

Arkansas Sunshine Law from the Arkansas Freedom of Information Act

(Complete FOI Handbook found at <https://arkansasag.gov/resources/foia/>)

A.C.A. 25-19-106. Open public meetings.

- (a) Except as otherwise specifically provided by law, all meetings, formal or informal, special or regular, of the governing bodies of all municipalities, counties, townships, and school districts and all boards, bureaus, commissions, or organizations of the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds, shall be public meetings.
- (b)(1) The time and place of each regular meeting shall be furnished to anyone who requests the information.
- (2) In the event of emergency or special meetings, the person calling the meeting shall notify the representatives of the newspapers, radio stations, and television stations, if any, located in the county in which the meeting is to be held and any news media located elsewhere that cover regular meetings of the governing body and that have requested to be so notified of emergency or special meetings of the time, place, and date of the meeting. Notification shall be made at least two (2) hours before the meeting takes place in order that the public shall have representatives at the meeting.
- (c)(1)(A) Except as provided under subdivision (c)(6) of this section, executive sessions will be permitted only for the purpose of considering employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee.
- (B) The specific purpose of the executive session shall be announced in public before going into executive session.
- (2)(A) Only the person holding the top administrative position in the public agency, department, or office involved, the immediate supervisor of the employee involved, and the employee may be present at the executive session when so requested by the governing body, board, commission, or other public body holding the executive session.
- (B) Any person being interviewed for the top administrative position in the public agency, department, or office involved may be present at the executive session when so requested by the governing board, commission, or other public body holding the executive session.
- (3) Executive sessions must never be called for the purpose of defeating the reason or the spirit of this chapter.
- (4) No resolution, ordinance, rule, contract, regulation, or motion considered or arrived at in executive session will be legal unless, following the executive session, the public body reconvenes in public session and presents and votes on the resolution, ordinance, rule, contract, regulation, or motion.
- (5)(A) Boards and commissions of this state may meet in executive session for purposes of preparing examination materials and answers to examination materials which are administered to applicants for licensure from state agencies.
- (B) Boards and commissions are excluded from this chapter for the administering of examinations to applicants for licensure.
- (6) Subject to the provisions of subdivision (c)(4) of this section, a public agency may meet in executive session for the purpose of considering, evaluating, or discussing matters pertaining to public water system security or municipally owned utility system security as described in §

25-19-105(b)(18).

- (7) An executive session held by the Child Maltreatment Investigations Oversight Committee under § 10-3-3201 et seq. is exempt from this section.

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General:

Q. What is a meeting?

A. Any meeting, formal or informal, regular or special, of a governing body including sub-bodies. A quorum of the governing body need not be present for the meeting to be subject to the FOIA. If two members meet informally to discuss past or pending business, that meeting may be subject to the FOIA. This question will turn on the facts of each case.

Attorney General Opinions:

Q. Are social gatherings of members of governing bodies subject to the FOIA?

A. No, as long as any discussion of government business is only intermittent and incidental to the social function. But any regular gathering of members of a governing body demands close scrutiny. Opinion No. 95-020 .

Q. Could members of a public board or agency meet informally in closed session to discuss recommendations by administrative employees and other board or agency business before the public meeting.

A. No. Opinion No. 90-239; Mayor & City Council of El Dorado v. El Dorado Broad. Co., 260 Ark. 821, 544 S.W.2d 206 (1976).

Q. After a public meeting is adjourned, can it be reconvened immediately if a quorum is present for the new meeting?

A. No, because it is a special meeting and the members would not be able to give the required two-hour notice. Opinion No. 95-308

Q. Would it violate the FOIA if the governing board of a public entity voted by secret ballot at a public meeting?

A. It depends on the manner in which the ballots are used. The ballots must be signed, retained, and made available for public inspection. Opinion Nos. 97-016, 92-124; De- poyster v. Cole, 298 Ark. 203, 766 S.W.2d 606 (1989).

Q. If a matter is discussed at a regular public meeting of a public agency with no action taken, could the members later vote on the matter by telephone?

A. No, unless the public's right to hear or monitor the telephone conversation is safeguarded, e.g., by use of speaker phones. Opinion No. 2000-096.

Q. Is there a "meeting" for purposes of the FOIA where one member of a governing body emails another member?

A. Generally, no. Opinion No. 2005-166. But the email message would be subject to disclosure as a "public record." Opinion No. 99-018. A violation may nevertheless occur through a sequential or circular series of email communications or under circumstances suggesting that the governing body was deliberating in secret. Opinion No. 2005-166.

Q. If two city council members meet to discuss matters on which foreseeable action will be taken, is the FOIA violated?

A. Possibly. See *City Council of El Dorado v. El Dorado Broad. Co.*, 260 Ark. 821, 544 S.W. 2d 206 (1976), *Arkansas Gazette Co. v. Pickens*, 258 Ark. 69, 522 S.W. 2d 350 (1975) and Opinion Nos. 99-018 and 91-225. But there is no bright line rule that two members meeting constitute a "meeting" under the FOIA. A violation is most likely to occur if the two members meet with other individuals concerning matters on which the whole governing body will foreseeably act. Opinion Nos. 2003- 376, 96-317, 96-067, and 95-227. A violation may also occur in the event successive meetings of two members are held prior to action by the governing body, thereby avoiding public discussion. Opinion No. 99-018.