



# OPEN MEETINGS LAW TRAINING

Assistant City Attorney Peter Block

(414) 286-6197

[pblock@milwaukee.gov](mailto:pblock@milwaukee.gov)

# *OVERVIEW*

Public Policy

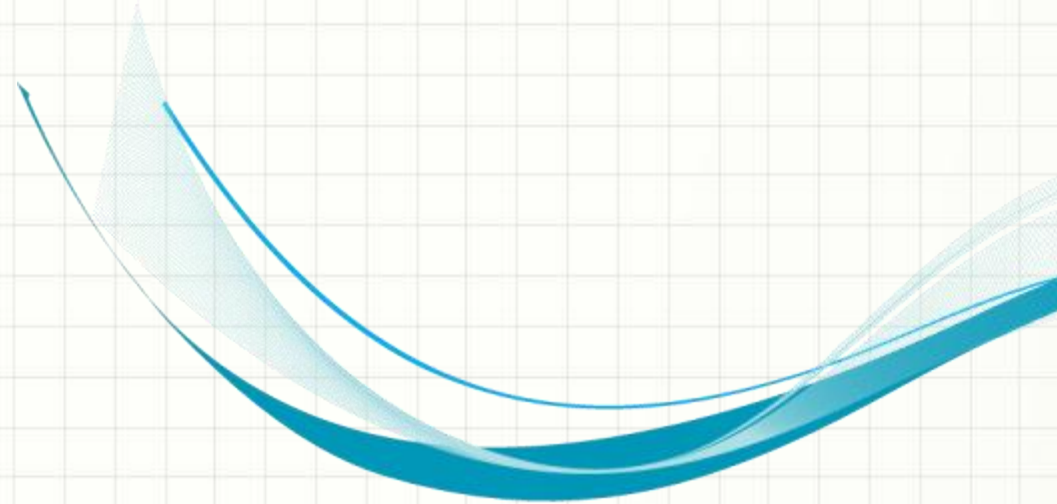
Applicability

Open Session v. Closed Session

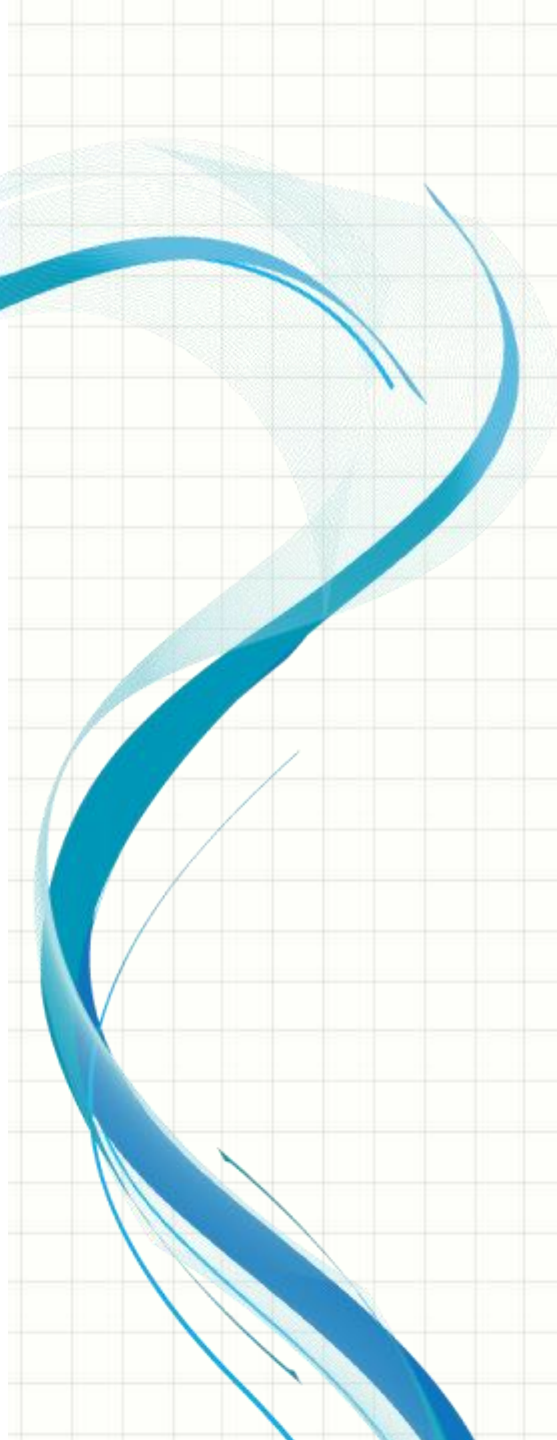
Record Keeping

Enforcement and Penalties

Public Records Law

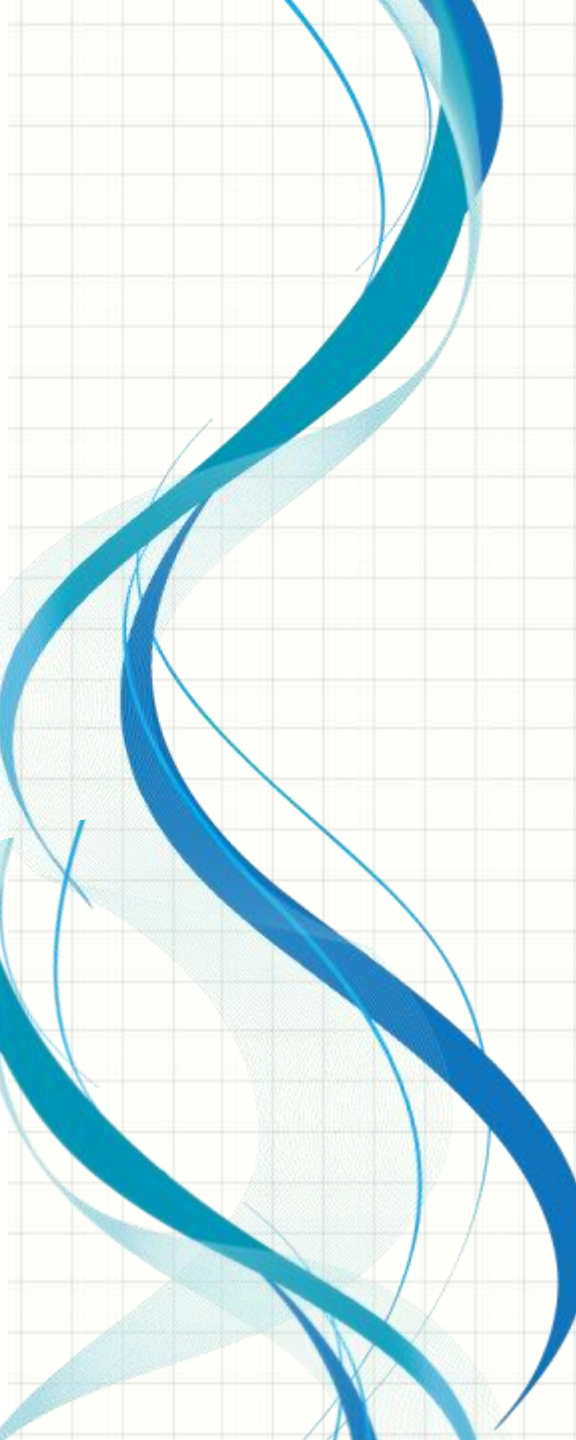


# Public Policy



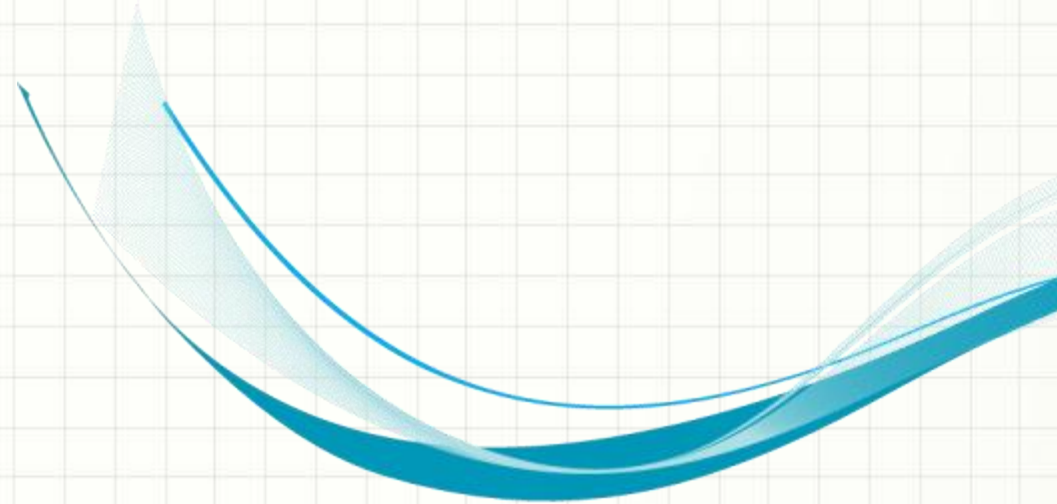
“In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.”

-Wis. Stat. § 19.81(1)



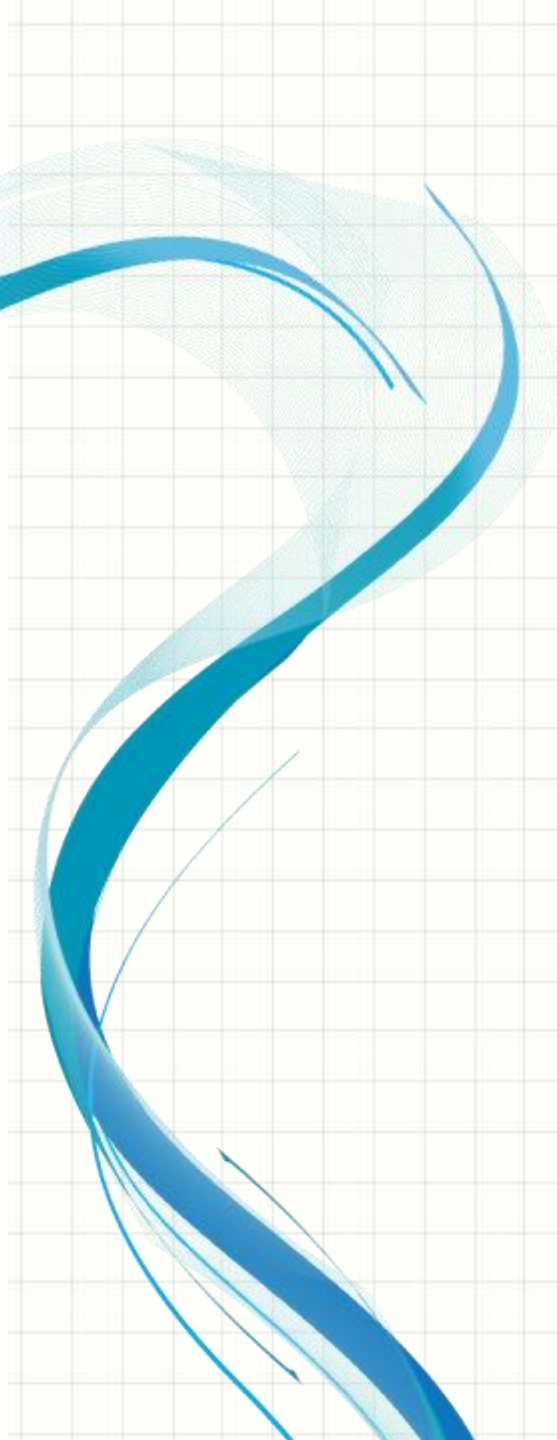
The Open Meetings Law is to be liberally interpreted to promote the policy of openness and transparency in government.

-Wis. Stat. § 19.81(4)

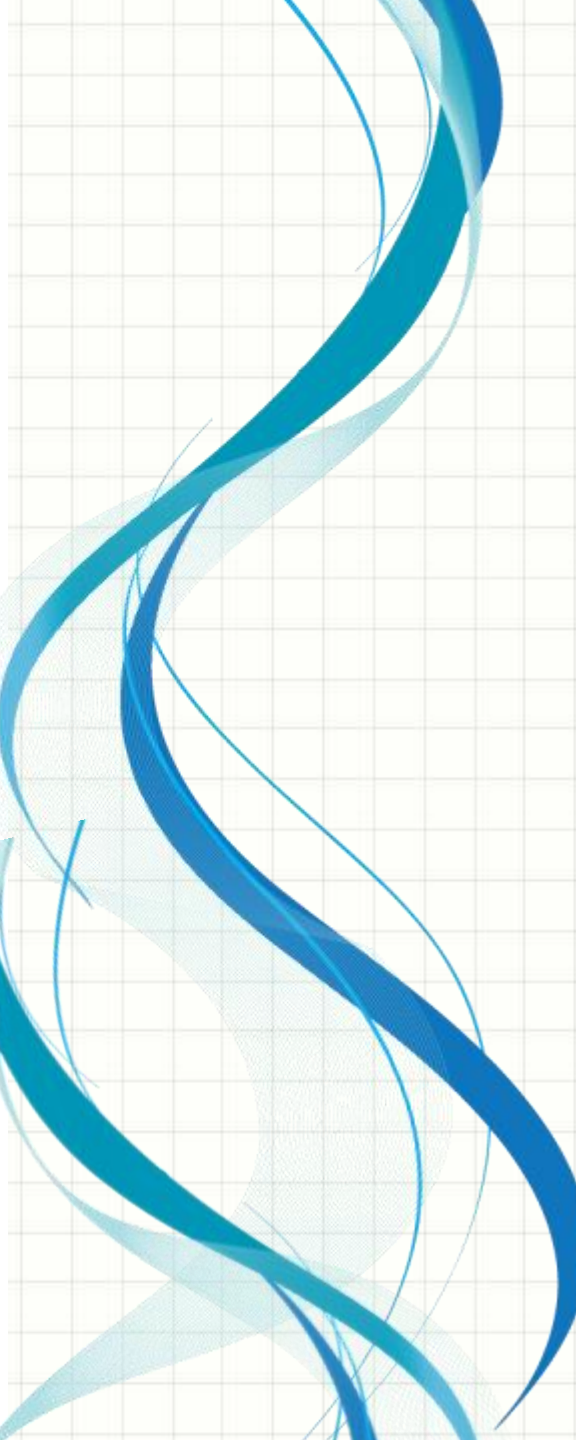


# Applicability





The Open Meetings  
Law provides that  
all **MEETINGS** of  
**GOVERNMENTAL**  
**BODIES...**



...must be preceded  
by public **NOTICE**  
and must be  
**REASONABLY**  
**ACCESSIBLE** to  
members of the  
public

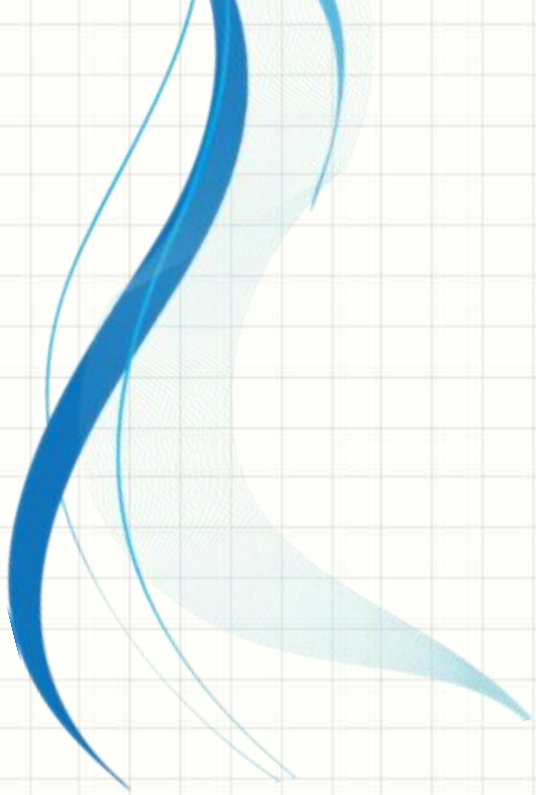




## **GOVERNMENTAL BODY:**

Any state or local agency, board, commission, committee, council, department or public body corporate and politic, ***that is created by constitution, statute, ordinance, rule or order.***

-Wis. Stat. § 19.82(1)



The DOJ advises that a governmental body is defined primarily in terms of the manner in which it is created, rather than in terms of the type of authority it possesses.

The phrase “rule or order” should be liberally construed to include any directive, formal or informal, creating a body and assigning it duties, including directives from mayors, county executives and local agencies, departments and divisions

## Subunits

A Subunit is a body that is created by a parent body and that is composed exclusively of members of the parent body.

## Bodies Created by Rule or Order

The Determination of whether a body is created by rule or order must be made on a **case-by-case basis**. Look to:

- Definable number of members in body?
- Exercising collective power?
- Definition of when that collective power exists?

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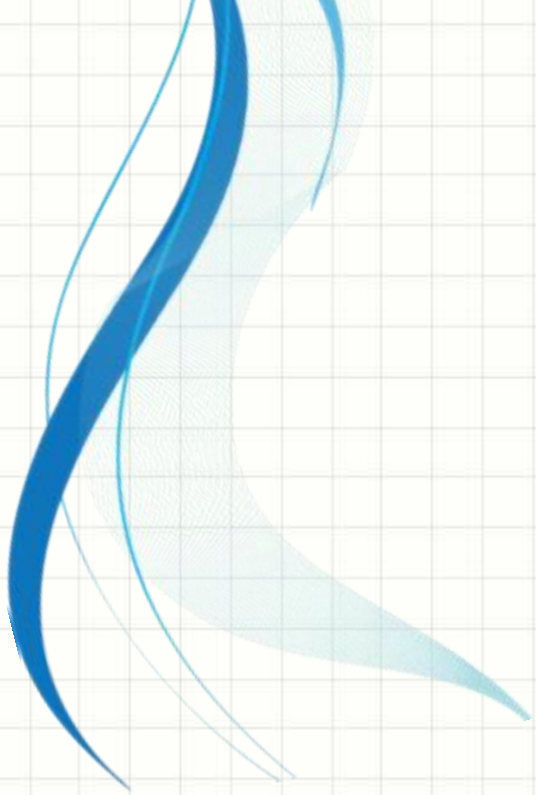
-Informal Correspondence Wis. Op.  
(September 24, 1998).



## **MEETING:**

A convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body.

-Wis. Stat. § 19.82(2)



In *State ex rel. Newspapers v. Showers*, 135 Wis.2d 77 (1987), the Wisconsin Supreme Court established a two-part test for determining whether a gathering is a Meeting, consisting of:

- The **PURPOSE** requirement
- The **NUMBERS** requirement



**PURPOSE REQUIREMENT**: looks to whether the purpose of the gathering is to engage in governmental business ***including discussion, decisions or information-gathering.***

*-State ex rel. Badke v. Village Board of the Village of Greendale, 173 Wis. 2d 553 (1993).*

- Interactions between members is not required.
- Not limited to formal or final decision making.

Does not include social or chance gatherings or a conference that is not intended to avoid the Open Meetings Law.

- ***BUT***, there is a rebuttable presumption that governmental business is being discussed if half or more of the body is present.

*-Wis. Stat. § 19.82(2).*

**NUMBERS REQUIREMENT**: looks to whether the number of members present are sufficient to determine the governmental body's course of action on the business under consideration.

### ***Quorums***

- A sufficient number of members to take action on a particular matter.

### ***Negative Quorums***

- A negative quorum is when there is a sufficient number of members to block action on a particular matter.

### ***Walking Quorums***

- A walking quorum is when there is as a series of gatherings among separate groups of the members of a body, each less than the quorum, who agree, passively or explicitly, to act in sufficient numbers to reach a quorum.

## **CONFERENCE CALLS**

- Wis. DOJ has advised that meetings can occur if the purpose of the call is to conduct government business and a sufficient number of members are present to determine a course of action under consideration.

## **TEXT MESSAGES**

- Wis. DOJ has advised that text messages are analogous to conference calls in that all participants in the communication are present at the same time.

## **E-MAILS**

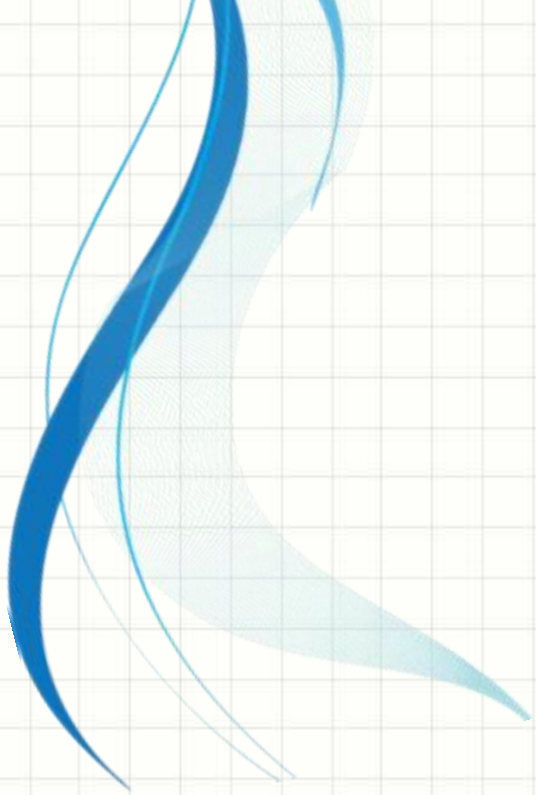
- Wis. DOJ strongly discourages, and advises that meetings can occur via e-mail depending on: (1) the number of participants; (2) number of communications re: subject; (3) time frame of the e-mails; and (4) extent of conversation-like interactions in the communications.



## **NOTICE:**

“Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof.”

-Wis. Stat. § 19.84(2).



Notice must be provided to:

- **The Public.**
- **News Media** that have filed a written request for such notice.
- **Officially Designated Newspaper**, or, if none exists, a news medium likely to give notice in the area.



# NOTICE CONTENTS

Notices must be *reasonably specific*. Determining what is reasonable requires a case-specific analysis. Look to:

- **Burden of providing more specificity;**
- **Matters of particular interest to the public; and**
- **Non-routine actions.**

No requirement that agenda items be discussed in the order they are listed on the notice, unless item noticed for a specific time.

Body must notice that it intends to go back into open session after a closed session.

## **TIMING OF THE NOTICE**

Notices must be provided at least 24 hours in advance of the meeting, unless for good cause such notice is impossible or impractical.

If good cause exists, the notice should be given as soon as possible, and not less than two hours in advance of the meeting.

-Wis. Stat. § 19.84(3).

## SIMULTANEOUS MEETINGS

When a quorum of one government body knowingly attends the meeting of a subunit of that body, or a meeting of a different body, to gather information, two meetings are actually taking place, and both must be properly noticed.

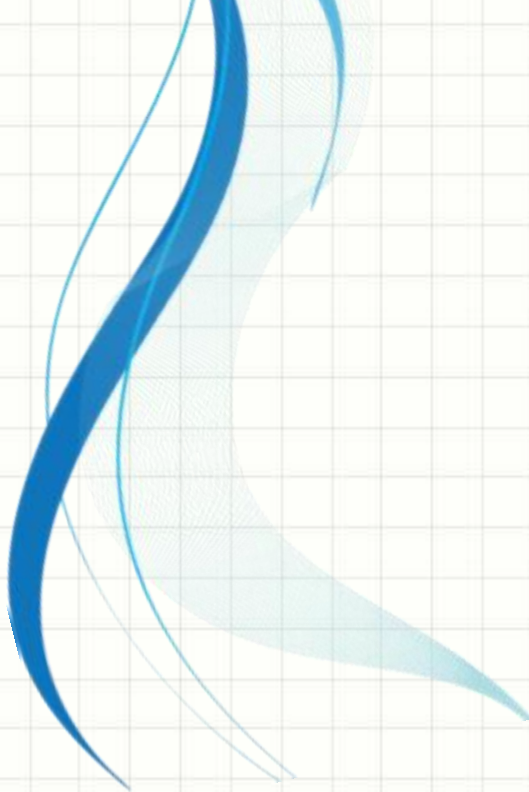
*-Badke v. Village of Greendale, 173 Wis. 2d 553 (1992).*



## **ACCESSIBILITY:**

Open meetings must be held in a place reasonably accessible to members of the public and open to all citizens at all times.

Reasonable access does not mean total access, nor does it mean that a body can systematically exclude or arbitrarily refuse admittance to any individual.



Wis. DOJ has advised that, in light of **COVID-19**, governmental bodies can comply with their accessibility obligations by providing members of the public with a way to monitor the meeting, even if there is no central location at which the public can convene for the meeting.

Wis. DOJ has advised that audio only teleconferences are likely not reasonably accessible if complex plans, drawing or charts are being displayed or the demeanor of a witness is significant.



## **RECORDING**

Citizens have the right to tape record or videotape meetings in open session, as long as doing so does not disrupt the meeting. Reasonable efforts must be made to accommodate anyone who wants to record, film or photograph an open session meeting

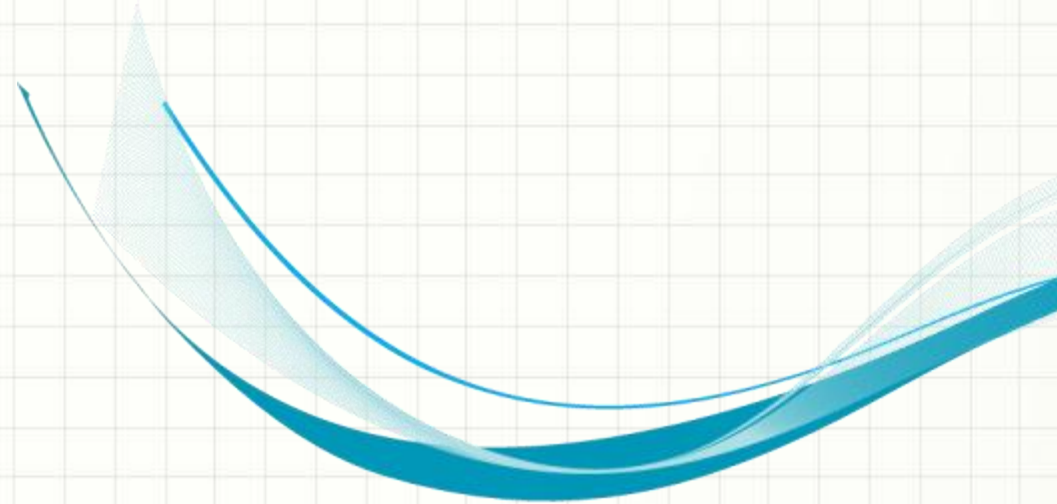
-Wis. Stat. § 19.90.

## **CITIZEN PARTICIPATION**

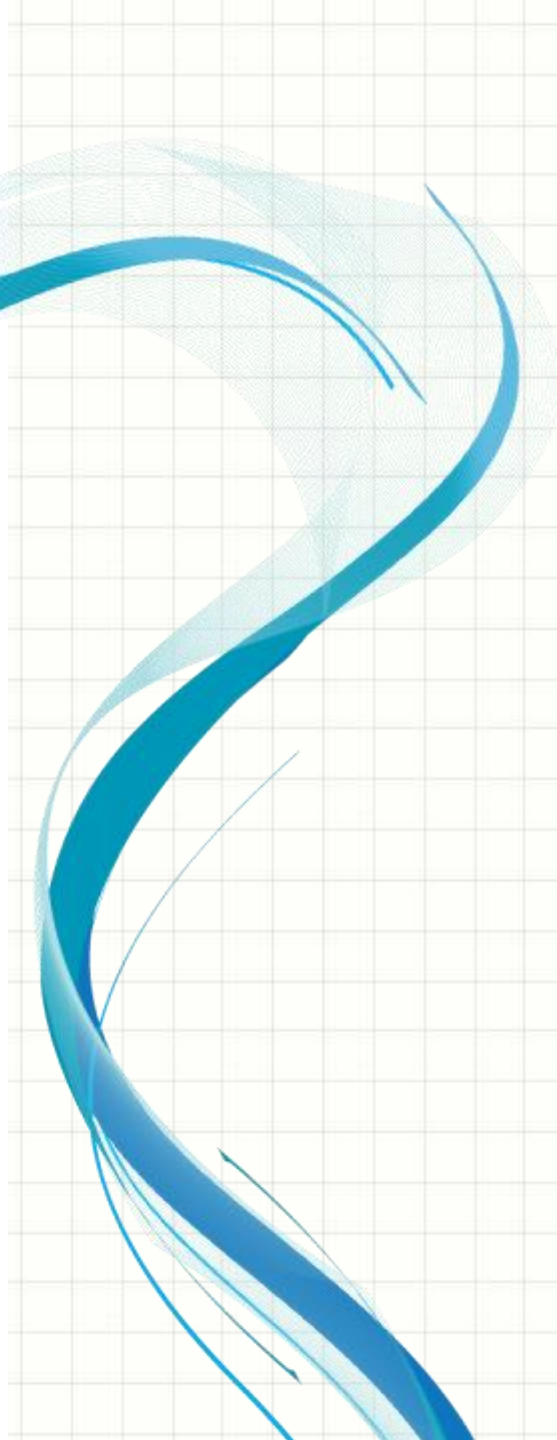
The Open Meetings Law grants citizens the right to attend and observe meetings occurring in open session. It does not require that members of the public be allowed to speak or actively participate in the meeting. However, a body may set aside a portion of the meeting for public comment if it wishes to.

-Wis. Stat. § § 19.83(2) and

19.84(2).



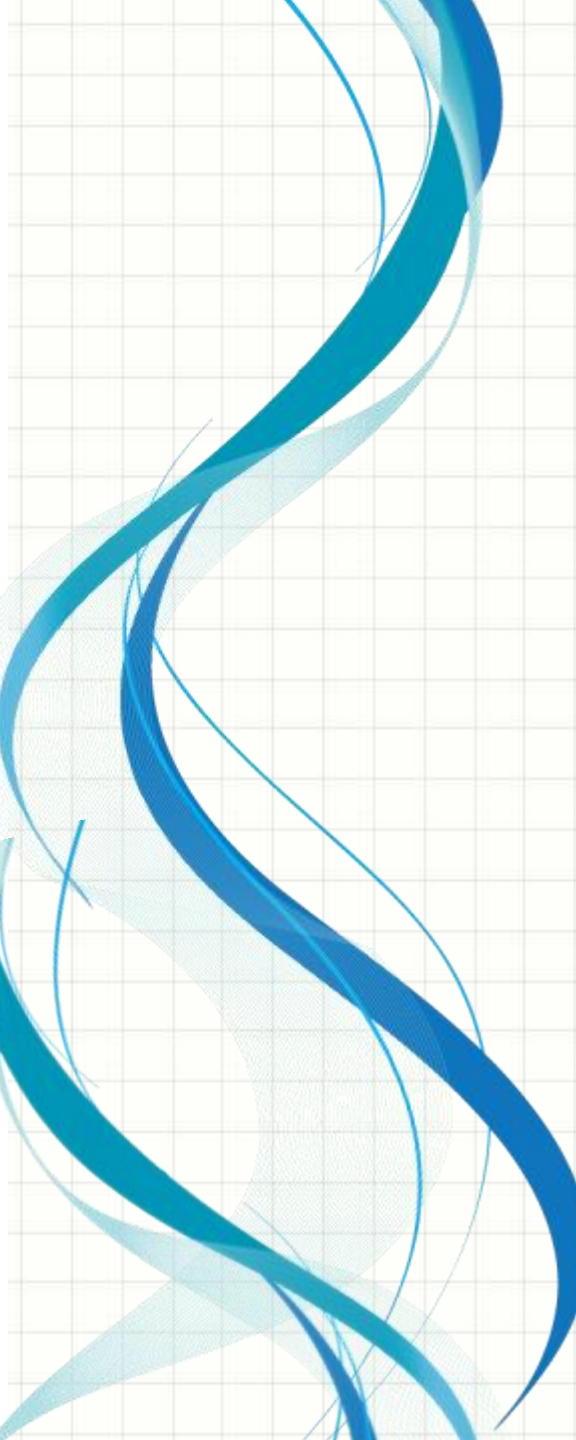
# Open Session v. Closed Session



**Open Session** means a meeting which is held in a place reasonably accessible to members of the public and open to citizens at all time.

-Wis. Stat. §

19.82(1)

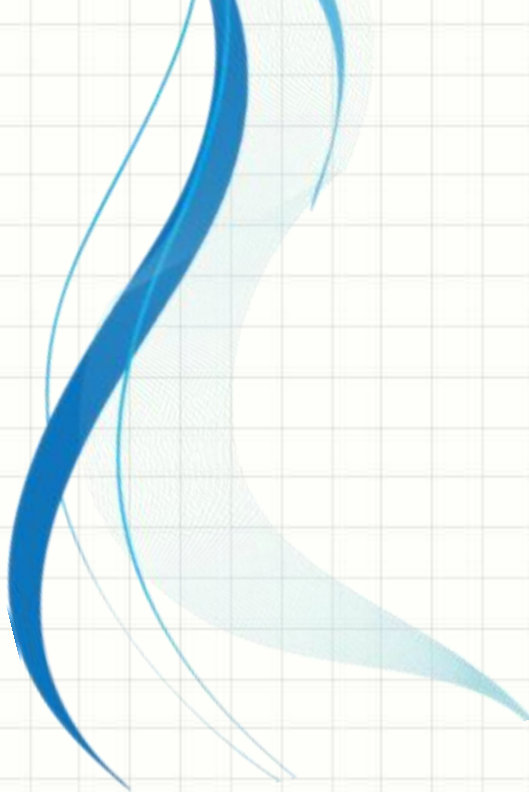


Every meeting of a governmental body must first be convened in open session.

All business of any kind must be initiated, discussed and acted upon in open session unless one of the 11 exemptions in Wis. Stat. § 19.85(1) applies.

If one of the exemptions applies, governmental bodies can motion and vote to go into ***Closed Session***.



A decorative graphic on the left side of the slide, consisting of a solid blue wavy line and a lighter blue, semi-transparent wavy shape behind it, both curving downwards from top-left to bottom-right.

No business may be taken up during the closed session except that relating to matters specifically noticed.

Bodies have wide discretion to admit anyone into a closed session whose presence the body determines is necessary for the business at hand.

# **AUTHORIZED CLOSED SESSIONS**

***-Judicial or quasi-judicial hearings:*** deliberations on a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body can be held in closed session. Wis. Stat. § 19.85(1)(a).

***-Employment and Licensing Matters:*** for “[c]onsidering dismissal, demotion, licensing or discipline of any public employee or a person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter...” Wis. Stat. § 19.85(1)(b).

**-Consideration of employment, promotion, compensation and performance evaluation data** of any public employee over which the governmental body has jurisdiction or exercises responsibility. Wis. Stat. § 19.85(1)(c).

**-Considering extended supervision, probation, parole or strategy for crime detection or prevention:** except during parole commission hearings designed for victims or family members to have direct input in parole decision making process for certain crimes. Wis. Stat. § 19.85(1)(d).

**-Conducting public business with competitive or bargaining implications:** for “[d]eliberating or negotiating the purchase of public properties, the investing of public funds, or conducting other specific public business, whenever competitive or bargaining reasons require a closed session.” Wis. Stat. § 19.85(1)(e).

***-Deliberating to discuss unemployment insurance. Wis. Stat. § 19.85(1)(ee).***

***-Deliberating to discuss worker's compensation issues. Wis. Stat. § 19.85(1)(eg).***

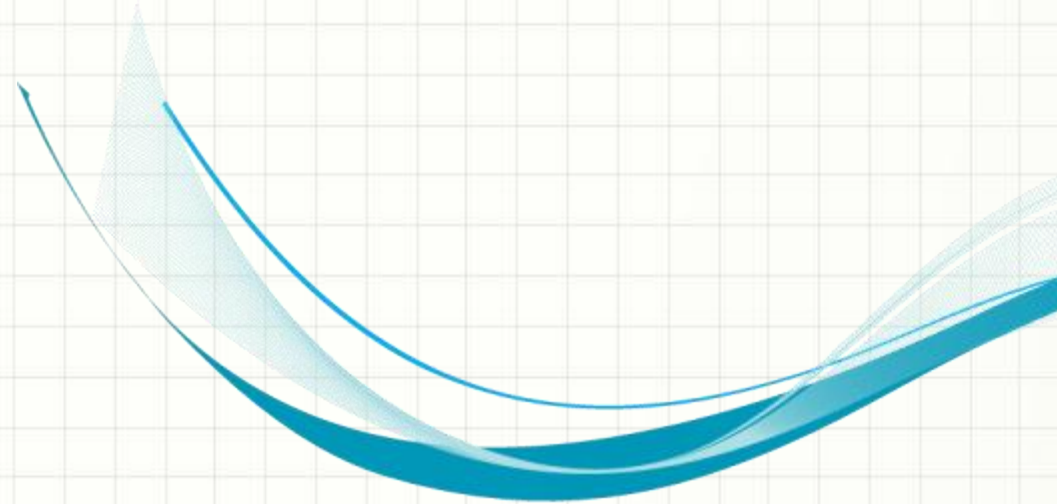
***-Deliberating on issues arising out of location of burial sites. Wis. Stat. § 19.85(1)(em).***

***-Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation upon any person referred to in such histories or data, or involved in such problems or investigations. Wis. Stat. § 19.85(1)(f).***

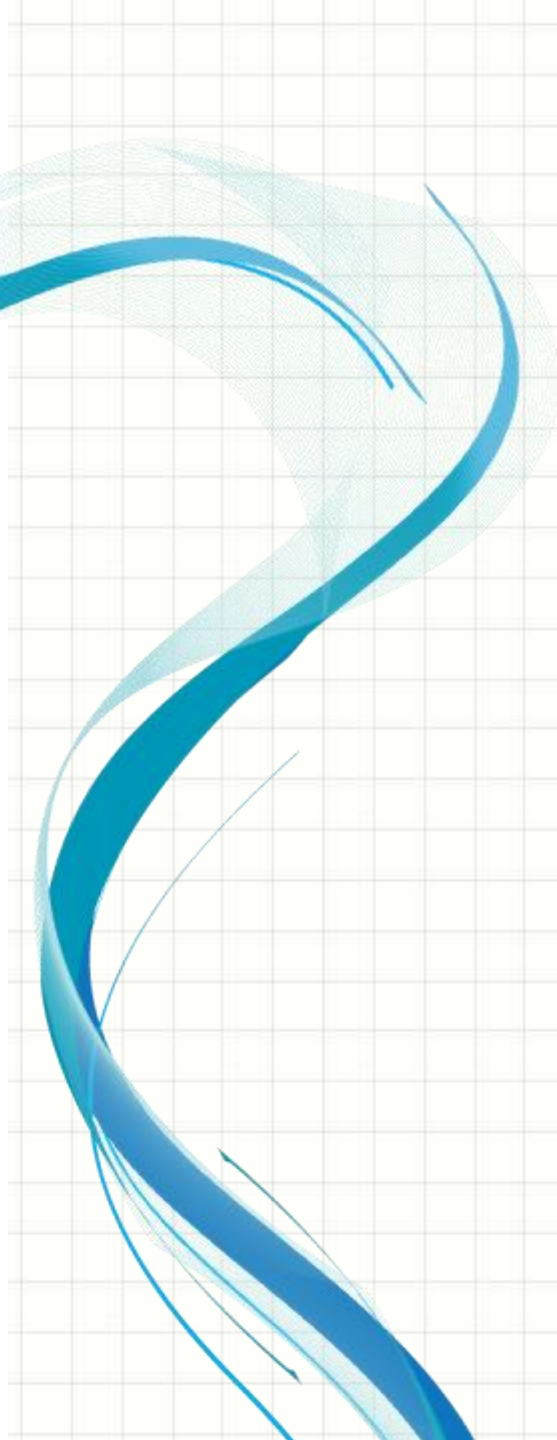
***-Conferring with legal counsel*** for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. Wis. Stat. § 19.85(1)(g).

***-Consideration of requests for confidential written advice from the elections commission or the ethics commission*** or from any county or city ethics board. Wis. Stat. § 19.85(1)(h).





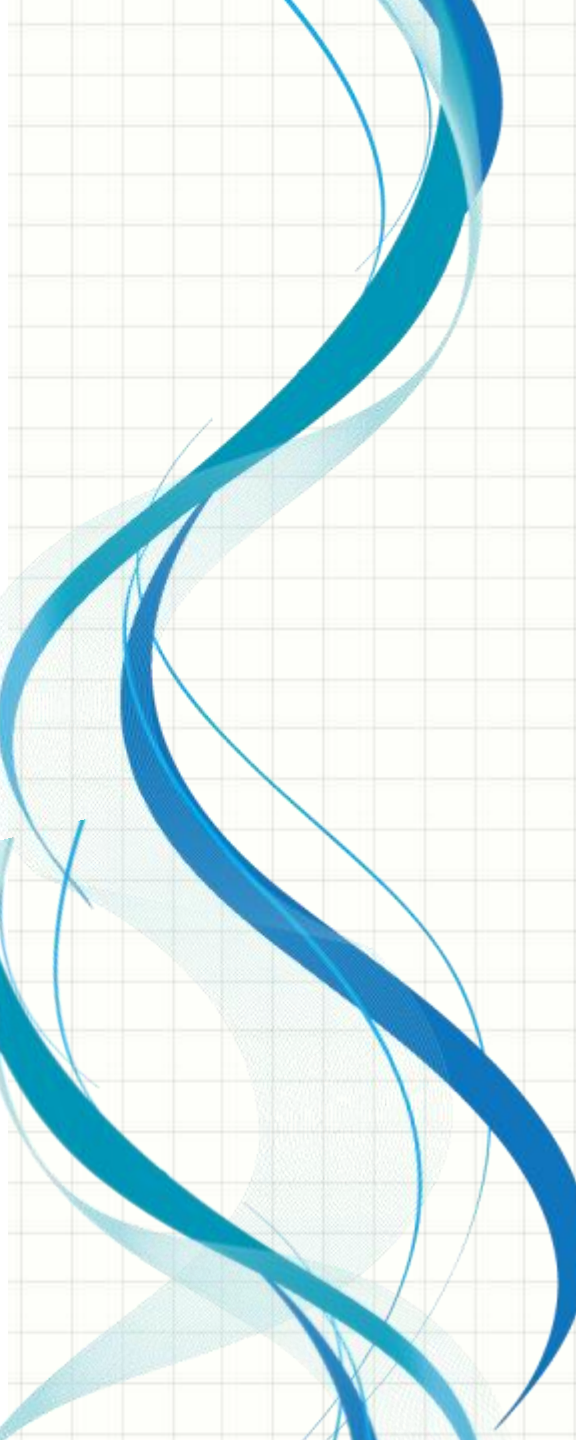
# Record Keeping



**All motions and roll-call  
votes of each meeting  
shall be recorded and  
preserved and open to  
public inspection.**

-Wis. Stat. §

19.88(3)



No specified timeframe in which records of motions and roll call votes must be created.

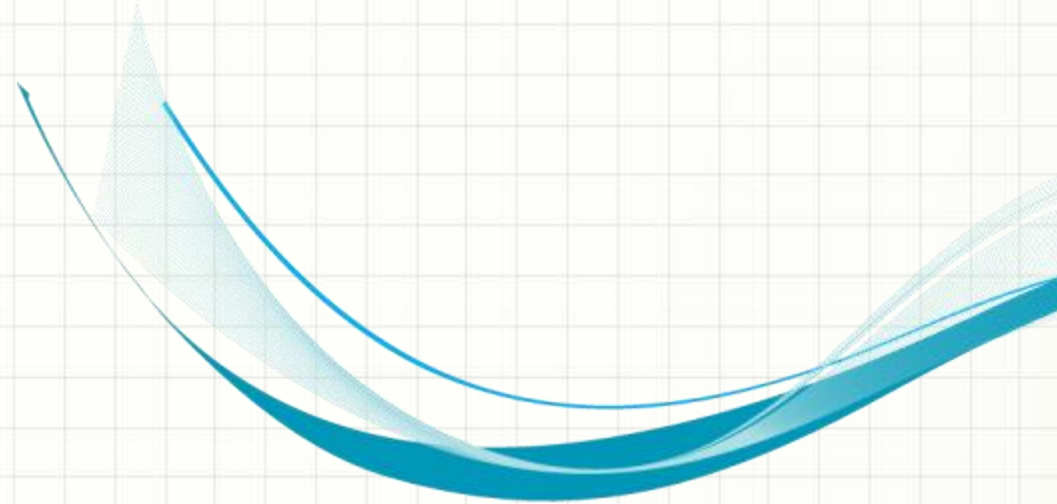
Wis. DOJ advises that motions and roll call votes be recorded at the time of the meeting or as soon thereafter as practicable.

Open Meetings Law does not require that formal minutes be created (but other statutes, rules or regulations may).



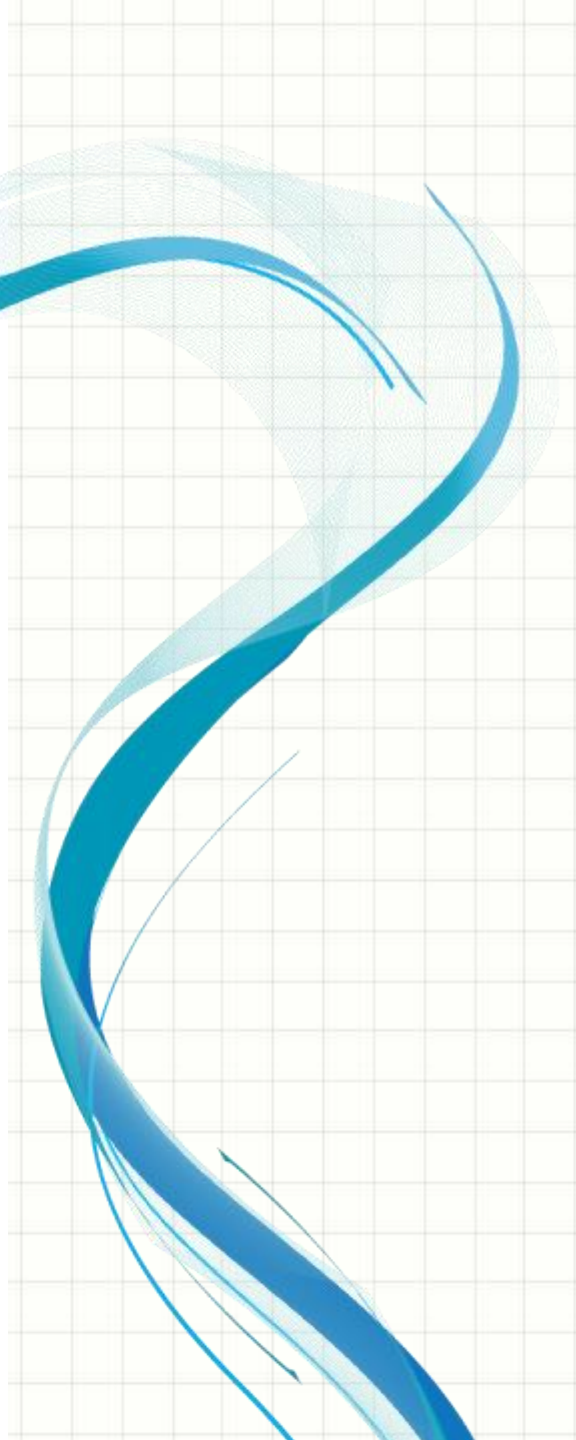
## Records Looked at in Closed Session

May be subject to disclosure under the Public Records Law, depending on whether the reason for convening in closed session continues.



Enforcement

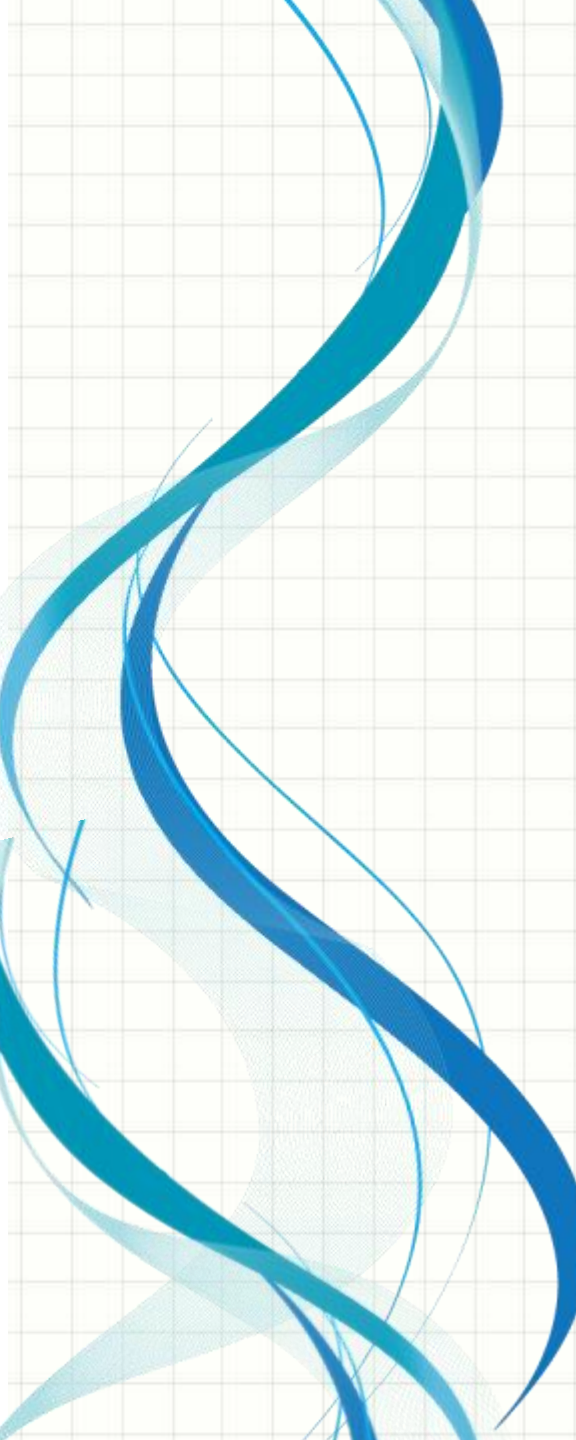




# **The Attorney General and the District Attorney enforce the Open Meetings Law.**

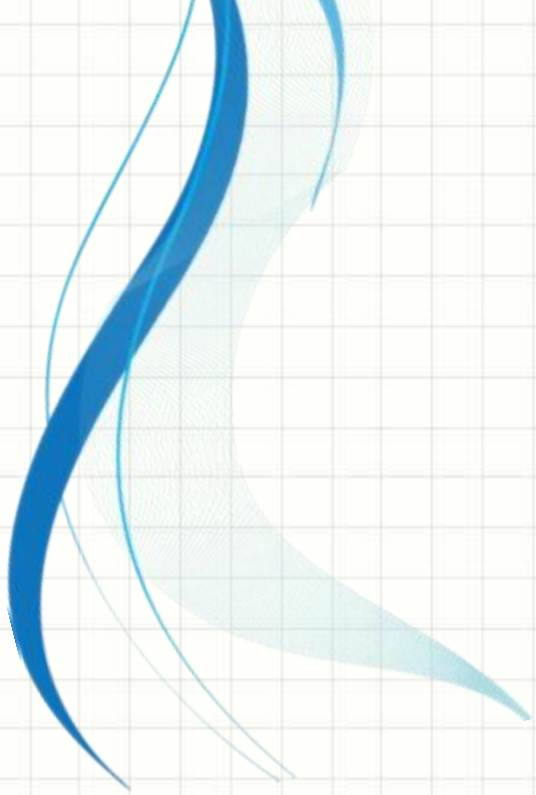
-However, for City of Milwaukee, Milwaukee Corporation Counsel, rather than the District Attorney, has enforcement authority.

-Wis. Stat. § 59.42(2)(b)4.



**Verified Complaint** (written, signed and sworn) must be filed before AG, DA or Corp. Counsel can enforce the Open Meetings Law.

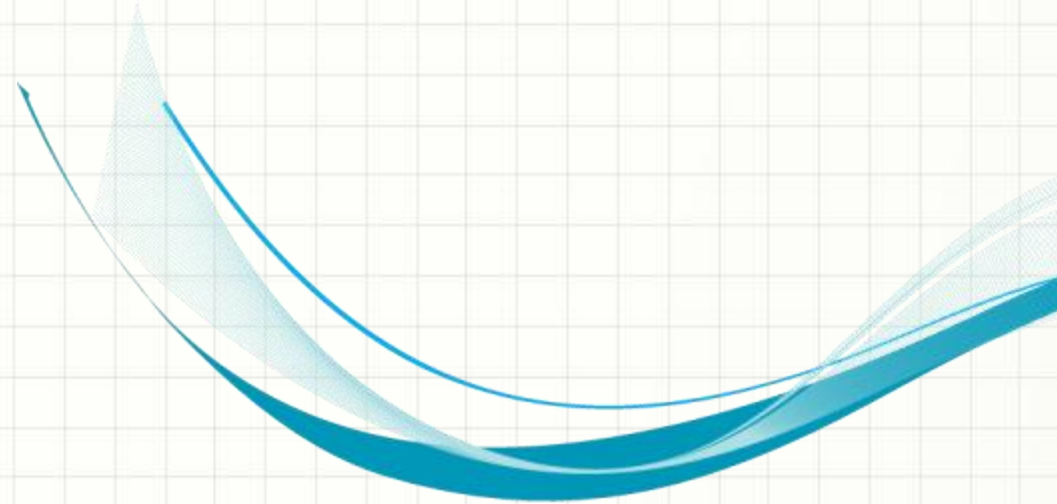
If AG, DA or Corp. Counsel refuses to commence action, *or fails to act within 20 days*, complainant has the right to bring an action, in the name of the state, to enforce the Open Meetings Law.



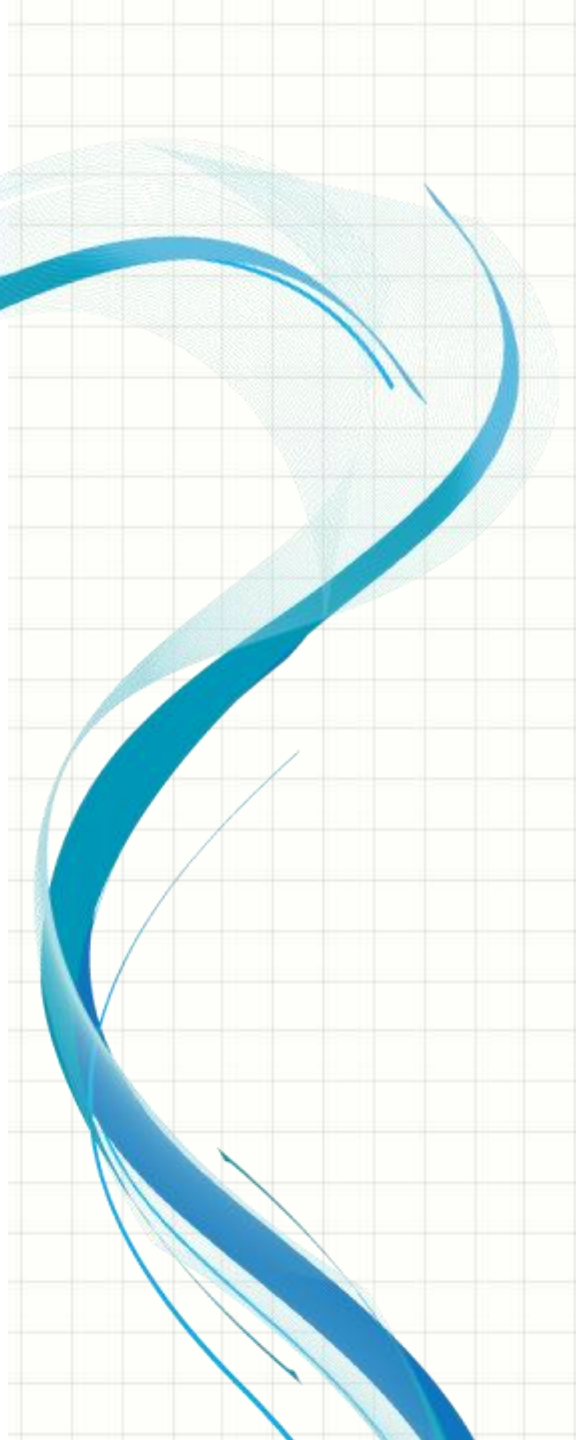
-An individual bringing an action to enforce the Open Meetings Law may be awarded the actual and necessary costs of prosecution, including reasonable attorney fees.

-Bringing a complaint on behalf of the individual, rather than on behalf of the state, is a fatal error and will cause the complaint to be dismissed.

-Statute of Limitations on actions to enforce the Open Meetings Law is **two years** after the cause of action accrues.



# Penalties

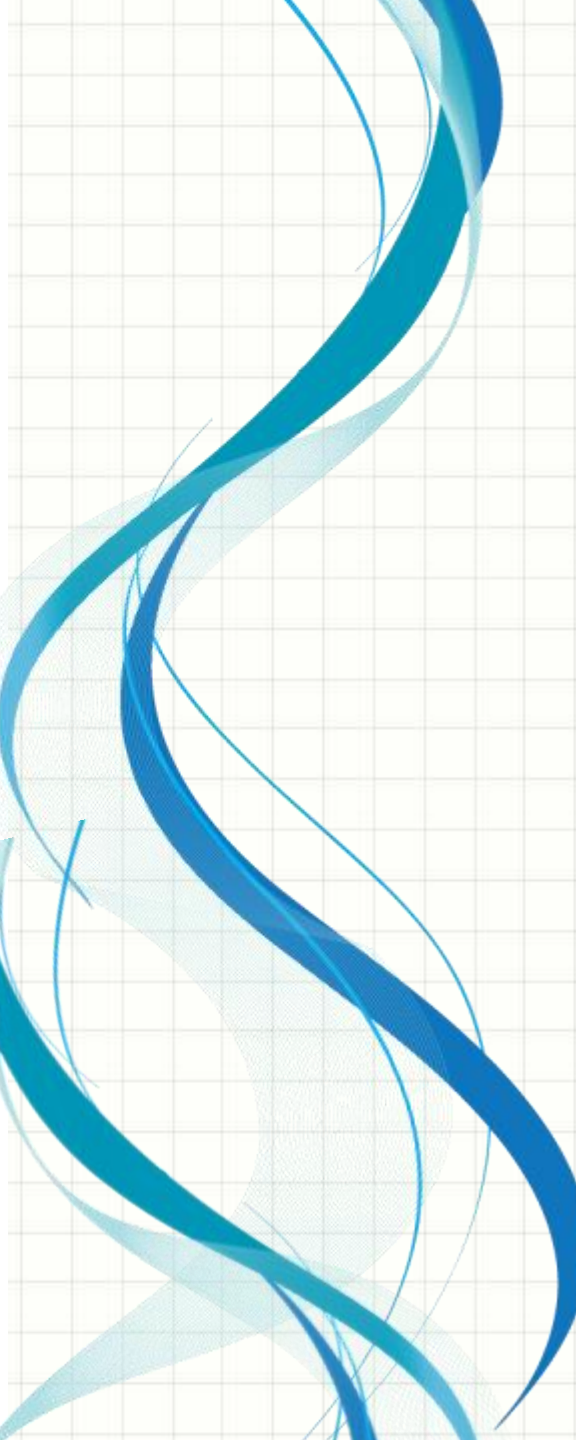


Any member of the governmental body who “***knowingly***” attends a meeting in violation of the Open Meetings Law is subject to a forfeiture between \$25 and \$300 for each violation. **This is personal liability.**

“***knowingly***” means not only positive knowledge of the illegality of a meeting, but also the awareness of the high probability of the meeting’s illegality or conscious avoidance or awareness of the illegality.

*State v. Swanson*, 92 Wis. 2d 310 (1979).



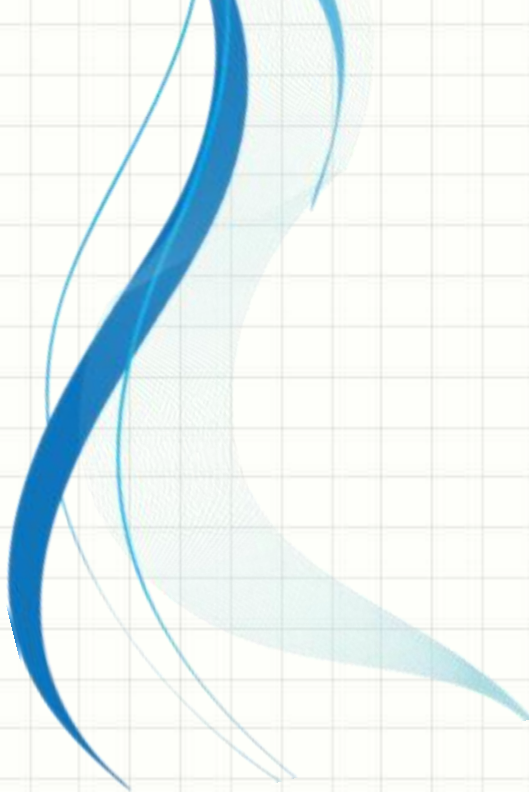


No liability for member knowingly attending an unlawful meeting if the member makes or votes in favor of a motion to prevent the violation from occurring, or does so on the advice of counsel.

A body may not reimburse a member for a forfeiture incurred as a result of violation, unless the enforcement action involved an issue regarding the constitutionality of the Open Meetings Law.

77 Op. Att'y Gen. 177, 180 (1988).

Court can order that a body obtain Open Meetings Training.



Court may award any other appropriate legal or equitable relief, including declaratory and injunction relief.

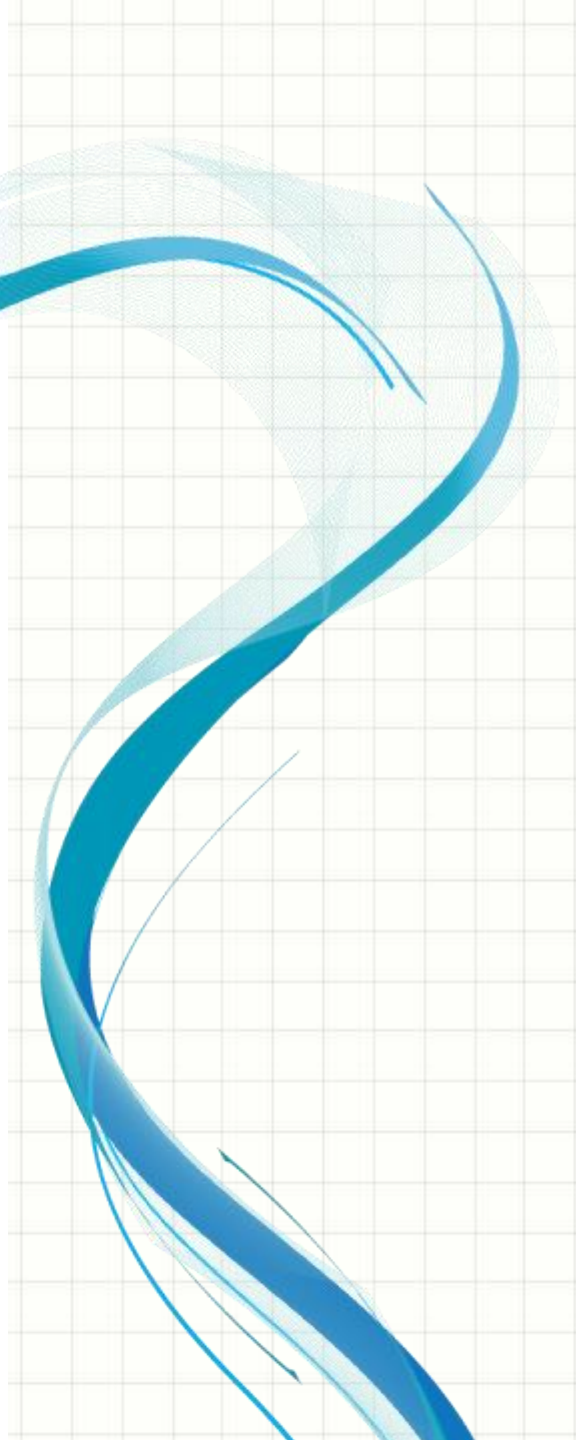
**Any action taken at a meeting of a governmental body in violation of the Open Meetings Law is voidable.**

However, only after court finds that the public's interest in enforcement of the Open Meetings Law outweighs the public interest in sustaining the validity of the action taken.

-Wis. Stat. § 19.97(3).

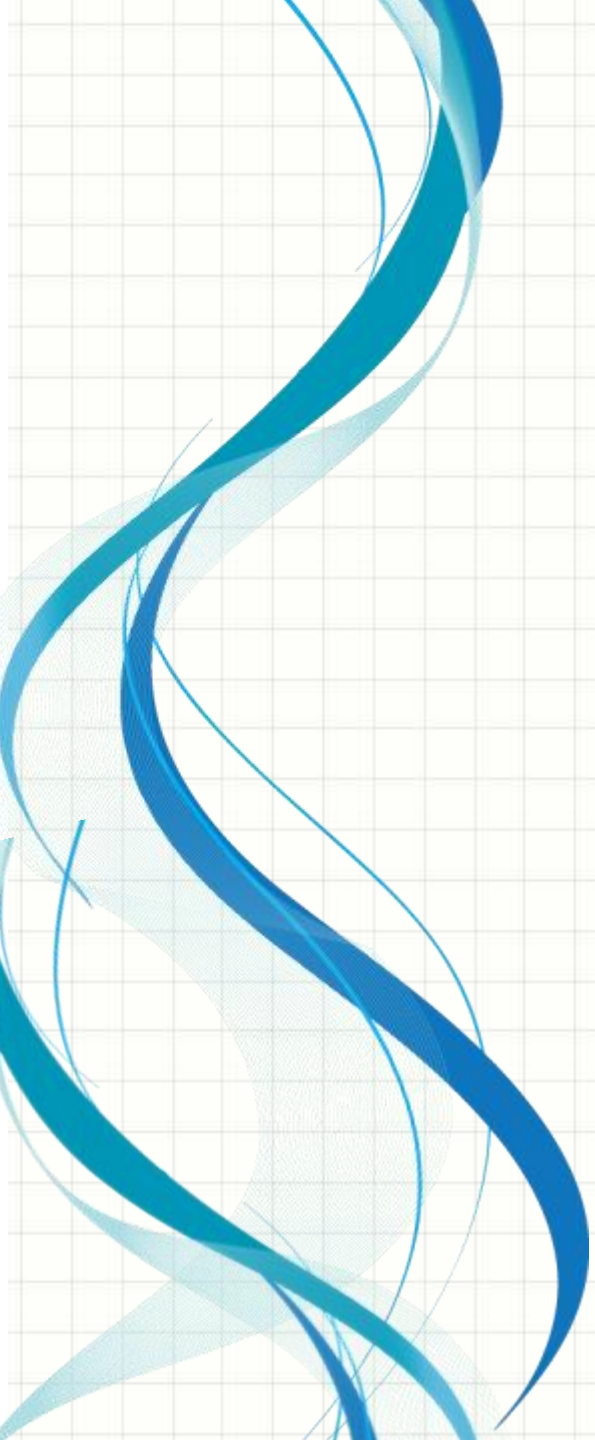


# Public Records Law – What's a Record?

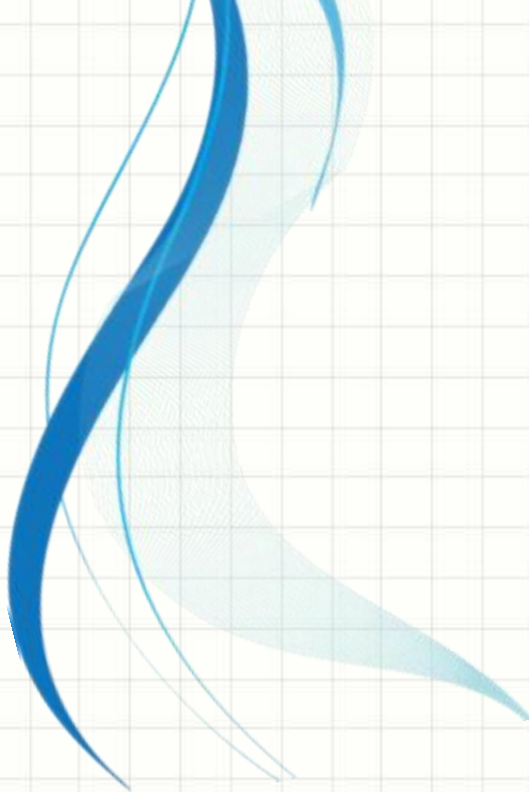


A **RECORD** is defined as “any material on which written, drawn, printed, spoken, visual or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, which has been created or kept by an authority.”

Wis. Stat. § 19.32(2).

- 
- Not everything a public official or employee creates is a public record. It must be created or kept in connection with an **official purpose or function of the agency.**
  - Attorney General's Office advises that **content, not medium format or location,** determines whether something is a "record."



- 
- Public records requests must be responded to “as soon as practicable, and without delay.”
  - If any CCC member receives a public records request, please forward that request to the CCC staffer as soon as possible to ensure that the a timely response can be provided.