

The Freedom of Information Act: Meetings

1. Introduction

The Virginia Freedom of Information Act (“FOIA”):

[E]nsures the people of the Commonwealth . . . free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.

Virginia Code § 2.2-3700(B).

FOIA requires that the meetings of a public body be open to the public. *Virginia Code* § 2.2-3700 *et seq.* Open government is the overriding policy of FOIA. *Taylor v. Worrell Enterprises, Inc.*, 242 Va. 219 (1991).

2. Meetings

- A. A **meeting may exist when three or more members** of a public body are physically assembled for the purpose of discussing or transacting business; if a quorum of the public body is less than three, then a meeting exists whenever a quorum is established. A meeting may be established under FOIA **even though a quorum is not established** (*e.g.*, 3 members of a 7-member public body may establish a meeting under FOIA, even though 4 members are required to be present to establish a quorum).
- B. A **meeting does not exist when three or more members** of a public body are physically assembled, but not for the purpose of discussing or transacting business of the public body, and the gathering or attendance was not called or prearranged with any purpose of discussing or transacting business of the public body (*e.g.*, at a dinner or a VDOT informational meeting).
- C. **Electronic communications** such as e-mail communications between three or more members of a public body may be an unlawful meeting if the communications are conducted in real time; e-mail communications where there are periods of time between each correspondence are unlikely to constitute a meeting.
- D. If three or more members of a public body **continue discussions** of public business after a public meeting has adjourned, the gathering is a meeting under FOIA, even if the members are discussing the business with staff.
- E. Public meetings are the rule; **closed meetings are the exception**. A closed meeting is permitted only when an express statutory exemption from the public meeting requirement applies. For example, the following discussions may be conducted in a closed meeting under Virginia Code § 2.2-3711(A):
 1. To discuss, consider, or interview prospective candidates for employment; to discuss and consider the assignment, appointment, promotion, performance, salaries, disciplining, or resignation of specific public officers, appointees, or employees of the public body.
 2. To consult with legal counsel and staff regarding specific legal matters that require the provision of legal advice by legal counsel.
 3. To discuss the terms and scope of a possible public contract involving the expenditure of public funds for [describe the subject of the contract, *e.g.*, the goods or services being acquired], where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the Board.
- F. A member of a public body may participate remotely through electronic communications means if that member is unable to be present due to a disability, a medical condition, or a personal matter, provided that a

quorum is physically assembled, the public body has established a written policy allowing for and governing participation by electronic communication means, and other statutory requirements are satisfied.

- G. If a **quorum is not established**, the only action the public body may take at a meeting is to adjourn the meeting.
- H. The **date, time, and location** of a public meeting must be posted **3 working days prior to the meeting**.

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