**INFORMATION BRIEF**
**Research Department**
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# Minnesota Open Meeting Law

The Minnesota Open Meeting Law[1] requires that meetings of governmental bodies generally be open to the public. The Minnesota Supreme Court has articulated three purposes of the law:

- To prohibit actions being taken at a secret meeting where it is impossible for the interested public to become fully informed about a public board's decisions or to detect improper influences
- To assure the public's right to be informed
- To afford the public an opportunity to present its views to the public body[2]

This information brief discusses the groups and types of meetings covered by the open meeting law, and then reviews the requirements of and exceptions to the law and the penalties for its violation.

## Contents

Groups and Meetings Governed by the Open Meeting Law .....2
Requirements of the Open Meeting Law .....5
Exceptions to the Open Meeting Law .....7
Penalties .....11
Advice .....12

[1] Minn. Stat. ch. 13D (recoded from Minn. Stat. § 471.705 in 2000). The Minnesota Open Meeting Law was originally enacted in Laws 1957, chapter 773, section 1.

[2] *Prior Lake American v. Mader*, 642 N.W.2d 729, 735 (Minn. 2002) (citing *St. Cloud Newspapers, Inc. v. District 742 Community Schools*, 332 N.W.2d 1, 4 (Minn. 1983)). While the courts consistently say that the open meeting law is to afford the public an opportunity to present its views to the public body, there is no general right for members of the public to speak at a meeting. Some statutes, and perhaps some home rule charters, specify that a hearing on a particular matter must be held at which anyone who wishes to address the public body may do so. *See, e.g.,* Minn. Stat. § 117.0412, subd. 2.

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# Groups and Meetings Governed by the Open Meeting Law

**The law applies to all levels of state and local government.**

The open meeting law applies to:

- a state agency, board, commission, or department when it is required or permitted by law to transact public business in a meeting;
- the governing body of any school district, unorganized territory, county, city, town, or other public body;
- a committee, subcommittee, board, department, or commission of a public body subject to the law; and
- the governing body or a committee of a statewide or local public pension plan.[3]

"Public body" is not defined but the Minnesota Supreme Court has stated that "[i]n common understanding, 'public body' is possibly the broadest expression for the category of governmental entities that perform functions for the public benefit."[4]

In determining whether the open meeting law applies to a particular entity, one should look at all of the entity's characteristics. For example, in a 1998 case, the Minnesota Supreme Court held that because the statute authorizing creation of a municipal power agency authorized an agency to conduct its affairs as a private corporation, it could hold closed meetings.[5] The court held so notwithstanding the statute that provides for municipal power agencies to be political subdivisions of the state.[6]

The open meeting law and the Government Data Practices Act apply to the University of Minnesota Board of Regents, and the application of these laws to the university does not violate the university's constitutional autonomy.[7]

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[3] Minn. Stat. § 13D.01, subd. 1.

[4] *Star Tribune Co. v. University of Minnesota Board of Regents*, 683 N.W.2d 274, 280 (Minn. 2004).

[5] *Southern Minn. Mun. Power Agency v. Boyne*, 578 N.W.2d 362, 364 (Minn. 1998) (citing Minn. Stat. § 453.54, subd. 21, and discussing the factors that distinguish a public corporation from a private corporation).

[6] Minn. Stat. § 453.53, subd. 1, ¶ (1) (The agency agreement shall state: "(1) That the municipal power agency is created and incorporated . . . as a municipal corporation and a political subdivision of the state, to exercise thereunder a part of the sovereign powers of the state;").

[7] *Star Tribune Co.*, 683 N.W.2d 274. In 2002, Mark Yudof resigned from the presidency of the University of Minnesota. When finalists for the position had been selected but not announced, the Board of Regents closed a meeting to interview them, ensuring their privacy. The university asserted that its constitutional autonomy meant it was not subject to these laws. A number of newspapers sued, claiming that the university is subject to the open meeting law and data practices act, and that it violated both laws. The district court and court of appeals agreed with the newspapers, and the state supreme court affirmed those decisions.

**The law generally applies to nonprofit corporations created by governmental entities.**

The list of groups covered by the open meeting law does not refer to nonprofit corporations created by a governmental entity. However, the law creating a specific public nonprofit corporation may specify that it is subject to the open meeting law.[8] In addition, corporations created by political subdivisions are clearly subject to the open meeting law.[9]

**Gatherings of less than a quorum of a public body are not subject to the law; a "meeting" is held when the group is capable of exercising decision-making powers.**

The Minnesota Supreme Court has held that the open meeting law applies only to a quorum or more of members of the governing body or a committee, subcommittee, board, department, or commission of the governing body.[10] Serial meetings in groups of less than a quorum held in order to avoid open meeting law requirements may also be found to be a violation, depending on the facts of the case.[11]

A public body subject to the law should be cautious about using e-mail to communicate with other members of the body. Although the statute does not specifically address the use of e-mail, it is likely that the court would analyze use of e-mail in the same way as it has telephone conversations and letters.[12] That is, communication about official business through telephone conversations or letters by a quorum of a public body subject to the law would violate the law. Serial communication through telephone conversations or letters by less than a quorum with the intent to avoid a public hearing or to come to an agreement on an issue relating to official business could also violate the law.

In a 1993 case, the Minnesota Court of Appeals held that the open meeting law was not violated when two of five city council members attended private mediation sessions related to city

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[8] *E.g.,* Minn. Stat. §§ 62Q.03, subd. 6 (Minnesota Risk Adjustment Association); 116O.03, subd. 5 (Minnesota Technology, Inc.); 116V.01, subd. 10 (Agricultural Utilization Research Institute); 116S.02, subds. 6 and 7 (Minnesota Business Finance, Inc.); 124D.385, subd. 4 (Minnesota Commission on National and Community Service may create a nonprofit but it is subject to the open meeting law); 128C.22 (State High School League); and Laws 1990, ch. 535, § 2, subd. 6 (Lake Superior Center Authority).

[9] Minn. Stat. § 465.719, subd. 9 (enacted by Laws 2000, ch. 455, art. 1, § 2, subd. 9). A 1986 attorney general opinion stated that the open meeting law did not apply to nonprofit corporations created by political subdivisions. Op. Att'y Gen. 92a-30, Jan. 29, 1986. The 1999 Legislature established a task force to recommend legislation in 2000, governing corporations created by political subdivisions. Laws 1999, ch. 186. Among other things, the 2000 legislation addressed the issue of application of the open meeting law, stating that the law applied and a corporation created by a political subdivision cannot be exempted from it.

[10] *Moberg v. Independent School Dist. No. 281*, 336 N.W.2d 510 (Minn. 1983).

[11] *Id.* at 518; *see also Mankato Free Press Co. v. City of North Mankato*, 563 N.W.2d 291, 295 (Minn. App. 1997). On remand to the district court for a factual finding on whether the city used serial interviews to avoid the open meeting law, the trial court found, and the court of appeals affirmed, that the serial meetings were not held to avoid the law. *Mankato Free Press Co. v. City of North Mankato*, 1998 WL 865714 (Minn. App. 1998) (unpublished opinion).

[12] *Moberg*, 336 N.W.2d at 518. The Commissioner of Administration stated in a July 9, 2008, opinion that an e-mail sent to all members of a city council was effectively "printed material" that should be available to members of the public and also suggested that the legislature revise the statute to recognize the use of electronic and other types of communications. Minn. Dept. of Admin. Advisory Op. 08-15.

business. The court determined that the two council members did not constitute a committee or subcommittee of the council because the group was not capable of exercising decision-making powers.[13]

**The law applies to informational meetings.**

The Minnesota Supreme Court has held that the open meeting law applies to all gatherings of members of a governing body, regardless of whether or not action is taken or contemplated. Thus, a gathering of members of a public body for an informational seminar on matters currently facing the body or that might come before the body must be conducted openly.[14] However, a 1975 attorney general opinion stated that city council attendance at a League of Minnesota Cities training program for city officials did not violate the open meeting law if the members did not discuss specific municipal business.[15] Under a 2007 law, it appears that informational meetings of the Legislative-Citizen Commission on Minnesota Resources may be closed.[16]

**The law does not cover chance or social gatherings.**

The open meeting law does not apply to chance or social gatherings of members of a public body.[17] However, a quorum of a public body may not, as a group, discuss or receive information on official business in any setting under the guise of a private social gathering.[18]

**The law does not apply to certain types of advisory groups.**

The Minnesota Court of Appeals has held that the open meeting law does not apply to certain types of advisory groups.[19] In that case, a presidential search advisory committee to the University of Minnesota Board of Regents was held not to be a committee of the governing body for purposes of the open meeting law. In reaching its holding, the court pointed out that no regents were on the search committee and that the committee had no power to set policy or make a final decision. It is not clear if a court would reach the same result if members of the governing body were also on the advisory committee. Depending on the number of members of the governing body involved and on the form of the delegation of authority from the governing

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[13] *Sovereign v. Dunn*, 498 N.W.2d 62 (Minn. App. 1993).

[14] *St. Cloud Newspapers, Inc. v. District 742 Cmty. Schools*, 332 N.W.2d 1 (Minn. 1983).

[15] Op. Att'y Gen. 63a-5, Feb. 5, 1975.

[16] Minn. Stat. § 116P.08, subd. 5 ("(a) Meetings of the commission, committees or subcommittees of the commission, technical advisory committees, and peer review panels must be open to the public. The commission shall attempt to meet throughout various regions of the state during each biennium. For purposes of this subdivision, *a meeting occurs when a quorum is present and action is taken* regarding a matter within the jurisdiction of the commission, a committee or subcommittee of the commission, a technical advisory committee, or a peer review panel. (b) For legislative members of the commission, enforcement of this subdivision is governed by section 3.055, subdivision 2. For nonlegislative members of the commission, enforcement of this subdivision is governed by section 13D.06, subdivisions 1 and 2." (emphasis added)).

[17] *St. Cloud Newspapers, Inc.*, 332 N.W.2d at 7.

[18] *Moberg*, 336 N.W.2d at 518.

[19] *The Minnesota Daily v. University of Minnesota*, 432 N.W.2d 189 (Minn. App. 1988).

body to the members, a court might consider the advisory committee to be a committee of the governing body.

**A separate law applies to the legislature.**

In 1990, the legislature passed a law separate from the open meeting law that requires all legislative meetings be open to the public.[20] The law applies to House and Senate floor sessions and to meetings of committees, subcommittees, conference committees, and legislative commissions. For purposes of this law, a meeting occurs when a quorum is present and action is taken regarding a matter within the jurisdiction of the group. Each house of the legislature must adopt rules to implement these requirements. Remedies provided under these rules are the exclusive means of enforcing this law.

# Requirements of the Open Meeting Law

**The primary requirement of the open meeting law is that meetings be open to the public.**

The law also requires that votes in open meetings be recorded in a journal and that the journal be open to the public. The vote of each member must be recorded on appropriations of money, except for payments of judgments and claims and amounts fixed by statute.[21] A straw ballot to narrow the list of candidates for city administrator and not made public was held to be a secret vote in violation of the open meeting law.[22]

Open meetings must be held in a public place within the borders of the public body.[23]

Meetings may be held by interactive television if specified conditions are met to ensure openness and accessibility for those who wish to attend.[24]

Specific agencies have broader authority to hold meetings by telephone conference call or other electronic means as long as specified conditions are met to ensure openness and accessibility for those who wish to attend. In addition, a meeting of any public body may be conducted by telephone or other electronic means if a health pandemic or other emergency makes meeting in person impractical or imprudent and all of the same conditions as for other meetings held by telephone conference call or other electronic means are met, unless unfeasible due to the pandemic or emergency. In general, those conditions include the following:

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[20] Minn. Stat. § 3.055 (added by Laws 1990, ch. 608, art. 6, § 1).

[21] Minn. Stat. § 13D.01, subds. 4 and 5.

[22] *Mankato Free Press Co.*, 563 N.W.2d at 295-96.

[23] *Quast v. Knutson*, 150 N.W.2d 199, 200 (Minn. 1967) (school board meeting held 20 miles outside the jurisdiction of the school board at a private office did not comply with open meeting law; consolidation proceedings were fatally defective because the resolution by which the proceedings were initiated was not adopted at a public meeting as required by law).

[24] Minn. Stat. § 13D.02. *See also* Minn. Stat. § 471.59, subd. 2 (joint powers board for educational purposes).

- All members of the body can hear one another and can hear all discussion and testimony
- Members of the public at the regular meeting location can hear all discussion, testimony, and votes
- At least one member of the body, chief legal counsel, or chief administrative officer is present at the regular meeting location
- All votes are conducted by roll call
- The public body must allow a person to monitor the meeting electronically from another location. The body may require the person to pay for any documented additional costs the body incurs as a result of the additional connection
- The public body must give notice of the regular meeting location, of the fact that some members may participate by telephone or other electronic means, and of the right of the public to monitor the meeting from another location[25]

**The law requires public bodies to give notice of their meetings.**

In 1974, the Minnesota Supreme Court held that failure to give notice of a meeting is a violation of the open meeting law.[26] The court has also held that it is a violation of the open meeting law to conduct business before the time publicly announced for a meeting.[27]

In 1987, the legislature spelled out the notice requirements in statute for regular, special, emergency, and closed meetings. Public bodies must do the following:

- Keep schedules of *regular* meetings on file at their offices[28]
- Post notice of *special* meetings (meetings held at a time or place different for regular meetings) on their principal bulletin board. The public body must also either mail notice to people who have requested such mailings, or publish notice in the official newspaper, at least three days before the meetings[29]

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[25] Minn. Stat. §§ 13D.021 (health pandemic, other emergency); 35.0661 (Board of Animal Health during restricted travel for animal health reasons); 41A.0235 (Minnesota Agricultural and Economic Development Board); 41B.026 (Rural Finance Agency); 116J.68, subd. 5 (Small Business Development Center Advisory Board); 116L.03, subd. 8 (Minnesota Jobs Skills Partnership Board); 116L.665, subd. 2a (Governor's Workforce Development Council); 116M.15, subd. 5 (Urban Initiative Board); 116U.25 (Explore Minnesota Tourism Council); 129C.105 (Perpich Center for Arts Education); 248.10 (Rehabilitation Council for the Blind); 256.482, subd. 5b (Minnesota State Council on Disability); 256.975, subd. 2a. (Minnesota Board on Aging); 256C.28, subd. 7 (Commission of Deaf, Deaf-Blind, and Hard of Hearing Minnesotans); 268A.02, subd. 3 (State Rehabilitation Council and Statewide Independent Living Council); 326B.32, subd. 7 (Board of Electricity); 326B.435, subd. 7 (Board of Plumbing); 341.26 (Combative Sports Commission); 462A.041 (Minnesota Housing Finance Agency).

[26] *Sullivan v. Credit River Township*, 217 N.W.2d 502 (1974).

[27] *Merz v. Leitch*, 342 N.W.2d 141, 145 (Minn. 1984).

[28] Minn. Stat. § 13D.04, subd. 1 (§ 13D.04, previously § 471.705, subd. 1c, was added by Laws 1987, ch. 313, § 1).

[29] Minn. Stat. § 13D.04, subd. 2; *Rupp v. Mayasich*, 533 N.W.2d 893 (Minn. App. 1995) (bulletin board must be reasonably accessible to the public). A February 3, 2004, advisory opinion by the Commissioner of

- Make good faith efforts to notify news media that have filed written requests (with telephone numbers) for notice of *emergency* meetings (special meetings called because of circumstances that require immediate consideration)[30]

The same notice requirements apply to closed meetings.[31]

For state agencies, absent any other specific law governing notice, publication requirements can be satisfied by publishing notice in the State Register.[32]

**The law requires relevant materials to be publicly available.**

The open meeting law requires that for open meetings, at least one copy of any printed material prepared by the public body and distributed or available to all members of the public body also be available in the meeting room for inspection by the public. This requirement does not apply to materials that are classified as other than public under the Government Data Practices Act.[33]

# Exceptions to the Open Meeting Law

A closed meeting, except one closed under the attorney-client privilege, must be electronically recorded at the expense of the public body. Unless otherwise provided by law, the recordings must be preserved for at least three years after the date of the meeting.[34]

**The law does not apply to state agency disciplinary hearings.**

The open meeting law does not apply to any state agency, board, or commission when exercising quasi-judicial functions involving disciplinary hearings.[35]

**Certain meetings involving employee evaluation or discipline must be closed.**

A public body must close meetings for preliminary consideration of allegations or charges against an individual subject to its authority.[36] If the members of the public body conclude that discipline may be warranted as a result of those charges, further meetings or hearings relating to

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Administration stated that a public body's actions at a special meeting are limited to those topics included in the notice of special meeting. Minnesota Department of Administration Advisory Opinion 04-004.

[30] Minn. Stat. § 13D.04, subd. 3.

[31] Minn. Stat. § 13D.04, subd. 5.

[32] Minn. Stat. § 13D.04, subd. 6.

[33] Minn. Stat. § 13D.01, subd. 6.

[34] Minn. Stat. § 13D.05, subd. 1, cl. (d).

[35] Minn. Stat. § 13D.01, subd. 2 (2); *see also Zahavy v. University of Minnesota*, 544 N.W.2d 32, 41-42 (Minn. App. 1996).

[36] Minn. Stat. § 13D.05, subd. 2 (b).

the charges must be open. Meetings must also be open at the request of the individual who is the subject of the meeting.

Statutes other than the open meeting law may permit or require closed meetings for certain local governmental bodies to conduct specific kinds of disciplinary hearings. For example, school board hearings held to discharge or demote a teacher are private unless the affected teacher wants a public hearing.[37]

A public body may close a meeting to evaluate the performance of an individual who is subject to its authority.[38] Before closing a meeting, the public body must identify the individual to be evaluated. The public body must summarize the conclusions of the evaluation at its next open meeting. An evaluation meeting must be open at the request of the subject of the meeting.

A meeting must be closed if an individual's medical records governed by Minnesota Statutes, section 144.291 to 144.298, are discussed.[39]

**A meeting may be closed to discuss labor negotiations.**

The open meeting law permits a public body to hold a closed meeting to discuss strategy and proposals for labor negotiations conducted under the Public Employment Labor Relations Act.[40] The statute specifies procedures for tape-recording of these meetings, and for the recordings to become public when negotiations are completed.[41] Another law permits the Commissioner of the Bureau of Mediation Services to close negotiations and mediation sessions between public employers and public employees. These negotiations are public meetings, unless the commissioner closes them.[42]

**The law permits closed meetings based on a limited attorney-client privilege.**

In 1976, the Minnesota Supreme Court held that there is a limited exception, based on the attorney-client privilege, for meetings to discuss strategy for threatened or pending litigation.[43] In 1990, the legislature added the attorney-client exception to the open meeting law.[44] Although the statute is not limited, the court has since held that the scope of the exception remains limited in relation to the open meeting law.[45]

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[37] Minn. Stat. § 122A.41, subd. 9.

[38] Minn. Stat. § 13D.05, subd. 3(a).

[39] Minn. Stat. § 13D.05, subd. 2.

[40] Minn. Stat. § 13D.03, subd. 1.

[41] Minn. Stat. § 13D.03, subd. 2.

[42] Minn. Stat. § 179A.14, subd. 3.

[43] *Minneapolis Star & Tribune Co. v. Housing & Redevelopment Auth.*, 251 N.W.2d 620, 626 (1976).

[44] Minn. Stat. § 13D.05, subd. 3(b) (added by Laws 1990, ch. 550 § 2).

[45] *Star Tribune v. Board of Ed., Special School Dist. No. 1*, 507 N.W.2d 869 (Minn. App. 1993) *review denied* (Minn. Dec. 22, 1993). The court of appeals did not accept the argument that the statutory exception encompassed the full attorney-client privilege because that would result in the exception swallowing the rule in favor of open meetings. In 2002, the Minnesota Supreme Court restated that the attorney-client privilege exception only applies

The attorney-client privilege exception does not apply to a mere request for general legal advice. Nor does it apply when a governing body seeks to discuss with its attorney the strengths and weaknesses of a proposed legislative enactment (like a city ordinance) that may lead to future lawsuits because that can be viewed as general legal advice. Furthermore, discussion of proposed legislation is just the sort of discussion that should be public.[46]

In order to close a meeting under the attorney-client privilege exception, the governing body must give a particularized statement describing the subject to be discussed. A general statement that the meeting is being closed to discuss pending or threatened litigation is not sufficient.[47]

**A meeting may be closed to address certain security issues.**

If disclosure of the information discussed would pose a danger to public safety or compromise security procedures or responses, a meeting may be closed to:

- receive security briefings and reports,
- discuss issues related to security systems,
- discuss emergency response procedures, and
- discuss security deficiencies in or recommendations regarding public services, infrastructure, and facilities.

Before closing a meeting, the public body must refer to the facilities, systems, procedures, services, or infrastructures to be considered during the closed meeting. A closed meeting must be tape-recorded at the expense of the governing body, and the recording must be preserved for at least four years.

Financial issues related to security matters must be discussed and all related financial decisions must be made at an open meeting.[48]

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when the purposes for the exception outweigh the purposes of the open meeting law. In that case, the city council was threatened with a lawsuit if it did not grant a request. The court found that the threat of a lawsuit did not warrant closing the meeting. *Prior Lake American v. Mader*, 642 N.W.2d 729 (Minn. 2002) (en banc). *Cf. Brainerd Daily Dispatch v. Dehen*, 693 N.W.2d 435 (Minn. App. 2005) (applying analysis of *StarTribune* and *Prior Lake American*, finding threats were sufficiently specific and imminent that confidential consultation with legal counsel appointed by city's insurer to discuss defense strategy or reconciliation to address a threatened lawsuit justified closing the meeting).

[46] *Northwest Publications, Inc. v. City of St. Paul*, 435 N.W.2d 64, 68 (Minn. App. 1989); *Star Tribune*, 507 N.W.2d at 872.

[47] *The Free Press v. County of Blue Earth*, 677 N.W.2d 471 (Minn. App. 2004).

[48] Minn. Stat. § 13D.05, subd. 3.

**A meeting may be closed to discuss certain issues relating to government property sales or purchases.**

A public body may close a meeting to:

- determine the asking price for real or personal property to be sold by the government entity;
- review confidential or nonpublic appraisal data; and
- develop or consider offers or counteroffers for the purchase or sale of real or personal property.

Before holding a closed meeting, the public body must identify on the record the particular property that is the subject of the closed meeting. The proceedings must be tape-recorded at the expense of the public body. The recording must be preserved for eight years after the date of the meeting and made available to the public after all property discussed at the meeting has been purchased or sold or the governing body has abandoned the purchase or sale. The property that is the subject of the closed meeting must be specifically identified on the tape. A list of members and all other persons present at the closed meeting must be made available to the public after the closed meeting. If an action is brought claiming that public business other than discussions allowed under this exception was transacted at a closed meeting held during the time when the tape is not available to the public, the court would review the recording of the meeting *in camera* and either dismiss the action if the court finds no violation, or permit use of the recording at trial (subject to protective orders) if the court finds there is a violation.[49]

An agreement reached that is based on an offer considered at a closed meeting is contingent on approval of the public body at an open meeting. The actual purchase or sale must be approved at an open meeting after the notice period required by statute or the governing body's internal procedures, and the purchase price or sale price is public data.[50]

**There is a narrow exception for certain meetings of public hospital boards.**

Boards of public hospitals and certain health organizations may close meetings to discuss competitive market activities and contracts.[51]

**On-site inspections by town board members are not subject to the law.**

The law does not apply to a gathering of town board members to perform on-site inspections, if the town has no employees or other staff able to perform the inspections and the town board is acting essentially in a staff capacity. The town board must make good faith efforts to provide notice of the inspections to the media that have filed a written request, including a telephone

[49] Minn. Stat. § 13D.05, subd. 3, referring to § 13D.03, subd. 3.

[50] Minn. Stat. § 13D.05, subd. 3. Property appraisal data covered by this law is described in Minnesota Statutes, section 13.44, subdivision 3.

[51] Minn. Stat. § 144.581, subds. 4 and 5.

number, for notice. Notice must be by telephone or by any other method used to notify the members of the public body.[52]

**The law does not apply to meetings of the Commissioner of Corrections.[53]**

**The law specifies how it relates to the Government Data Practices Act.**

Except as specifically provided, public meetings may not be closed to discuss data that are not public data under the Government Data Practices Act.[54] Data that are not public may be discussed at an open meeting without liability, if the matter discussed is within the public body's authority and if it is reasonably necessary to conduct the business before the public body.[55]

A portion of a meeting must be closed if the following data are discussed:

- Data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults[56]
- Active investigative data collected by a law enforcement agency, or internal affairs data relating to alleged misconduct by law enforcement personnel[57]
- Certain types of educational, health, medical, welfare, or mental health data that are not public data[58]

# Penalties

The open meeting law provides a civil penalty of up to $300 for intentional violation.[59] A person who is found to have intentionally violated the law in three or more legal actions involving the same governmental body forfeits the right to serve on that body for a time equal to the term the person was serving. The Minnesota Supreme Court has held that this removal provision is constitutional only if the conduct constitutes malfeasance or nonfeasance and provided that the violations occurred after the person had a reasonable amount of time to learn the responsibilities of office.[60]

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[52] Minn. Stat. § 366.01, subd. 11.

[53] Minn. Stat. § 13D.01, subd. 2 (1). This exception does not make sense. Until 1982, the exception was for meetings of the corrections board—a multimember body. A 1983 instruction directed the revisor of statutes to change "corrections board" to "commissioner of corrections" throughout the statutes. Laws 1983, ch. 274, § 18.

[54] Minn. Stat. § 13D.05, subd. 1.

[55] Minn. Stat. §§ 13.03, subd. 11, 13.05, subd. 4, ¶ (e), and 13D.05, subd. 1.

[56] Minn. Stat. § 13D.05, subd. 2 (a)(1).

[57] Minn. Stat. § 13D.05, subd. 2 (a)(2).

[58] Minn. Stat. § 13D.05, subd. 2 (a)(3).

[59] Minn. Stat. § 13D.06.

[60] *Claude v. Collins*, 518 N.W.2d 836, 843 (Minn. 1994) (discussing the constitutionality of provision relating to removal from office); *see also Brown v. Cannon Falls Township,* 723 N.W.2d 31, 41-44 (Minn. App. 2006) (discussing the statutory history and that since 1994 the statute has required three or more legal actions).

A public body may not pay a civil penalty on behalf of a person who violated the law. However, a public body may pay any costs, disbursements, or attorney fees incurred by or awarded against a member of the body in an action under the open meeting law if the member was found not guilty of a violation.[61]

A court may award reasonable costs, disbursements, and reasonable attorney fees of up to $13,000 to any party in an action under the open meeting law. However, the following conditions apply:

- A court may award costs and attorney fees to a defendant only if it finds that the action was frivolous and without merit
- A court may award monetary penalties or attorney fees against a member of a public body only if the court finds there was an intent to violate the open meeting law

The court must award reasonable attorney fees to a prevailing plaintiff if the public body was also the subject of a prior written opinion issued by the Commissioner of Administration, and the court finds that the opinion is directly related to the cause of action being litigated and that the public body did not follow the opinion.[62]

The appropriate mechanism to enforce the open meeting law is to bring an action in district court seeking injunctive relief or damages. The statute does not provide for a declaratory judgment action.[63]

The Minnesota Supreme Court has held that actions taken at a meeting held in violation of the open meeting law are not invalid or rescindable.[64]

# Advice

Public bodies subject to the open meeting law may seek advice on the application of the law and how to comply with it from three sources:

- The governmental entity's attorney
- The attorney general[65]
- The Commissioner of Administration[66]

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[61] Op. Att'y Gen. 471-a, Dec. 31, 1992; Minn. Stat. § 13D.06, subd. 4 (c).

[62] Minn. Stat. § 13D.06, subd. 4.

[63] *Rupp v. Mayasich*, 561 N.W.2d 555 (Minn. App. 1997).

[64] *Sullivan v. Credit River Township*, 299 Minn. 170, 176-177, 217 N.W.2d 502, 507 (Minn. 1974).

[65] Under Minnesota Statutes, section 8.06, the attorney general is the attorney for all state officers and boards or commissions created by law. Under Minnesota Statutes, section 8.07, the attorney general, on request from an attorney for a county, city, town, public pension fund, school board, or unorganized area, gives written opinions on matters of public importance.

An individual may seek advice from two sources:

- The individual's attorney
- The Commissioner of Administration[67]

Since 2003, an individual who disagrees with the manner in which members of a governing body perform their duties under the open meeting law may request the Commissioner of Administration to give a written opinion on the governing body's compliance with the law.

A governing body or person requesting an opinion of the Commissioner of Administration must pay a $200 fee if the commissioner issues an opinion.

The commissioner may decide not to issue an opinion. If the commissioner decides not to issue an opinion, the commissioner must notify the requester within five days of receipt of the request. If the commissioner decides to issue an opinion, it must be done within 20 days of the request (with a 30-day extension possible for good cause and notice to the requester). The governing body must be allowed to explain how it performs its duties under the law.

Opinions of the Commissioner of Administration are not binding, but a court must give the opinions deference. However, a governing body that follows an opinion is not liable for fines, attorney's fees or any other penalty, or forfeiture of office.

*For more information about open meetings and other issues related to the government, visit the government operations area of our web site, www.house.mn/hrd/issinfo/gv_state.htm.*

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[66] Minn. Stat. § 13.072, subds. 1 and 2.

[67] Id.; see www.ipad.state.mn.us/opinions/index.html for access to prior opinions of the Commissioner of Administration or to find out how to request an opinion.