



ACCESS TO PUBLIC MEETINGS under the VIRGINIA FREEDOM OF INFORMATION ACT

I. STATUTORY GUIDANCE

The Virginia Freedom of Information Act (FOIA) is largely a procedural act, and the provisions relating to meetings set forth the procedures that a public body must follow in conducting an open meeting and convening in a closed meeting. This outline breaks down the procedural requirements, such as what is required in posting a notice and certifying a closed meeting, and provides practical advice for conducting meetings that comply with FOIA. Appendix A sets forth in detail the requirements for making a motion to convene a closed meeting. Appendix B describes commonly used meeting exemptions of general applicability.

II. OPEN MEETINGS GENERALLY

WHAT IS A MEETING UNDER FOIA?

A “meeting” is defined as “meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708, as a body or entity, or as an informal assemblage of (i) **as many as three members** or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body” **where the business of the public body is being discussed or transacted.** (Emphasis added.)¹

WHAT IS NOT A MEETING UNDER FOIA?

1. The gathering of employees of a public body;
2. The gathering or attendance of two or more members of a public body at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, the gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, **and** the public business is not discussed; or
3. The gathering or attendance of two or more members of a public body at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting.²

¹ Statutory reference: § 2.2-3701. FOIA Council Opinions AO-4-00, AO-20-01, AO-40-01, AO-46-01, AO-02-02, AO-06-02, AO-13-03, AO-15-04, AO-20-04, AO-11-05, AO-02-06, AO-10-07, AO-12-08, AO-03-09, AO-05-11.

² Statutory references: §§ 2.2-3701, 2.2-3707(G). FOIA Council Opinions AO-4-00, AO-10-00, AO-46-01, AO-02-02, AO-13-03, AO-12-04, AO-12-08, AO-05-11.



MAY A PUBLIC BODY CONDUCT A MEETING BY CONFERENCE CALL OR OTHER ELECTRONIC METHOD?

Maybe. Prior to July 1, 2007, no **local** governing body or any other type of local public body was permitted to conduct a meeting through telephonic, video, electronic or other communication means where the members are not physically assembled to discuss or transact public business. However, **state** public bodies may conduct such meetings under specified circumstances. Since July 1, 2007, local and regional public bodies may also allow participation by their members via teleconference or other electronic means under certain limited circumstances.³

IF IT IS A MEETING, WHAT DOES FOIA REQUIRE?

If it is a meeting under FOIA, the law requires that:

1. Notice of the meeting be given;
2. The meeting must be open to the public; **and**
3. Minutes of the meeting must be taken and preserved.⁴

WHAT IS SUFFICIENT NOTICE?

Notice must contain the **date, time, and location** of the meeting. It is also helpful (but not required) to include the agenda for the meeting to inform the public generally of what topics will be discussed at the meeting. If a state public body includes at least one member appointed by the Governor, the notice must also indicate whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received.⁵

WHERE TO POST THE NOTICE?

FOIA requires that all public bodies post notices in two physical locations:

1. In a prominent public location at which notices are regularly posted, **and**
2. In the office of the clerk of the public body, or in the case of a public body that has no clerk, in the office of the chief administrator.

State public bodies must also post notice on their own websites and on the Commonwealth Calendar website. Electronic publication of meeting notices by other public bodies is encouraged, but not required.

NOTE: Electronic posting must be **in addition to** the physical posting detailed above.⁶

WHO ELSE IS ENTITLED TO NOTICE OF MEETINGS?

³ Statutory references: § 2.2-3708, § 2.2-3708.1. FOIA Advisory Opinions AO-1-01, AO-16-02, AO-21-04, AO-12-08, AO-07-09.

⁴ Statutory references: §§ 2.2-3700, 2.2-3707. FOIA Council Opinions AO-40-01, AO-06-02, AO-17-02, AO-13-03, AO-15-04.

⁵ Statutory reference: § 2.2-3707(C). FOIA Council Opinions AO-13-00, AO-3-01, AO-18-01, AO-43-01, AO-06-02, AO-23-03, AO-02-04, AO-06-07, AO-08-07, AO-03-09.

⁶ Statutory reference: § 2.2-3707(C). FOIA Council Opinions AO-18-01, AO-43-01, AO-08-07, AO-03-09.



Any person who annually files a written request for notification with a public body is entitled to receive direct notification of all meetings of that public body. If the person requesting notice does not object, the public body may provide the notice electronically.

The request for notice shall include the requester's name, address, zip code, daytime telephone number, electronic mail address, if available, and organization, if any.⁷

WHEN TO POST THE NOTICE?

For regular meetings: The notice must be posted **at least three working days prior to the meeting.**

For special or emergency meetings: Notice, reasonable under the circumstance, of special or emergency meetings must be given at the same time as the notice provided members of the public body conducting the meeting. FOIA defines an emergency as "an unforeseen circumstance rendering the notice required by FOIA impossible or impracticable and which circumstance requires immediate action."⁸

MAY THE PUBLIC OR MEDIA RECORD THE MEETING?

Yes. Any person may photograph, film, record, or otherwise reproduce any portion of a meeting required to be open.⁹

MAY A PUBLIC BODY RESTRICT THE USE OF RECORDING DEVICES?

Yes. The public body conducting the meeting may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming, or recording a meeting to prevent interference with the proceedings.¹⁰

WHEN MUST AGENDA MATERIALS BE AVAILABLE TO THE PUBLIC/MEDIA?

At least one copy of all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting must be made available for public inspection **at the same time** the packets or materials are furnished to the members of the public body.¹¹

ARE THERE ANY EXCEPTIONS FOR TAKING MINUTES?

Yes. Minutes are required to be taken only at open meetings; minutes are not required to be taken during closed meetings. Minutes are also not required to be taken at deliberations of:

1. Standing and other committees of the General Assembly;
2. Legislative interim study commissions and committees, including the Virginia Code Commission;
3. Study committees or commissions appointed by the Governor; or

⁷ Statutory reference: § 2.2-3707(E). FOIA Council Opinions AO-3-01, AO-13-03, AO-23-03, AO-08-07.

⁸ Statutory references: § 2.2-3707(C),(D). FOIA Council Opinions AO-13-00, AO-3-01, AO-18-01, AO-06-02, AO-08-07.

⁹ Statutory reference: § 2.2-3707(H). FOIA Council Opinions AO-03-03, AO-10-05.

¹⁰ Statutory reference: § 2.2-3707(H). FOIA Council Opinions AO-03-03, AO-10-05.

¹¹ Statutory reference: § 2.2-3707(F). FOIA Council Opinions AO-3-01, AO-35-01, AO-23-03, AO-05-12.



4. Study commissions or study committees, or any other committees or subcommittees appointed by the governing body or school board of a county, city or town, except where the membership of the commission, committee or subcommittee includes a majority of the members of the governing body.¹²

WHAT DO MINUTES HAVE TO LOOK LIKE?

Minutes are required (except as noted above) of all open meetings, and must include: the date, time, and location of the meeting; the members of the public body present and absent; a summary of matters discussed; and a record of any votes taken. In addition, motions to enter into a closed meeting and certification after a closed meeting must be recorded in the minutes.¹³

ARE MINUTES PUBLIC RECORDS UNDER FOIA?

Yes. Minutes, including draft minutes, and all other records of open meetings, including audio or audio/visual recordings, are public records and must be released upon request.¹⁴

IS THERE AN AFFIRMATIVE OBLIGATION TO POST MINUTES?

Yes, but **only for state agencies in the executive branch.**

All boards, commissions, councils, and other public bodies created in the executive branch of state government and subject to FOIA must post minutes of their meetings on the Commonwealth Calendar website.

Draft minutes of meetings must be posted as soon as possible but no later than 10 working days after the conclusion of the meeting. Final approved meeting minutes must be posted within three working days of final approval of the minutes.¹⁵

MUST ALL VOTES OF A PUBLIC BODY TAKE PLACE IN AN OPEN MEETING?

Yes. Any and all votes taken to authorize the transaction of any public business must be taken and recorded in an open meeting.

A public body may not vote by secret or written ballot.¹⁶

IS IT A FOIA VIOLATION TO POLL MEMBERS OF A PUBLIC BODY?

No. Nothing in FOIA prohibits separately contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a member's position with respect to the transaction of public business. Such contact may be done in person, by telephone, or by electronic communication, provided the contact is done on a basis that does not constitute a meeting as defined in FOIA.¹⁷

¹² Statutory reference: § 2.2-3707(I). FOIA Council Opinion AO-08-07.

¹³ Statutory references: §§ 2.2-3707(I), 2.2-3712(A),(D). FOIA Council Opinions AO-25-04, AO-01-06.

¹⁴ Statutory reference: § 2.2-3707(I). FOIA Council Opinions AO-13-03, AO-25-04.

¹⁵ Statutory reference: § 2.2-3707.1.

¹⁶ Statutory reference: § 2.2-3710(A). FOIA Council Opinions AO-9-00, AO-15-02, AO-01-03, AO-13-03, AO-01-05, AO-05-09, AO-07-09.

¹⁷ Statutory reference: § 2.2-3710(B). FOIA Council Opinions AO-08-02, AO-15-02, AO-01-03, AO-07-09.

