



# Complying with Tennessee's Open Meeting and Public Records Acts



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Presented by

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# Open Meetings Act

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## ■ Requirements

- All meetings of any governing body must be open to the public at all times, except as provided by the Tennessee Constitution
  - It is the policy of the state that the formation of public policy and decisions is public business and shall not be conducted in secret.
- Public meeting is a meeting open to the public
  - Not required to hear from public at meeting



# Open Meetings Act

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## ■ Requirements

- Adequate public notice of all regular and special meetings must be given
  - No established requirements, only such notice based on the totality of the circumstances as would fairly inform the public
- Minutes of meetings must be kept
  - Must contain a record of the persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of a roll call.



# Open Meetings Act

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## ■ Requirements

- All votes must be by public vote, public ballot, or public roll call
  - Secret votes are prohibited
- “Meeting” - convening of a governing body of a public body for which a quorum is required in order to make a decision, or deliberate toward a decision.
  - A chance meeting between 2 or more members of a public body is subject to the Sunshine Act.



# Open Meetings Act

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## ■ Requirements

- Chance meetings, informal assemblages, or electronic communication between 2 or more members of a public body cannot be used to deliberate public business
  - Prohibits
    - Informal discussion of pros and cons of measure by 2 or more members of a public body
    - Telephone or email communication between members of a public body regarding pros and cons of a measure

# Open Meetings Act

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## ■ Entities Covered

### – Governing bodies include

- A “public body” consisting of 2 or more members, with the authority to make decisions for or recommendations to a public body on policy or administration

- “Public body includes any board, commission, committee, agency, authority or any other body, by whatever name, whose origin in authority may be traced to state, city or county legislative action.

- The Act was intended to apply to any governmental board, commission, committee, agency or authority whose members have authority to make policy or administrative decisions



# Open Meetings Act

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## ■ Entities Covered

### – Governing bodies include

- Any community action agency which administers community action programs under the provisions of 42 U.S.C. § 2790
- Any nonprofit corporation which contracts with a state agency to receive community grant funds in consideration for rendering specified services to the public so long as the community grant funds comprise at least 30% of the total annual income of such corporation.



# Open Meetings Act

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## ■ Entities Covered

### – Governing bodies include

- Any association or nonprofit corporation authorized by the laws of Tennessee that was
  - Established for the benefit of local government officials or counties, cities, towns or other local governments or as a municipal bond financing pool;
  - Receives dues, service fees or any other income from local government officials or such local governments that constitute at least 30% of its total annual income; and
  - Was authorized as of 1/1/98 to obtain coverage for its employees in the TCRS





# Open Meetings Act

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## ■ Exceptions

### – Attorney-Client Meetings

- There is a narrow exception for private meetings between a public body and its attorney concerning pending litigation
  - Must concern litigation that has already been filed or that is likely to be filed and to which the government is or will be a party
  - Must be limited to discussions between the attorney and members of the body regarding the body's legal options,
    - » No discussions between members of the body as to what action should be taken



# Open Meetings Act

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## ■ Exceptions

### – Audit Committee Meetings

- Normally subject to Sunshine Act
- Upon vote of majority of its members, audit committee may hold confidential, nonpublic executive sessions to discuss
  - Items not subject to inspection under Public Records Act
  - Current or pending litigation and pending legal controversies
  - Pending or ongoing audits or audit related investigations
  - Information protected by federal law
  - Confidential reports of report suspected illegal, improper, wasteful or fraudulent activity



# Open Meetings Act

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## ■ Enforcement

- Any action taken at a meeting in violation of the Act is void
  - Even if violation occurs, body can cure violation
    - Cure requires new and substantial reconsideration of the issues involved at which the public could be present
- Any citizen has standing to enforce Act
- No right to recover attorneys fees



# Public Records Act

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## ■ Requirements

– All Public Records Required to be Open for Inspection

- During Normal Business Hours
- Compiling or Creating Records
  - No obligation to compile records but must allow inspection and copying
  - No obligation to create records, only produce existing records for inspection and copying



# Public Records Act

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## ■ Entities Covered

- State, county and municipal agencies
- Certain associations and nonprofits
  - Having 2 or more full-time staff
  - Established for benefit of local government or local government officials
  - Receives at least 30% of revenue from dues, service fees or other income from local government
  - Authorized on 1/1/1998 to obtain coverage for employees from TCRS
  - Exception if audit of association or nonprofit is filed with the Comptroller



# Public Records Act

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## ■ Entities Covered

### – Functional Equivalents

- Government cannot avoid disclosure by contractually delegating its responsibilities to a private entity
- Factors to be considered
  - Whether and to what extent the entity performs a governmental or public function
  - The level of government funding of the entity
  - The extent of government involvement with, regulation of, or control over the entity
  - Whether the entity was created by an act of the legislature or previously determined by law to be open to public access.



# Public Records Act

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## ■ Records Covered

- All state, county and municipal records, except those made confidential by law
  - Courts presume records are public
- Includes
  - All documents, electronic data processing files and output, films, sound recordings or other material, regardless of physical form or characteristics
    - Made or received pursuant to law or ordinance, or
    - Made or received in connection with the transaction of official business by any governmental agency



# Public Records Act

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## ■ Confidential Records

- Only those records made confidential by State or Federal law
- Economic Development Records
  - Tenn. Code Ann. §§ 4-3-712 and 4-3-730
    - Certain records held by Department of Economic and Community Development
- Tax Records
  - Tenn. Code Ann. § 67-1-1702
    - Returns, tax information and tax administration information held by State





# Public Records Act

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## ■ Compliance Issues

### – Timeliness

- Must promptly make non-confidential records available for inspection.
- If it is not practicable for the record to be made available promptly, the custodian has 7 business days to
  - Make the information available
  - Deny the request in writing setting forth the basis for the denial
  - Provide a completed records request response form stating the time reasonably necessary to produce the record or information.



# Public Records Act

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## ■ Compliance Issues

### – Who may inspect and copy

- Citizens of Tennessee
- Cannot require written request prior to inspection, but can require written request for copies

### – Costs

- Reasonable costs of producing records as determined by Office of Open Records Council
- Must give cost estimate in advance

### – Redaction

- Confidential information must be redacted whenever possible



# Public Records Act

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## ■ Enforcement

- Petition seeking records can be filed in Circuit of Chancery Court
- Court can require agency to immediately appear and show cause why the petition should not be granted
- Burden of proof on agency
- If agency knew that record was public and willfully refused to disclose it, the court can assess attorneys' fees against the agency

# Contact Information

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