

Appendix D: OPEN MEETINGS LAW FAQs

Written by the North Carolina Open Government Coalition. Originally published at <http://www.elon.edu/e-web/academics/communications/ncopengov/innc/openmeeting.xhtml>. Used with permission.

HOW TO USE OPEN MEETINGS LAW

Who is subject to the law?

It applies to any public body. "Public body" is a broad term that includes any authority, board, commission, committee, council or other body of state or local government that has at least two members and carries out one of five functions: legislative, policy-making, quasi-judicial, administrative or advisory. The law covers both elected and appointed boards and commission.

Are all meetings covered?

No. Only official meetings. An official meeting of a majority of the body's members -- in person or electronically -- to conduct a hearing, deliberate, take action or otherwise transact the public's business. And a court has said "deliberate" means to examine, weigh and reflect upon the reasons for or against a possible decision. If a body is only receiving information, that counts.

What about conference calls and e-mails?

Conference calls are covered. A chat room meeting would count as an official meeting. A message sent from one member of a body to all of the others would not -- it's like posting a message on a bulletin board. A gray area lies between those two examples. If the others were to reply to a message and then copy each other, and then more responses followed, the "conversation" may constitute an official meeting.

Workshop meetings, agenda meetings and work sessions?

Yes. These meetings, in which the board can be informed about matters and discuss them but not take final actions, are less formal than regular meetings but are considered official meetings and are open to the public. Even if the board does nothing but receive information, the meeting is public.

Can a board majority gather informally or socially without constituting an "official meeting?"

Social gatherings are allowed, but boards are not permitted to use these events as an excuse to deliberate outside of the public eye. Meals that a board regularly takes together, for example, are considered official meetings.

Can a board chairman meet individually, and privately, with each member to discuss a public matter?

Yes. However, the law also says a board must not essentially take action through these individual meetings.

Do they have to announce meetings?

Yes. The requirements vary according to the type of meeting: regular, special, emergency and recessed. Special meetings are official meetings that are not emergency meetings, recessed meetings or regular meetings. The law required boards give at least 48 hours of notice for special meetings, stating the time, place and purpose of the meeting. Notice must be posted on a board's principle bulletin board, if it has one or the door of the board's usual meeting place. Notice must also be made to everyone who has submitted a written request for notice.

CLOSED MEETINGS

When are they allowed?

When a board plans to discuss particular issues that generally fall into the following categories, they are exempted from the open meetings law: confidential information, consultations with an attorney, claims or litigation, business location or expansion, real property acquisition, employment contracts, certain personnel matters and investigations. See G.S. 143-318.11.

What procedure must be followed?

The law requires the board to disclose the reason for going into the closed session is, and then vote on it. In addition, if the body says it is going to discuss "confidential information" it must cite the law that makes the matter confidential. If the body wants to discuss pending litigation, the motion must identify the parties to the litigation. If officials go into a closed session to talk about one thing, can they can't talk about other matters. To broaden the discussion, the board must return to open session, disclosed the new topic, and vote to return to closed session.

If a board doesn't follow proper procedure what can you do?

You can stand up, ask for permission to speak, and object.

What do I say?

"North Carolina's open meetings law, Chapter 143 of the General Statutes, requires that all meetings of state and local governmental bodies be open to the public unless there is a specific statutory exemption authorizing closure. If you contend that this meeting can be closed legally, please advise me of the statutory authority for your action."

Must they keep minutes of a closed meeting?

Yes. And you can ask to see them. The law requires "minutes" be kept that are "full and accurate" and that they provide a "general account" to let a person who wasn't there "have a reasonable understanding of what transpired." A "general account" is intended to provide some sort of record of the discussion that took place behind closed doors, whether action was taken or not. The law is unclear on how detailed the minutes must be. The board must make those minutes available for public inspections as soon as the reason for the closed session is no longer valid.

Is a board allowed to vote in a closed meeting?

Yes, but the vote must be disclosed in the minutes.

Can a board prohibit its members from disclosing what happened in a closed session?

No. Permission to hold a closed session is simply permission to exclude the public; it is not authorization to prohibit those present from disclosing what occurred.

What happens if the Open Meetings Law is violated?

1. A court can issue a declaratory judgment, which is a finding that a violation has taken place.
2. If someone seeks an injunction against violations, a court may order the public body not to violate the law in the future.
3. A person can ask a court to invalidate an action taken (or deliberated) based upon a violation of the open meetings law. Your rights in the meeting

Can you take pictures or tape record the meeting?

Taping, photographing, filming, or other types of recording open meetings are permitted by any member of the public. Radio and television station are allowed to broadcast open meetings.

Can public bodies hide the subject of their deliberations?

No. Public bodies must deliberate in such a way that a member of the public should be able to understand what they are talking about. They may not, for example, refer to secret letters or codes in their deliberations. They may, however, refer to items on an agenda made available to the public before the meeting as long as the agenda is sufficient to explain what the board is discussing.

What kind of background materials is a board required by law to release?

Enough for the public to understand the subject of deliberations and actions. The public is entitled to background materials distributed to the board under the public records statute.

Does a citizen have the right to address a public body?

No. You have a right to attend and listen. You do not have a right to talk to the public body or participate in its deliberations, unless the matter under consideration is part of a public hearing.

Are North Carolina courts open to the public?

With few exceptions courts in North Carolina are open to the public. The N.C. Constitution states "All courts shall be open." North Carolina's federal courts are also open to the public and press. Unlike state courts, federal courts do not permit camera coverage.

When can courts be closed to the public?

In the 1980's the U.S. Supreme Court concluded that the First Admendment gives the public and press the right to attend criminal trials (including preliminary hearings, jury selection, opening statements, witness examination and closing) unless a trial judge enters an order containing specific written findings. Those findings must demonstrate that:

- that closure is absolutely necessary to protect a "compelling" governmental interest;
- that no less restrictive measure short of closing the courtroom will suffice to protect that interest; and
- that the closure is "narrowly tailored " so that its scope and duration are as limited as possible.

Are there exceptions to the general rule of open court proceedings?

Yes those exceptions are:

- Commitment hearings. The N.C. Court of Appeals has ruled that there is no right of access to involuntary civil commitment proceedings. However commitment hearings for people found guilty by reason of insanity in criminal cases are public and must be held in the court where the original trial took place.
- Conference Any bench conference between judges and lawyers, conferences between lawyer and their clients are not intended for the public.
- Grand jury proceedings. Federal and state law requires that grand jury proceedings be conducted in private. It is also a crime for a grand juror to release information that is presented to a grand jury. It is not a crime for a news organization to publish the information.

- Juvenile proceedings. Once closed as a matter of public policy juvenile proceedings are now presumptively open to the public and the court must find "good cause" to close a proceeding. No proceeding can be closed if the juvenile requests that it be open.
- Sex crimes cases. In cases involving charges of rape, attempted rape, sex offense or attempted sex offense the court may be closed during the testimony of the victim.
- Potential for violence. This law is rarely used and if invoked, it probably would not call for the exclusion of all persons.
- Proceedings involving medical peer review records. This is a recent ruling by the N.C. Supreme Court that held the public does not have a right to access court hearings that concern confidential information relating to medical peer review records.
- Trade secrets. Generally a court can be closed while trade secrets are discussed.
- Victim's compensation. These take place before administrative law judges who may exclude from a hearing all persons not directly involved in the hearing during the taking of medical and law enforcement information as evidence.

