

## TRAINING

- **Monthly training** is now available at the Carnegie Center in Phoenix. For dates and information, go to: <http://www.azleg.gov/ombudsman/presentations.asp>
- To schedule training contact Liz Hill at 602-285-9136 x32 or [ehill@azoca.gov](mailto:ehill@azoca.gov).

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## 2008 Public Access Legislation in Effect

On September 26, 2008, new legislation relating to public access took effect in Arizona. Arizona Revised Statute §39-128 requires a public body to maintain all records that are reasonably necessary or appropriate to maintain an accurate knowledge of disciplinary actions, including disciplinary responses to all disciplinary actions involving public officers or employees of the public body. In addition, the disciplinary records shall be open to inspection and copying, unless inspection or disclosure is specifically prohibited pursuant to statute. The personal identifying information of any eligible person pursuant to A.R.S §§ 39-123 and -124 is still protected from disclosure. See Session Laws 2008, Ch. 277, §1.

The open meeting law was also amended to specifically permit discussions between members of a public body and the media. Arizona Revised Statute § 38-

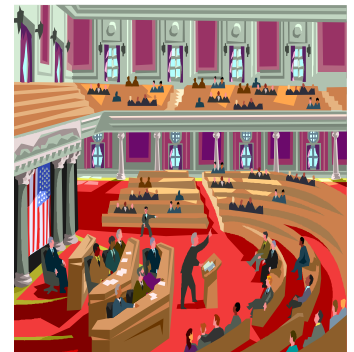
or at a venue other than a public meeting, the member is not in violation of the open meeting law, if the opinion is not directed at another public official and there is no concerted plan to engage in collective deliberation to take legal action. See Session Laws 2008, Ch. 135, § 1

For the full text of the statutes go to <http://www.azleg.gov/ArizonaRevisedStatutes.asp>.



### 2008 Legislation took effect September 26, 2008

431.09(B) expressly clarifies that if a member of a public body individually expresses an opinion or discusses an issue with the public, through public broadcast



## New Attorney General Opinion

On September 29, 2008, the Arizona Attorney General's Office issued a new opinion regarding the application of Arizona's Open Meeting Laws. The question presented was whether the open meeting law allows the governing board of a school district to conduct deliberations and discussion in an online meeting

when the Board provides proper notice under the law and facilitates public access to the online meeting through the Internet. The answer is yes.

The definition of meeting for purposes of Title 38 encompasses serial communications of a quorum of the public body through the Internet or other

online medium. Measures must be taken, however, to provide clear notice to the public about when the Board will be deliberating in its online meeting and to facilitate the public's access to the meeting.

For the full opinion go to <http://www.azag.gov/opinions/2008.html>

# Accessing Public Records: What constitutes prompt?



Time is of the essence in responding to public record requests. Arizona’s public records law provides that any person may request to examine or be furnished copies, printouts or photographs of any

**The custodian of records shall promptly furnish public records.** public record during regular office hours. In addition, the law requires custodians to furnish copies, printouts or photographs promptly. The question is what constitutes prompt?

In *West Valley View, Inc. v. Maricopa County Sheriff’s Office*, the Arizona Court of Appeals applied the common definition of prompt, which means “quick to act or to do what is required” or “done at once or

without delay.” *West Valley View*, 216 Ariz. 225, 165 P.3d 203 (Ariz. App. 1 2007)(*review denied*).

Of course, several factors such as the agency’s resources, the nature and volume of the request, the content of the records, and the location of the records should be taken into consideration when determining whether the custodian is acting promptly.

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**“[D]elay is never justified simply for the convenience of the public body.”**

## Effect of Identify Theft Legislation on Public Records

In 2006, the legislature enacted the government identification procedures contained in Arizona Revised Statutes title 41, chapter 39, article 2. It requires government agencies to develop procedures to ensure that identifying information cannot be accessed unless authorized by law. As testified by the bill’s sponsor, Representative Bob Robson, the purpose of the bill was to en-

sure that identity theft was addressed by all agencies uniformly.

The question among agencies is whether this legislation modified what is considered a public record in regard to personal identifying information. The answer is no.

To suggest that personal identifying information that was previously public, must now be withheld, fo-

cuses solely on the definition of personal identifying information without considering the language of the entire statute. The statute does not mandate that agencies withhold identifying information, if its release is allowed by law. Moreover, it expressly provides that “[n]othing in this article shall be construed to restrict, diminish or otherwise affect the provision of Title 39.”

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## Counting Heads: Is there a quorum?

A common question is how many public officials must be present to make up a quorum. A “quorum” is the number of members entitled to vote who must be present in order for business to be transacted. The number is established by law, but different public bodies have different quorum requirements. Therefore, public bodies must check their statutory authority.

In Arizona, a quorum is generally the majority of the board or commission unless a specific statute sets a different quorum requirement. See A.R.S. § 1-216. For example, if you have a seven member board, a quorum is four.

When computing a quorum, vacancies must be counted unless otherwise provided by law. In other

words, if statute creates a seven person board, but there are only six members at any given time, the quorum is still four.

Quorum requirements can be confusing, but it is imperative that all public officials know what is required for their own boards, commissions, or councils before voting at a public meeting. If there is any question, public officials should ask the lawyer who represents the public body.



**In most cases, a quorum is a majority of the board or commission.**

# The Nuts and Bolts of Executive Sessions

Executive sessions are the exception to the general requirement of the open meeting law that all meetings of public bodies be open to the public. Here are a few key things to remember:

1. Adhere to the statute: The law authorizes executive sessions for seven specific purposes. If none apply, the discussion must take place in public.
2. Provide a notice for the executive session.
3. Provide an agenda for the executive session. It must include a specific statutory citation to the statute au-

thorizing the executive session as well as a general description of the matters to be considered.

4. Take a vote. A quorum of the public body must vote in public to hold the executive session.
5. Confidentiality. The presiding officer must remind all present that the business conducted in executive session is confidential.
6. Stay focused. Only discuss matters as authorized for the reason cited.
7. Keep records. You must maintain minutes or a recording of executive. Re-

member, they are confidential. It is important to make sure they are stored in a secure location preferably separate from minutes of public meetings.

8. Final action. All voting and final decision making must take place in a public meeting.

For additional information on executive sessions, take a look at A.R.S. §§ 38-431.01 (B)(C), -431.02(B), and -431.03 as well as Arizona Agency Handbook Sections 7.6.7, 7.7.3, 7.8.3, and 7.9.

## Effect of Identify Theft Legislation on Public Records

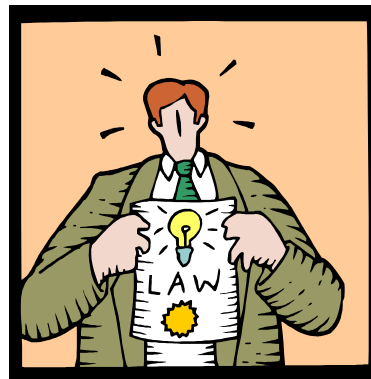
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Nothing in the legislative history suggests that the legislature intended to change what is considered to be a public record. In fact, in a memo dated September 26, 2008, the Legislative Council points out that developing procedures that prevent public access to public records, including identifying information that is currently considered

public, is contrary to statute.

To read the full memo go to [http://www.azleg.gov/ombudsman/public\\_records.asp](http://www.azleg.gov/ombudsman/public_records.asp).

For more information on this legislation go to [http://azleg.gov/DocumentsForBill.asp?Bill\\_Number=2024&image.x=0&image.y=0](http://azleg.gov/DocumentsForBill.asp?Bill_Number=2024&image.x=0&image.y=0)



“The question is whether [A.R.S. § 41-4172] modified what is considered a public record in regard to personal identifying information. The answer is no.”

## Copying Fees: Impose Only Actual Cost

Examination of records is free, however, Arizona’s public records law permits public bodies to impose a fee for copying public records. The amount and types of fees that may be charged depends on whether the record is obtained for a commercial or non-commercial purpose. This discussion solely address requests for non-commercial use.

A person requesting copies for a non-commercial purpose may only be charged a fee for the cost of time, equipment, and personnel used in producing the copies. This does not include costs of searching for or retrieving the records. In addition, it does not include the time spent redacting records. It is limited to the cost of copying the records.

Therefore, officials must ask themselves how much the copy really costs. For instance, the staff time to copy the records and the medium on which the copy is provided (i.e. paper, cd, dvd, audio tape, etc.). Remember, providing public records is not a revenue generating activity. It is part of doing business and officials may not impose charges that exceed the actual cost of providing the service.





## Arizona Ombudsman—Citizens' Aide

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The Arizona Ombudsman-Citizens' Aide is an independent agency of the Arizona Legislature that was established to make government more responsive to Arizona citizens.

The mission of the Arizona Ombudsman – Citizens' Aide is to improve the effectiveness, efficiency, and responsiveness of state government by receiving public complaints, investigating the administrative acts of state agencies and, when warranted, recommending fair and appropriate remedy. In addition, the Arizona Ombudsman – Citizens' Aide promotes open government throughout the state, by providing assistance and education to state and local government officials and members of the public, resolving disputes, and investigating complaints in matters relating to public access laws.



# Accessing Public Records: What constitutes prompt?

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**Resources.** Some agencies have public record units that are responsible for handling requests. Others may only have a staff of one or two people who handle a variety of tasks including public record requests.

**Nature of the request.** A request for a single document may be processed much faster than a request that requires gathering hundreds of documents.

**Content.** While many records may be released immediately, release of others can be a complex process. This is particularly true if the records contain both open and confidential information. In such cases, the confidential information must be redacted (blacked out). Time may be needed to sort out the application of the law

and prepare the records for release.

**Location.** Not all records are maintained on site. Some public bodies are forced to store records at warehouses or the Arizona State Library and Archives. They take time to retrieve.



How long would it take if you wanted it?

Communication is key. Contacting the requester upon receipt of the request goes a long way. Whenever possible, let the requester know when you expect the records will be made available. This is also the perfect opportunity to clarify the request or narrow very large requests.

Remember, delay is never justified simply for the convenience of the public body. If a prompt response is truly not possible, the custodian should talk with the requester and explain the delay. Provide a time-frame and provide records as they become available. Even if this means partially filling the request on several separate occasions.