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FOIA and OMA Best Practices

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One of the things I most enjoy as MPA General Counsel is engaging on the importance of open government in our democracy. On multiple occasions, I have presented on the topic of Open Government. Reporters, public officials, and citizens all gathered to take about the Freedom of Information Act (FOIA) and the Open Meetings Act (OMA) – their importance, the challenges in obtaining/providing information, as well as best practices. It is clear to me that many government officials and employees not only want to comply with the legal requirements (as they must), they want to go beyond the bare minimum required by the law and begin making strides toward better transparency policies. With that in mind, here are some thoughts on best practices for you to discuss with your local governments.

The Spirit of the Law should be the Government's Primary Guide

"It is the public policy of this state that all persons...are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees...."

Public bodies should keep in mind the spirit and intent of the law. When in doubt – disclose!

Communicate early and often – especially on potentially controversial issues

Nothing frustrates the public more than not knowing that an issue is being considered by a public body. Public bodies should publish notices of meeting **agenda items** sufficiently in advance of the public meeting in order that the public know **what** is under discussion. Or they should call a local reporter so that they can do a story on the issue. Public bodies should also provide copies of board packets and other materials in advance of meetings

Related Services

Access, Freedom of Information Act & Open Meetings Act

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and also provide copies at meetings so that citizens understand the basic issues and facts.

Be Accessible

Too often, it is hard for the public to know who to contact and where. They get stuck in automated response hell. Public bodies should provide government email addresses for public officials and employees and list them on their website and at public offices. If there are no have official email addresses for public officials, there should be a publicly disclosed (and published) email address for contact purposes. Governments should also provide emergency contact information for certain positions (Police Chief, Sheriff) and publicize it.

Develop an Electronic Communications Policy and Enforce it!

Many public bodies now use electronic versions of materials via a laptop or tablet at public meetings. Use of these devices at public meetings can create the misimpression that the officials are improperly communicating during open meetings. The government body should make it clear that:

- Officials are only accessing materials and/or taking notes
- There is a policy forbids electronic communications (except for personal emergencies) during an open meeting

If there is a violation of the policy, take appropriate action and let the public know you did so!

Be Open about Closed Sessions

If a public body is going into a closed session – provide as much detail as possible on the topic and the applicable exemption. For example: **Say Instead of** Periodic personnel evaluation of Superintendent Smith Personnel Matters Consult with attorney regarding the case of Joe Smith v. The Public Body Pending litigation

Provide Ample Time for Public Comment at Public Meetings

If necessary, extend meetings to allow public comment, rather than imposing very short times for people to comment. Encourage and provide mechanisms for persons to speak on behalf of a group. Don't "stack" the agenda so that public comments come after the public body has already voted (another big area of frustration for citizens).

Take the time to review your obligations on your own and/or get trained

Too often, public bodies and officials blindly defer to their attorneys. While an attorney's advice may be important, read the FOIA and OMA statutes. For the most part, the provisions are pretty clear. And many of the exemptions are discretionary, meaning that they can be waived; there might be good reasons to do so in a particular case.

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