

# GIVENS PURSLEY<sub>LLP</sub>

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## **IDAHO OPEN MEETING LAW**

Idaho Code Sections 74-201 to 74-208

The people of the state of Idaho in creating the instruments of government that serve them, do not yield their sovereignty to the agencies so created. Therefore, the legislature finds and declares that it is the policy of this state that the formation of public policy is public business and shall not be conducted in secret.

I.C. § 74-201

# The Idaho Open Meeting Law Applies to You

All meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meetings except as otherwise provided by this act.

I.C. § 74-203(1)

# Definition of “Meeting”

The convening of a governing body of a public agency:

- To make a decision; or
- To deliberate toward a decision on any matter.

I.C. § 72-202(6)

# Definition of “Decision”

Means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present, but shall not include those ministerial or administrative actions necessary to carry out a decision previously adopted in a meeting.

# Definition of “Deliberation”

Means the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature which do not specifically relate to a matter then pending before the public agency for decision.

I.C. § 74-202(2)

# Post Notice for Open Meetings

- ❖ Notice is required for the meeting.
- ❖ Post on your door or bulletin board, website, and social media.
  - ▲ Notice for regular meetings – 5 calendar days.
  - ▲ Special meeting notice and agenda must be posted – 24 hours before meeting.
    - Special meetings are non-regular meetings for a specific reason or executive session only meetings.

# Post Agenda for Meetings

- ❖ Notice is required for the agenda:
  - Notice of the agenda must be posted at least 48 hours before the meeting.
  - An agenda that requires a vote or decision shall be identified as “action items.”
  - Notice can be amended:
    - Anytime before 48 hours before the meeting;
    - Less than 48 hours (24 hours for a special meeting) if:
      - A new agenda is posted;
      - A motion is made and passed during the meeting to amend the original agenda;
      - State the good faith reason for amending the original agenda; and
      - No action unless a true emergency.

# Voting

- ❖ No secret ballots.
- ❖ Voice vote okay – at minimum indicate result.
- ❖ May request roll call vote.
- ❖ Written ballot okay, but must identify whose written ballot.



# Written Minutes

- ❖ Written minutes are required to be kept.
- ❖ Full transcript and/or recording is not required.
- ❖ Minutes must include:
  - All members of Board present;
  - All motions, resolutions, orders or ordinances proposed and disposition;
  - Results of all votes and if requested, the vote of each member by name (roll call vote).

# Executive Session Process

- ❖ Minutes of executive session must be kept and such minutes must:
  - Indicate the motion to go into session;
  - Identify the specific statutory provision authorizing the session;
  - Roll call vote;
  - Two-thirds vote is required;
  - No final action or final decision can be made in session.

# Bases for Executive Session

- ❖ To consider hiring a specific public officer, employee, staff member or individual agent;
- ❖ To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent;
- ❖ To conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency;
- ❖ To consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code;
- ❖ To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;

# Bases for Executive Session, cont'd

- ❖ To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;
- ❖ To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement.

# Common Sense Practice Tips

- ❖ To have a meeting, there has to be a quorum.
- ❖ If there are three members of the Board, refrain from talking about pending business or future business that has a reasonable likelihood of being in front of the Board.
- ❖ No serial agreements. Do not call Board members and ask for a commitment to vote one way or another before a meeting.

# The Idaho Public Records Law

General Rule: Any and all writing containing information relating to the conduct of administration of the public's business prepared, owned, used or retained by the District.

# Almost Everything Is Public

Records, documents, pictures, maps, computer media, communications, agreements, mail, email, transcripts, writings, notes, memoranda, studies, projections, presentations, electronic files, invoices, certificates are available to the public at all reasonable times for inspection, unless otherwise expressly provided by statute.

# Email is a Public Record

“They constitute nothing more than innocent sarcasm, bantering, and joking between myself and a subordinate, and the type of informal communications that occurs daily in every workplace in America,” Douglas said.



# Public Records Law

- ❖ We may require that a request be submitted in writing that provides the requester's name, mailing address, email address, and telephone number. Email is okay.
- ❖ We cannot make inquiries of the requester. I.C. § 9-338(5).
- ❖ Information cannot be used for mailers.
- ❖ Designate a person for public records requests.

# Public Records Law, cont'd

- ❖ Generally, we can charge actual labor and copying costs.
- ❖ We may request advance payment.
- ❖ We can take reasonable steps to protect the integrity of the documents and prohibit alteration.
- ❖ Cannot use the public records law as either a sword or shield in a judicial or administrative proceeding.

# Some Applicable Exemptions

- ❖ “Personal” personnel information – race, marital status, birth date, home address, performance evaluation, scoring materials, PERSI information, etc.
- ❖ Judicial and administrative proceedings and documents prepared in anticipation of litigation.
- ❖ Trade secrets.
- ❖ Attorney/client legal communications.

# Judicial Remedy

A requestor for records may seek judicial remedy for a denial of a public records request.

# Practical Tips

- ❖ Do not use personal email accounts for District business.
- ❖ Always be professional when corresponding about District business.
- ❖ NEVER use District email for anything other than District business.