

What meetings are covered by the Open Meeting Law?

With certain exceptions, all meetings of a public body must be open to the public. A meeting is generally defined as “a deliberation by a public body with respect to any matter within the body’s jurisdiction.” As explained more fully below, a deliberation is a communication between or among members of a public body.

These four questions will help determine whether a communication constitutes a meeting subject to the law:

- 1) is the communication between or among members of a **public body**;
- 2) if so, does the communication constitute a **deliberation**;
- 3) does the communication involve a matter within the body’s **jurisdiction**; and
- 4) if so, does the communication fall within an **exception** listed in the law?

What constitutes a public body?

While there is no comprehensive list of public bodies, any multi-member board, commission, committee or subcommittee within the executive or legislative branches ¹ of state government, or within any county, district, city, region or town, if established to serve a public purpose, is subject to the law. The law includes any multi-member body created to advise or make recommendations to a public body, and also includes the governing board of any local housing or redevelopment authority, and the governing board or body of any authority established by the Legislature to serve a public purpose. The law excludes the Legislature and its committees, bodies of the judicial branch, and bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer.

Boards of selectmen and school committees (including those of charter schools) are certainly subject to the Open Meeting Law, as are subcommittees of public bodies, regardless of whether their role is decision-making or advisory. Individual government officials, such as a town manager or police chief, and members of their staff are not subject to the law, and so they may meet with one another to discuss public business without needing to comply with Open Meeting Law requirements. This exception for individual officials to the general Open Meeting Law does not apply where such officials are serving as members of a multiple-member public body that is subject to the law.

Bodies appointed by a public official solely for the purpose of advising the official on a decision that individual could make alone are not public bodies subject to the Open Meeting Law. For example, a school superintendent appoints a five-member advisory body to assist her in nominating candidates for school principal, a task the superintendent could perform herself. That advisory body would not be subject to the Open Meeting Law.²

¹ Although the Legislature itself is not a public body subject to the Open Meeting Law, certain legislative commissions are required to follow the Law's requirements.

² See Connelly v. School Committee of Hanover, 409 Mass. 232, 565 N.E.2d 449 (1991).

What constitutes a deliberation?

The Open Meeting Law defines deliberation as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.” Distribution of a meeting agenda, scheduling or procedural information, or reports or documents that may be discussed at a meeting is often helpful to public body members when preparing for upcoming meetings. These types of communications generally will not constitute deliberation, provided that, when these materials are distributed, no member of the public body expresses an opinion on matters within the body’s jurisdiction. Additionally, certain communications that may otherwise be considered deliberation are specifically exempt by statute from the definition of deliberation (for example, discussion of the recess and continuance of a Town Meeting pursuant to G.L. c. 39, § 10A(a) is not deliberation).

To be a deliberation, the communication must involve a quorum of the public body. A quorum is usually a simple majority of the members of a public body. Thus, a communication among less than a quorum of the members of a public body will not be a deliberation, unless there are multiple communications among the members of the public body that together constitute communication among a quorum of members. Courts have held that the Open Meeting Law applies when members of a public body communicate in a serial manner in order to evade the application of the law.

Note that the expression of an opinion on matters within the body’s jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. For example, if a member of a public body sends an email to a quorum of a public body expressing her opinion on a matter that could come before that body, this communication violates the law even if none of the recipients responds.

What matters are within the jurisdiction of the public body?

The Open Meeting Law applies only to the discussion of any “matter within the body’s jurisdiction.” The law does not specifically define “jurisdiction.” As a general rule, any matter of public business on which a quorum of the public body may make a decision or recommendation is considered a matter within the jurisdiction of the public body. Certain discussions regarding procedural or administrative matters may also relate to public business within a body’s jurisdiction, such as where the discussion involves the organization and leadership of the public body, committee assignments, or rules or bylaws for the body. Statements made for political purposes, such as where a public body’s members characterize their own past achievements, generally are not considered communications on public business within the jurisdiction of the public body.

What are the exceptions to the definition of a meeting?

There are five exceptions to the definition of a meeting under the Open Meeting Law.

1. Members of a public body may conduct an on-site inspection of a project or program; however, they may not deliberate at such gatherings;
2. Members of a public body may attend a conference, training program or event; however, they may not deliberate at such gatherings;
3. Members of a public body may attend a meeting of another public body provided that they communicate only by open participation; however, they may not deliberate at such gatherings;
4. Meetings of quasi-judicial boards or commissions held solely to make decisions in an adjudicatory proceeding are not subject to the Open Meeting Law; and
5. Town Meetings, which are subject to other legal requirements, are not governed by the Open Meeting Law. See, e.g. G.L. c. 39, §§ 9, 10 (establishing procedures for Town Meeting).

The Attorney General interprets the exemption for “quasi-judicial boards or commissions” to apply only to certain state “quasi-judicial” bodies and a very limited number of public bodies at other levels of government whose proceedings are specifically defined as “agencies” for purposes of G.L. c. 30A.

We have received several inquiries about the exception for Town Meeting and whether it applies to meetings outside of a Town Meeting session by Town Meeting members or Town Meeting committees or to deliberation by members of a public body – such as a board of selectmen – during a session of Town Meeting. The Attorney General interprets this exemption to mean that the Open Meeting Law does not reach any aspect of Town Meeting. Therefore, the Attorney General will not investigate complaints alleging violations in these situations. Note, however, that this is a matter of interpretation and future Attorneys General may choose to apply the law in such situations.