

OPEN MEETINGS ACT

The Open Meetings Act, 1976 PA 267; MCLA 15.261 et. seq. requires all meetings of a public body to be open.



What information can I obtain about government operations?

As citizens, you have the right to know what your government is doing. Michigan has two laws—the Open Meetings Act (OMA) and the Freedom of Information Act (FOIA)—especially designed to protect this right, giving you the opportunity to learn how your government works. The OMA declares that the meetings of a public body must be open to the public and held in a place accessible to the general public. The FOIA entitles citizens to review, inspect or receive copies of most public records.



How does the OMA define a public body?

The OMA defines a public body as any body created by statute, constitution, charter, ordinance, resolution or rule to perform a governmental function. For something to be considered a public body, it must have been both created by law and perform a governmental function. Thus, your local grocery store and church are not considered public bodies, while entities like city councils, township boards of trustees and zoning commissions are. Generally, the OMA excludes the courts from its provisions, though both the Michigan Constitution and court rules grant the public access to most court proceedings.



Can a public body ever meet in private?

Yes. The OMA provides for closed meetings in a few circumstances. Public bodies may meet privately to discuss sensitive issues like: the evaluation, dismissal or discipline of a public officer or employee, or dismissal or discipline of a student when the person involved requests a closed meeting; collective bargaining; the purchase or lease of real estate; legal strategy regarding pending litigation; review of applications for employment or appointment when the applicant so requests (however, interviews for employment or appointment must be held at an open meeting); and discussion of material exempt from disclosure by law.



Could a public body meet informally, at a restaurant for instance, before or after a meeting?

Yes, a public body may meet at a restaurant before or after a meeting as long as they do not discuss business. The OMA specifically states that it does not apply to these types of social gatherings when they are not designed to avoid the act. However, the OMA also states that any gathering of a quorum of a public body at which they deliberate toward a decision is a meeting that must be open to the public.



Can a public body vote on matters by secret ballot?

No, they may not. Though the law does include a few very specific exceptions, in general the OMA mandates that all decisions of a public body be made at an open meeting, including voting.



Can a public body meet outside its geographic area?

While the act does not state that a meeting must be held in the public body's geographic boundaries, it does say that meetings must be held in a place that is easily accessible to residents served by that public body.



If a public body posts a special meeting on the outside of a building over the weekend, is the meeting legal?

Yes, as long as the notice was posted 18 hours prior to the meeting. The OMA does not require that notice be given during regular business hours. However, it does require that the posting be accessible. For example, it must be posted on the outside, not on the inside, of the building.



If a quorum of a public body goes to its attorney's office without posting notice of the meeting, is it a violation of the OMA?



Most likely. The OMA defines a meeting of a public body as a gathering at which a quorum is present to deliberate towards, or render a decision on, a public policy. Therefore, if the quorum had engaged in any deliberation or decision-making, it is possible that an OMA violation occurred. However, a public body can sometimes meet in closed session to consider material exempt by law, such as a written opinion of the attorney covered by attorney-client privilege, or to discuss specific, pending litigation, but they must post a notice that such a meeting will occur, vote to go into closed session, provide an opportunity for public comment at the open portion of the meeting and follow the OMA's additional requirement of taking minutes.



Does the OMA apply to committees of a public body?



It may. The OMA includes committees and subcommittees in the definition of public body. However, when a committee is merely advisory and capable only of making recommendations, it may not be subject to the act if the recommendation is about a governmental matter. A committee that has the authority to make governmental decisions is subject to the OMA and must comply with all its provisions including notice, taking of minutes and time for public comment.



How does the FOIA define public body?



Under the FOIA, a public body includes any agency, board, commission or council in the legislative branch of the state; a county, city, township, village or other regional governing body; school districts and agencies thereof; and any other body that is created by state or local authority or that is primarily funded by or through state or local authority. An individual member of a board—a school board member, for instance—would not be considered a public body. State officers and employees are, however,

considered to be public bodies. The governor, lieutenant governor and the executive office of the governor are excluded from the FOIA, as is the judiciary.



What is a public record?



In general, all records except those specifically considered exempt are covered by the FOIA. As a citizen, you have a right to see minutes of open meetings, officials' voting records, correspondence, financial records, staff manuals, even personnel records and the salaries of public officials and employees. Further, you have a right to these records no matter the form in which they are maintained. The FOIA applies to any handwriting, typewriting, printing, photographing and photocopying, and it includes letters, words, pictures, sounds or symbols. It also includes papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, computer discs or other means of recording or retaining meaningful content. The exception to this list is computer software.



Is there a special form for making a FOIA request?



No, the FOIA simply requires that you make your request in writing. Faxes and e-mails are acceptable. Some public bodies have created forms for citizens to use when requesting public records, but in general, the law only calls for a written request.



May a public body charge a fee for public records?



Yes. A public body may charge a fee for a public record search, the necessary copying of a public record for inspection or for providing a copy of a public record. The fee for providing copies is limited to the actual mailing cost and the actual incremental cost of duplication including labor, search, examination, review and the separation and deletion of exempt material. The first \$20 of a fee must be waived for a person receiving public assistance or presenting an affidavit of indigency.

PUBLIC RECORDS

The Freedom of Information Act, 1976 PA 442; MCLA 15.231 et. seq. gives citizens access to public records.



What happens after I make my request in writing?



A public body must respond to your request in writing within five business days either by granting your request, denying your request in whole or in part, or extending the time for response by up to 10 additional days. If the public body denies any portion of your request, it must explain, based on the FOIA, why it is withholding the records.



What can I do if a public body violates the FOIA or the OMA?



For violations of the FOIA, you may either appeal the public body's denial of your request to the head of the public body, or you may file a lawsuit in circuit court asking the judge to order the public body to disclose the records. A citizen may also file a lawsuit in circuit court to compel compliance with the OMA. Decisions made in meetings that violate the OMA may be overturned by a court. In addition, intentional violations of the OMA may be prosecuted as misdemeanors. Both acts permit citizens to recoup their attorney fees and court costs if they win in court.



Where can I get more information about FOIA and OMA?



For the complete text of FOIA and OMA, as well as relevant Attorney General legal opinions, visit the Web site of the Attorney General at www.ag.state.mi.us. The Michigan Press Association Web site has an automated FOIA letter generator and sample letters, answers to a number of frequently asked questions about Michigan's sunshine laws—including how to deal with closed meetings—and links to state and federal FOIA resources at www.michiganpress.org.

WHY SHOULD YOU CARE?

Abraham Lincoln's Gettysburg Address has the answer: "that government of the people, by the people, for the people shall not perish from the earth."

It's our government and we have the right to know what it's doing.

The Freedom of Information Act (FOIA) and Open Meetings Act (OMA) protect that right for "all persons" in Michigan. Not just adults. Not just citizens. Not just the media. ALL OF MICHIGAN'S PEOPLE have the right to know what THEIR government is doing. And it doesn't matter why they want to know.

Some would argue that access to information like the personnel files of public employees or private business information held by government should be limited because those limitations could spare public employees from telemarketers or shield competitive financial information.

But the open and neutral FOIA and OMA help us understand the acts and actions of our public officials and employees.

FOIA ensures that parents can review the qualifications of teachers in their school system so they know that qualified teachers are being hired without regard to race or gender.

FOIA ensures that the police blotter is always available so that citizens can be warned that car thefts are occurring in their neighborhood.

FOIA ensures access to applications for government benefits so that citizens can see that only qualified entities are obtaining taxpayer dollars.

FOIA and OMA are about accountability. They can help spot wrongdoing and weaknesses, but they can also provide us with information to improve our neighborhoods, our schools and our society.

The Open Meetings Act and the Freedom of Information Act are important in a democracy that is of the people, by the people and for the people.

And that's why you should care.



What everyone should know about their

RIGHT TO KNOW

A guide to Michigan's public information laws

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