

UPCOMING
TRAINING

- Pinetop-Lakeside: August 1, 2008
- Northwest Fire District: August 5, 2008
- League of Arizona Cities and Towns Conference: August 21, 2008
- Arizona School Boards Association Conference: September 4 - 5, 2008
- Governor's Regulatory Review Council: September 25, 2008

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The Public Record

VOLUME 1, ISSUE 2

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The "Golden Rules"

The following three Golden Rules are intended to help public officials respond to public record requests and to remind persons requesting records of their legal rights.

Rule 1: The reason a person is requesting records is irrelevant.

Records, requested for a non-commercial purpose, which are open to public inspection and copying must be produced no matter what the reason for the request. Therefore, public officials should refrain from asking. The inquiry should be limited to whether the records will be used for a commercial or non-commercial purpose.

Rule 2: The identity of the person making a request for public records is irrelevant.

Members of the public do not need to identify themselves in order to access public records. One caveat is if a record is only available to certain people for limited purposes, then the custodian of records may need to ask for additional information to assure the record is only provided to those entitled to see it.



Rule 3: Public records may not be withheld without legal authority.

Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours. A custodian should only deny access when: 1) the record is made confidential by statute, 2) the record involves the privacy interests of persons, and 3) disclosure would be detrimental to the best interests of the State.

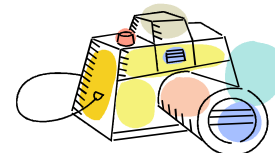
The latter two are balancing tests that should be applied judiciously. Absent a statute prohibiting public access, the public records law favors disclosure. Public officials may consult with their legal counsel when necessary.

Smile, You're on Candid Camera

Some public officials might be surprised to learn that any member of the public may take photographs or make tape recordings at public meetings. While it probably seems intimidating at times, Arizona's open meeting law permits any person in attendance of a public meeting to

record the meeting by means of a tape recorder or camera or any other means of sonic reproduction, provided that there is no active interference with the conduct of the meeting. Any interference should be well documented prior to restricting or prohibiting such recordings.

Of course, members of the public should be respectful. A public meeting is important business, not just a photo opportunity.



Is Electronic Data Available to the Public?



Yes, electronic data is public record. Public records are stored in many formats. In this day and age of computers, more and more public records are stored as data in computers. Just like public records

Records must be made available regardless of physical form or characteristics. that are stored on paper, public officials must provide access to any information stored in a computer that would otherwise be open for inspection and copying.

If the electronic data commingles public and confidential information computer software must be able to separate public from confidential information.

The public may choose to receive

an electronic or paper copy of an electronic record. Electronic copies must be provided in a format usable with commonly available data processing or data base management software.

If a person requests a record that requires special processing to produce (such as a compilation of records that requires special programming), a public body may impose a charge to cover the cost of the special processing.

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“The open meeting law...does not require public participation and does not require a call to the public.”

Calls to the Public: Take control.

The open meeting law permits the public to attend public meetings and listen to the public body's discussions and deliberations. It does not require public participation and does not require a call to the public.

If the public body chooses to include a call to the public on the agenda, it may impose reasonable time, place, and manner restric-

tions. While these restrictions may not be content based, they may set time limits, ban repetition, and prohibit disruptive behavior. Of course, it goes without saying, that these restrictions should be applied consistently and everyone should be treated the same.

What members of the public often fail to realize, however, is that even if they are given the opportunity to

address the public body, the public officers may not converse with the speaker unless the matter is specifically listed on the agenda. If not, an individual public officer may only respond to criticism, ask staff to review an item, or ask that an item be placed on a future agenda.



E-mail communications and the Open Meeting Law

E-mail communications are treated the same as any other form of communication between board members. Therefore, e-mail exchanges among a quorum of the board that involve discussion, deliberations, or taking legal action on matters that may come before the board constitute a meeting and thus violate the open meeting law.

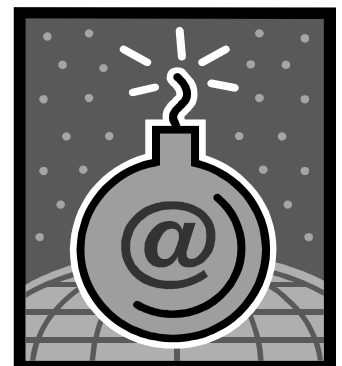
The most common problem are serial e-mails between board members that make up a quorum of the board on a subject that may come before the board for legal action.

While unilateral e-mail from one board member to a quorum of the other board members providing information would not violate the open meeting law, proposing legal

action would. For example, saying something like, “I hope I can count on all of you vote in favor if agenda item #5” proposes legal action.

Likewise, e-mails from third parties to a quorum of the board would not violate the open meeting law so long as

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Electronic Data....

Plan ahead. When public bodies are purchasing or designing software, they should do advance planning to accommodate public access to electronic records. For instance, prior to programming databases, leaders of the organizations should continually communicate with the information technology department and make sure that the programmers fully understand what records must be made available to the public upon request and how long records must be retained. That way the systems and software will be

designed to readily accommodate these requests.

Examples of electronic records include: word processing files, databases, metadata, and e-mail.



If you are interested in scheduling training on Arizona’s Open Meeting Law or Public Record Law, please contact Liz Hill, Assistant Ombudsman—Public Access at ehill@azoca.gov or 602-285-9136 x32.

“...e-mail communications of board members related to their official duties are public record and must be made available upon request. Even if maintained on personal computers or private e-mail accounts!”

Retention Schedules

By Lisa Maxwell, Director of the Records Management Division, Arizona State Library, Archives & Public Records

How long should I keep purchase orders? I just have copies of the purchase orders, how long do I keep those? If I scan my records, can I throw away the paper copies? These are all questions that the Arizona State Library, Archives and Public Records (ASLAPR) can help you with. ASLAPR is charged with preserving the historical records of

Arizona. In order to do that, we have to know what records people have. ARS §41-1347(b) states that records cannot be destroyed without the permission of our agency. That permission is granted through retention schedules. There are general retention schedules that have been approved for state agencies, municipalities, counties, fire

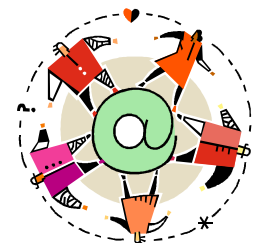
districts, school districts and community colleges and these are available on our website. There are also retention schedules written for specific agencies, municipalities, etc. These are not currently on our website, but we are working to have those available there soon.

E-mail communications....

the board members do not “reply all” if responding to the third party. Finally, an e-mail request for information from a board member to staff does not violate the open meeting law even if the other board members are copied on the e-mail and the response, however, the board members may not engage in discussions or share opinions re-

lated to the information outside a properly noticed public meeting. Confusing? It doesn’t have to be. Board members need only remember to use e-mail communications cautiously and refrain from ever discussing, deliberating, or proposing legal action on matters that may come before the board for action. In addition, keep in mind that e-mail

communications of board members related to their official duties are public record and must be made available upon request. Even if maintained on personal computers or private e-mail accounts!



For additional information and hypothetical's see Attorney General Opinion I05-004.