly Brown

Paralegal Specialist

Kimberly.brown6@dc.gov

(202) 893-3902

Kevin Brown

IT Specialist

Kevin.brown@dc.gov

(202) 579-3756

The Office of
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thanks
YOU

