

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

NEBRASKA

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE

OPEN RECORDS AND MEETINGS LAWS IN

NEBRASKA

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Previously Titled
Tapping Officials' Secrets

Published by The Reporters Committee for Freedom of the Press
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Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

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Open Records**I. STATUTE -- BASIC APPLICATION****A. Who can request records?****1. Status of requestor.**

Neb. Rev. Stat. § 84-712 allows “all citizens of this state, and all other persons interested in the examination of the public records,” to examine public records. Furthermore, Neb. Rev. Stat. § 84-712.03 allows “any person” to seek redress for the wrongful withholding of records. Generally, the use of the term “person” in Nebraska statutes “includes bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, joint stock companies, and associations.” Neb. Rev. Stat. § 49-801(16) (Reissue 2010).

2. Purpose of request.

The Nebraska public records statutes do not condition access on the purpose for which records are sought.

3. Use of records.

The statutes impose no specific limitations on use of information that is provided to the public.

B. Whose records are and are not subject to the act?

In general, Neb. Rev. Stat. § 84-712.01(1) provides that the term “public records” “shall include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing,” unless any other statute expressly provides that particular records shall not be made public.

1. Executive branch.

As noted above, all records of all agencies are public unless there is a specific statute to the contrary. No statute specifies whether records of the executive department head (e.g., governor or mayor) are also included. To the extent such records are records belonging to the state, county or municipality, rather than to the executive, they should be considered public records.

a. Records of the executives themselves.

There is no law on point.

b. Records of certain but not all functions.

There is no law on point.

2. Legislative bodies.

The definition of public records above appears to include records of legislative bodies as well. Neb. Const. Art. III, § 11, however, provides “the Legislature shall keep a journal of its proceedings and publish them (except such parts as may require secrecy).” The Legislature has taken the position that the exemption for “Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature” prohibits access to telephone records even by the State Auditor.

3. Courts.

The definition of public records above appears to include records of courts as well. There is old Nebraska case law holding that the public records statutes apply to courts. See *State ex rel. Griggs v. Meekes*, 19 Neb. 106, 26 N.W. 620 (1886). Certain court records may be sealed pursuant to statute of Nebraska Supreme Court rule. The Attorney General has opined that briefs submitted to a judge are public records even though such documents are not filed with the Clerk of the Court. Neb. Op. Att’y Gen. 04030 (12-27-04).

FOREWORD

The public records statutes in Nebraska employ the same basic format as the federal Freedom of Information Act, although the substance and some of the procedural mechanisms differ significantly. In other words, the Nebraska public records statutes begin with the presumption that all records belonging to the government are available for public inspection and copying, and then except out certain categories of records that need not be produced by government.

While access to government records in Nebraska is relatively straightforward, the reader should be aware that mere consultation of the specific statutes dealing with record access may be insufficient to resolve any given access question. The statute defining the basic public record framework excepts from public inspection particular information or records that other statutes make confidential. These statutory exceptions are not contained solely in the public records statutes, and are in fact scattered throughout the Nebraska Revised Statutes. No attempt has been made to address every conceivable record that might not be available to the public in this outline. Exceptions creating the most serious and frequent problems are addressed in detail, however, and all exceptions expressly contained in the public records statutes themselves are addressed.

The Nebraska Public Meetings Law, Neb. Rev. Stat. §§ 84-1408 to 84-1414 (Reissue 1999 and Cum. Supp. 2004), was initially enacted in 1975. In enacting the Public Meetings Law, the Nebraska Legislature expressed its intent “that the formation of public policy is public business and may not be conducted in secret.” Neb. Rev. Stat. § 84-1408 (Cum. Supp. 2004). This “statutory commitment to openness in government” guarantees that “there will be development and maintenance of confidence, as well as participation, in our form of government as a democracy.” *Grein v. Board of Education*, 216 Neb. 158, 163, 343 N.W.2d 718, 722 (1984).

4. Nongovernmental bodies.

a. Bodies receiving public funds or benefits.

Records of “tax-supported districts” that are not counties, cities, villages or political subdivisions are public records. Neb. Rev. Stat. § 84-712.01(1).

b. Bodies whose members include governmental officials.

Not addressed by statutes. To the extent the group contains a quorum of a public body and group reviews documents, those documents are probably public records pursuant to Neb. Rev. Stat. § 84-1412(8).

5. Multi-state or regional bodies.

No law regarding records. The Attorney General has indicated that the Central Interstate Low-Level Radioactive Waste Commission, the administrative arm of an interstate compact, is not subject to the open meeting law. Presumably, the same rationale would apply to the public records law.

6. Advisory boards and commissions, quasi-governmental entities.

Advisory boards must maintain public records to the extent they fit the definition in Neb. Rev. Stat. § 84-712.01(1) which provides that the term “public records” “shall include all records and documents, regardless of physical form, of or belonging to . . . any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing,” unless any other statute expressly provides that particular records shall not be made public.

7. Others.

Commissions of state or local government must maintain public records to the extent they fit the definition in Neb. Rev. Stat. § 84-712.01(1), which provides that the term “public records” “shall include all records and documents, regardless of physical form, of or belonging to . . . any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing,” unless any other statute expressly provides that particular records shall not be made public.

C. What records are and are not subject to the act?

1. What kind of records are covered?

The public records law defines public records in terms of records “belonging to” the state or its subdivisions. Thus, records in possession of the state or its subdivisions are public, regardless of how those records were acquired.

2. What physical form of records are covered?

Public records are defined “regardless of physical form.” Neb. Rev. Stat. § 84-712.01(1). “Data which is a public record in its original form shall remain a public record when maintained in computer files.” *Id.*

3. Are certain records available for inspection but not copying?

In 2000, the Nebraska Legislature changed the law to directly address the issue of permitting copies of available records. Neb. Rev. Stat. § 84-712. Previous law allowed persons inspecting public records “to make memoranda and abstracts therefrom.” Neb. Rev. Stat. § 84-712(1) (Reissue 1999). Now, persons are authorized to examine, to make memoranda, and to make copies free of charge using their own copying or photographing equipment, camera, digital camera, video camera or other means. If persons requesting the documents make the copies, they must be made at the agency during ordinary business or at a location mutually agreed to by the custodian. Alternatively, a custodian may reproduce documents if the custodian has copying equipment available or electronic records in any form in which they may be reasonably reproduced, but the custodian may charge the actual cost

for copying the records. Neb. Rev. Stat. § 84-712(3)(a). The person requesting the documents can designate the form of the copies based on the form in which the public record is maintained or produced, including, but not limited to, printouts, electronic data, discs, tapes and photocopies. Neb. Rev. Stat. § 84-712(3)(a). But, the custodian need not produce or generate a record in a new or different form or format than the form or format of the original record. Neb. Rev. Stat. § 84-712(1)(c).

Neb. Rev. Stat. § 25-1280 provides that public officials must provide a certified copy of public records upon request and payment of legal fees therefor.

D. Fee provisions or practices.

1. Levels or limitations on fees.

In 2000, the Nebraska Legislature amended the statutes to address the issue of charges connected with public records. The open records law now allows the custodian to charge for copies, including the custodian’s time involved in actually reproducing the documents as long as the amount is the “actual cost.” If persons make their own copies using their own equipment, there is no charge for making copies. Neb. Rev. Stat. § 84-712.01(2) addresses methods of reproduction that may be used, such as electronic record storage, although the statute does not require any particular type of electronic storage of public records. The fee that the custodian may charge, however, will depend on the type of record requested and the form on which the record is stored.

a. *Photocopies:* If the custodian has copying equipment that is reasonably available, the custodian may copy the public record and charge for the copies, but the fee may not exceed the reasonably calculated actual cost of the photocopies.

b. *Computerized Data:* If the reproduction is of computerized data or printouts on paper, the fee may not exceed the reasonably calculated actual cost of computer run time and the cost of the materials for making the copy.

c. *Electronic Data:* The custodian may charge for the reproduction of electronic data, although the custodian, depending on how the electronic data is stored, may determine the cost of reproduction in one of two ways, but in either case, the custodian’s charges may not exceed the reasonably calculated actual cost of reproduction:

1. the reasonably calculated actual cost or
2. by determining the cost of the following:
 - (a) the computer run time,
 - (b) any necessary analysis and programming, and
 - (c) the production of the report in the form furnished to the requester.

d. *Modem:* Counties that transmit a public record by modem may charge a reasonable fee for “such specialized service.” The fee must be reasonable and may include a portion of the amortization of the cost of computer equipment and software necessary to provide the service. Although a county may transmit via modem, counties are not required to obtain such specialized equipment to do so.

e. *State Gateway Services:* If a state agency provides electronic access to public records through a gateway service, the agency may obtain approval of the fee charged pursuant to Neb. Rev. Stat. §§ 84-1205.02 and 84-1205.03. The approved fee may include the cost for the gateway service.

Also, if the cost of production of documents is estimated by the custodian to exceed fifty dollars (\$50), the custodian may require a deposit prior to fulfilling the request. Neb. Rev. Stat. § 84-712(1)(d).

2. Particular fee specifications or provisions.

a. Search.

None.

b. Duplication.

Persons may obtain copies of any public record, although custodians may charge the reasonably calculated actual cost for reproducing public records, which may include a “reasonably calculated” fee for the custodian’s time to reproduce requested documents. Certified copies are available upon payment of cost of duplication, plus \$1 for certificates. Neb. Rev. Stat. § 25-1280. Certified copies of birth, death, or marriage certificates cost \$11. Neb. Rev. Stat. § 71-612 (Reissue 2009). Claimants before the U.S. Veteran’s Bureau or U.S. Bureau of Pensions may obtain certified copies free of charge. Neb. Rev. Stat. § 84-712.02.

3. Provisions for fee waivers.

None.

4. Requirements or prohibitions regarding advance payment.

If the cost of reproducing the records is estimated to exceed \$50, the custodian may require the requester to furnish a deposit before fulfilling the request.

5. Have agencies imposed prohibitive fees to discourage requesters?

Author is not aware of any prohibitive fees, and under Neb. Rev. Stat. § 84-712.01(2), it is a violation of statute to impose a fee that exceeds the reasonably calculated actual cost for reproducing the requested documents.

E. Who enforces the act?

The public records statutes can be enforced by a lawsuit brought by a dissatisfied requester or by the Attorney general. Neb. Rev. Stat. § 84-712.03.

1. Attorney General’s role.

Any person denied access to a record may petition the attorney general to review the matter to determine whether the record may be withheld from public inspection. The attorney general may order the custodian to disclose the record. If the custodian refuses, the requester may file suit or may demand that the attorney general do so. Neb. Rev. Stat. § 84-712.03.

2. Availability of an ombudsman.

Nebraska has a State Ombudsman, but he has no role in enforcing the public records statutes.

3. Commission or agency enforcement.

No such provision in the law.

F. Are there sanctions for noncompliance?

In a suit brought by a requester, the court may award attorneys fees if the requester has “substantially prevailed.” Neb. Rev. Stat. § 84-712.07. Violation of the public records statutes is a Class III misdemeanor, and any official who violates the statutes may be removed or impeached. Neb. Rev. Stat. § 84-712.09.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open records statute.

1. Character of exemptions.

a. General or specific?

The public records statutes presume that government records are public, “except where any other statute *expressly* provides that particular information or records shall not be made public.” Neb. Rev. Stat. § 84-712.01(1) (emphasis added). The attorney general has opined that the list of records that may be withheld from public inspection under Neb. Rev. Stat. § 84-712.05 are not “exemptions” to the public record statutes; i.e., the categories of records set out in that section (and

discussed below) are still public records, but they may be kept confidential at the discretion of their custodian. Op. Att’y. Gen. No. 94080 (Oct. 14, 1994). Additionally, various other statutes dealing with particular records exist. There is no general “public interest” exception for withholding records.

b. Mandatory or discretionary?

The exceptions contained in the public records statutes are discretionary. Records falling within those exceptions “may be withheld from the public by the lawful custodian of the records.” Neb. Rev. Stat. § 84-712.05 (Cum. Supp. 2010). Records that might otherwise be withheld must be made available for inspection if they have been “publicly disclosed in an open court, open administrative proceeding, or open meeting, or disclosed by a public entity pursuant to its duties.” *Id.* Record withholding pursuant to specific statutes other than the public records statutes may be either discretionary or mandatory.

c. Patterned after federal Freedom of Information Act?

The exemptions are not directly patterned after the Federal Freedom of Information Act.

2. Discussion of each exemption.

The following types of records, unless previously disclosed in “an open court, open administrative proceeding, or open meeting, or disclosed by a public entity pursuant to its duties,” may be withheld from the public (Neb. Rev. Stat. § 84-712.05(1) to (16) (Cum. Supp. 2010):

a. “Personal information in records regarding a student, prospective student, or former student of any educational institution or exempt school that has effectuated an election not to meet state approval or accreditation requirements pursuant to section 79-1601 when such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as such section existed on January 1, 2003;”

b. “Medical records, other than records of births and deaths and except as provided in subdivision (5) of this Section, in any form concerning any person, and also records of elections filed under section 44-2821 and patient safety work product under the Patient Safety Improvement Act;”

c. “Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;”

d. “Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body, or which are confidential communications as defined in section 27-503 [attorney/client privilege];”

e. “Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person;”

f. “Appraisals or appraisal information and negotiation records, concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;”

g. “Personal information in records regarding personnel of public bodies other than salaries and routine directory information;”

h. “Information solely pertaining to protection of the security of public property and persons on or within public property, such as

specific, unique vulnerability assessments or specific unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schemes, passwords, and user identification names; guard schedules; lock combinations; or public utility infrastructure specifications or design drawings the public disclosure of which would create a substantial likelihood of endangering public safety or property, unless otherwise provided by state or federal law;”

i. “The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities with which the division has entered into contractual relationships. Nothing in this subdivision shall allow the division to withhold from the public any information relating to amounts paid persons or entities with which the division has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the city, village, or county where the prize winner resides;”

j. “With respect to public utilities and except as provided in sections 43-512.06 and 70-101, personally identified private citizen account payment and customer use information, credit information on others supplied in confidence, and customer lists;”

k. “Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library’s materials or services;”

l. “Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature. The lawful custodian of such correspondence, memoranda, and records of telephone calls, whether created prior to, on, or after April 2, 1993, upon approval of the Executive Board of the Legislative Council, shall release such correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature pursuant to subsection (3) of section 81-1120.27 to the person the Executive Board of the Legislative Council has contracted with pursuant to section 50-401.04. A member’s correspondence, memoranda, and records of telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;”

m. “Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect such site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act;”

n. “Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act.”

o. “Job application materials submitted by applicants, other than finalists, who have applied for employment by any public body as defined in section 84-1409. For purposes of this subdivision, job application materials means employment applications, resumes, reference letters, and school transcripts, and finalist means any applicant who is offered and who accepts an interview by a public body or its agents, representatives, or consultants for any public employment position;” and

p. “Social security numbers, credit card, charge card, or debit card numbers and expiration dates; and financial account numbers supplied to state and local governments by citizens.”

q. Information exchanged between a jurisdictional utility and city pursuant to section 66-1867.

Exceptions not contained in the public records statutes will be discussed later as they relate to particular records.

B. Other statutory exclusions.

The provisions of the public records law may be overridden “where any other statute *expressly* provides that particular information or records shall not be made public.” Neb. Rev. Stat. § 84-712.01(1) (emphasis added).

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

There are no court-derived or common law exclusions or exceptions to the public records law. *But see* the Nebraska Supreme Court rule dealing with sealing certain court documents in connection with closing a hearing to the public and the Nebraska Supreme Court’s “Guidelines For Use By Nebraska Courts in Determining When and Under What Conditions a Hearing Before Such Court May Be Closed In Whole or In Part To The Public” (1986).

D. Are segregable portions of records containing exempt material available?

Neb. Rev. Stat. § 84-712.06 provides, “Any reasonably segregable public portion of a record shall be provided to the public as a public record upon request, after deletion of the portions which may be withheld.”

E. Homeland Security Measures.

The recent amendment of an existing exception to the Act, Neb. Rev. Stat. sec. 84-712.05(8), which has been in existence for many years, now allows the withholding of:

Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; lock combinations; or public utility infrastructure specifications or design drawings the public disclosure of which would create a substantial likelihood of endangering public safety or property, unless otherwise provided by state or federal law.

III. STATE LAW ON ELECTRONIC RECORDS

Access to electronic records was a matter of hot debate in Nebraska for the several years. The State Library Commission contracted with a private entity to provide for electronic record access in 1995, without first seeking legislative approval. This move angered many senators, and during the 1996 legislative session, a bill was passed that created a committee charged with studying the entire area of access to electronic records. Various legislation has been proposed, and as of the 2000 session, the Nebraska Legislature passed a bill, L.B. 628, to deal specifically with electronic records. Because of the surrounding controversy, however, more legislation may continue to modify this area of the law.

A. Can the requester choose a format for receiving records?

Yes. The party requesting the document may designate any form in which the public record is maintained or produced, including, but

not limited to, printouts, electronic data, discs, tapes and photocopies. Neb. Rev. Stat. § 84-712(3)(a). However, the agency need not produce or generate any record in a new or different form or format modified from the original form or format of the public record. Neb. Rev. Stat. § 84-712(3)(c). Also, persons may request copies only if the custodian has copying equipment reasonably available. Neb. Rev. Stat. § 84-712(3)(a). Persons also can choose a format for receiving records with regard to certain agencies whose records are available through the state's comprehensive website, Nebraska.gov.

B. Can the requester obtain a customized search of computer databases to fit particular needs?

Yes, for those agencies whose records are available through Nebraska.gov.

C. Does the existence of information in electronic format affect its openness?

No. Neb. Rev. Stat. § 84-712.01 provides in part, "Data which is a public record in its original form shall remain a public record when maintained in computer files." Neb. Rev. Stat. § 84-712.01(2) more specifically provides that agencies may charge a fee for the reasonable cost of producing documents, including an approved fee for gateway services and other electronic media. By this reference, electronic data is included in the open records laws. Neb. Rev. Stat. § 84-712(3)(b).

D. How is e-mail treated?

No statutes or case law address this specific issue. An attorney general opinion, Neb. Op. Att'y Gen. 04007, states that e-mails, faxes, or other electronic communications between elected officials and governmental staff are public records unless there is a specific statute that allows particular electronic materials to be kept confidential.

1. Does e-mail constitute a record?

Yes, Neb. Op. Atty. Gen. 04007.

2. Public matter on government e-mail or government hardware

No specific statutory or case law, but Neb. Op. Atty Gen. 04007, emails between government officials on government email systems are probably public record.

3. Private matter on government e-mail or government hardware

No statutory or case law.

4. Public matter on private e-mail

No statutory or case law.

5. Private matter on private e-mail

No statutory or case law.

E. How are text messages and instant messages treated?

Text messages and instant messaging are not addressed in the public records statutes.

1. Do text messages and/or instant messages constitute a record?

Text messages and instant messaging are not addressed in the public records statutes.

2. Public matter message on government hardware.

Text messages and instant messaging are not addressed in the public records statutes.

3. Private matter message on government hardware.

Text messages and instant messaging are not addressed in the public records statutes.

4. Public matter message on private hardware.

Text messages and instant messaging are not addressed in the public records statutes.

5. Private matter message on private hardware.

Text messages and instant messaging are not addressed in the public records statutes.

F. How are social media postings and messages treated?

Social media postings and messages are not treated in the public record statutes.

G. How are online discussion board posts treated?

Online discussion board posts are not treated in the public record statutes.

H. Computer software

Computer software is not addressed in the public record statutes.

1. Is software public?

Computer software is not addressed in the public record statutes.

2. Is software and/or file metadata public?

Metadata is not addressed in the public records statutes.

I. How are fees for electronic records assessed?

See Section I.D.1 Supra.

J. Money-making schemes.

Fees for copies of records, electronic or otherwise, are limited to costs, so "money making schemes" should not be allowed.

1. Revenues.

No law on point.

2. Geographic Information Systems.

No law on point.

K. On-line dissemination.

Neb. Rev. Stat. § 84-712(3)(b) acknowledges that electronic records can be disseminated online by provides no other guidance.

IV. RECORD CATEGORIES -- OPEN OR CLOSED

A. Autopsy reports.

No specific exceptions. Autopsy reports may not be public if the autopsy is performed as part of a law enforcement investigation.

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

No statutory or case law. To the extent an inspection or investigation is conducted by a law enforcement agency or other public body charged with duties of examination of persons, institutions or businesses, investigative records may be withheld. Neb. Rev. Stat. §84-712.05(5) (Cum. Supp. 2010).

1. Rules for active investigations.

There is no statutory or case law.

2. Rules for closed investigations.

There is no statutory or case law.

C. Bank records.

The public records statutes provide no access to records in the possession of a bank, as a bank is generally not considered to be part of

government. *See* I.B above. The name of a depositor or debtor of a bank and the amount of his deposit or debt to anyone may not be disclosed by the Nebraska Department of Banking and Finance, except that the department may give information regarding a borrower's total indebtedness to any bank owning obligations of the borrowers. Neb. Rev. Stat. § 8-112. Each bank must keep a list of all its stockholders and details of their ownership and must give access to such list to all of the bank's stockholders. Neb. Rev. Stat. § 8-127.

D. Budgets.

Budget documents relating to government bodies ought to be public records, as no statutory exceptions would apply.

E. Business records, financial data, trade secrets.

Proprietary trade information in the hands of government is excepted from public record access if release "would give advantage to business competitors and serve no public purpose." Neb. Rev. Stat. § 84-712.05(3) (Cum. Supp. 2010). Business records and financial data relating to government operations are ordinarily open for public inspection:

"Sections 84-712 to 84-712.03 shall be liberally construed whenever any state, county or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, payroll, check, receipt or other record of receipt, cash or expenditure involving public funds is involved in order that the citizens of this state shall have full rights to know of, and have full access to information on the public finances of the government and the public bodies and entities created to serve them." Neb. Rev. Stat. § 84-712.01(2).

F. Contracts, proposals and bids.

"Appraisals or appraisal information and negotiation records, concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale" are exempt from disclosure.

G. Collective bargaining records.

"Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body, or which are confidential communications as defined in section 27-503 [attorney/client privilege]" are exempt from disclosure.

H. Coroners reports.

No statute directly addresses access to coroners reports. Some counties have taken the position that such reports are not public under the medical records exception and investigation exception.

I. Economic development records.

No statute addresses public status of economic development records but they should be deemed public.

J. Election records.

Lists of all persons voting in a county are open to public inspection. Neb. Rev. Stat. § 32-937 (Reissue 2004). Applications for absentee ballots and absentee voter books are open to public inspection. Neb. Rev. Stat. § 32-948.

1. Voter registration records.

The Voter Registration Register is available for public inspection but may not be copied. Neb. Rev. Stat. §32-330. A list of registered voters minus personal identification information is available for sale by the Secretary of State.

2. Voting results.

Returns may not be released until polls close. Neb. Rev. State. §32-1008. Election results are public record although the Secretary of State may charge a fee. Neb. Rev. Stat. §32-1036.

K. Gun permits.

Information concerning an applicant or permitholder under the Concealed Handgun Permit Act is not public record. Neb. Rev. Stat. §69-2444.

L. Hospital reports.

Fiscal records of state, county or city hospitals are public. Medical records of individuals are not. Reports relating to Peer Reviews are not public.

M. Personnel records.

Job application materials for persons who are finalists for employment by public bodies are public. Neb. Rev. Stat. § 84-712.05 (Cum. Supp. 2010).

1. Salary.

Salaries of public employees are public record. Neb. Rev. Stat. §84-712.05(7) (Cum. Supp. 2010).

2. Disciplinary records.

Not public.

3. Applications.

Job application materials for persons who are finalists for employment by public bodies are public. Neb. Rev. Stat. §84-712.05(15) (Cum. Supp. 2010).

4. Personally identifying information.

Not public.

5. Expense reports.

There is no law on point.

6. Other.

There is no law on point.

N. Police records.

To the extent police records constitute part of an examination, investigation, intelligence information, citizen complaints or inquiries, informant identification or strategic information used in law enforcement training, they are not public.

1. Accident reports.

Accident reports prepared by law enforcement officers are public records. Neb. Rev. Stat. §60-699(4)(Reissue 2008).

2. Police blotter.

Police blotters are public records. Neb. Rev. Stat. §29-3521.

3. 911 tapes.

911 tapes may be withheld to the extent that they constitute investigatory records.

4. Investigatory records.

Investigatory records are generally not public. Neb. Rev. Stat. §84-712.05(5) (Cum. Supp. 2010).

a. Rules for active investigations.

There is no law on point.

b. Rules for closed investigations.

There is no law on point.

5. Arrest records.

Arrest records are public after an arrest warrant has been served.

6. **Compilations of criminal histories.**

Complete criminal history record information is public. Neb. Rev. Stat. §29-3520.

7. **Victims.**

There is no law on point.

8. **Confessions.**

There is no law on point.

9. **Confidential informants.**

There is no law on point.

10. **Police techniques.**

There is no law on point.

11. **Mug shots.**

Mug shots are public. Neb. Rev. Stat. §29-3521(Reissue 2008).

12. **Sex offender records.**

Information obtained under the Sex Offender Registration Act is generally confidential. Neb. Rev. Stat. §29-4009(Reissue 2008).

13. **Emergency medical services records.**

There is no law on point.

O. Prison, parole and probation reports.

Individual prisoner's files are kept confidential. Neb. Rev. Stat. § 83-178. Reports regarding conditions of confinement should be public record. *See* Neb. Rev. Stat. § 83-4,131. Pre-sentence investigation reports are confidential. Neb. Rev. Stat. § 29-2261(6).

P. Public utility records.

Personally identified private citizen account payment and customer use information, credit information on others supplied in confidence, and customer lists are not public. Neb. Rev. Stat. § 84-712.05(j).

Q. Real estate appraisals, negotiations.

Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of an interest in real or personal property, prior to completion of the purchase or sale.

4. **Deeds, liens, foreclosures, title history.**

Are public records.

5. **Zoning records.**

Are public records.

R. School and university records.

Personal information in records regarding students is not public, other than routine directory information.

S. Vital statistics.

1. **Birth certificates.**

Are public records, although requester must have a "proper purpose." Neb. Rev. Stat. §71-612 (Reissue 2009).

2. **Marriage & divorce.**

Marriage records are public. Court records concerning divorces are public.

3. **Death certificates.**

Are public records, although requester must have a "proper purpose." Neb. Rev. Stat. §71-612 (Reissue 2009).

4. **Infectious disease and health epidemics.**

Medical records of individuals are not public. Otherwise, there is no law on point.

V. **PROCEDURE FOR OBTAINING RECORDS**

A. **How to start.**

1. **Who receives a request?**

Requests should be made to persons with custody of the desired record(s). If the custodian is unknown, the request should be directed to the director of the agency or head of public body.

2. **Does the law cover oral requests?**

Nothing in the law prohibits oral requests. For a variety of practical reasons, however, written requests are preferable.

a. **Arrangements to inspect & copy.**

Inspection of documents must occur during ordinary business hours. If someone copies documents using their own copying or photocopying equipment, the copies must be made on the premises of the custodian or at a location mutually agreed to by the custodian and the person requesting the copies. Neb. Rev. Stat. § 84-712(2).

b. **If an oral request is denied:**

Submit a written request.

(1). **How does the requester memorialize the refusal?**

There is no law on point.

(2). **Do subsequent steps need to be in writing?**

There is no law on point.

3. **Contents of a written request.**

Nebraska law does not state formal requirements for requesting government records. Requests can be made orally or in writing, although any oral request that is denied should be promptly followed by a specific, detailed, written request so that attempted access is documented. Moreover, the four-day response period included in the 2000 amendments is triggered only by a written request. Each request should be as specific as possible by describing records with as much detail as possible, and should ask for prompt agency action on the request.

Neb. Rev. Stat. § 84-712.04 requires an agency denying a records request to provide, in writing, a description of the record withheld, the statutory authority under which the record is withheld, the name of the official responsible for denial of the request and notification of administrative or judicial remedies for denial. Each agency must maintain a file of such denial letters. Because such denial letter provides information helpful to further review of the denial, persons seeking access should follow up and obtain the denial letter if the record is not produced, and should cite § 84-712.04 in a written record request.

a. **Description of the records.**

Each request should be as specific as possible by describing records with as much detail as possible, and should ask for prompt agency action on the request.

b. **Need to address fee issues.**

In each request for records, it is helpful to acknowledge and agree to pay the fee that may be charged for reproducing requested documents, which may not exceed the actual cost of making the copies available. Particularly if the request involves a significant number of documents or is a complicated request, it also may be helpful to ask the custodian to contact you if the amount of the fee exceeds a certain amount.

c. Plea for quick response.

Neb. Rev. Stat. § 84-712.01(3) requires the custodian to provide access to or copies of requested documents “as soon as is practicable and without delay.” Unless the request is exceptionally difficult or extensive, the request must be completed within four business days following the receipt of the request. This does not preclude compliance before the end of the four-day period. If the request is simple, the custodian should comply before the four-day deadline. Therefore, it is possible that the request may be fulfilled sooner than four days. If this is important at the time of the request, the written request may identify the need for a timely response.

d. Can the request be for future records?

Not specified.

e. Other.

Records Custodian Accountability

1. Availability of Public Records

a. *Availability.* When a request is made, the custodian of public records to whom the request is directed must provide access to the records and copies of the requested records if copying equipment is reasonably available. Neb. Rev. Stat. § 84-712.01(3).

b. *Exceptions.* If there is a legal basis for denial of access and copies to requested public records, the custodian to whom the request is directed must provide a written denial of the request, which must include the following information:

1. a description of the contents of the records withheld;
2. a statement of the specific reasons for the denial, including citations to the particular statute relied upon for the denial;
3. the name of the public official or employee responsible for the decision to deny the request; and
4. Notification of any administrative or judicial right to review the decision to deny the claim.

Neb. Rev. Stat. § 84-712.02(3), 84-712.04.

2. Deadlines to Comply with Requests

a. The custodian must respond to a written request “as soon as practicable and without delay, but not more than four business days after actual receipt of the request.”

b. Within four days, the custodian must either

1. Produce copies or provide access to the documents requested.
2. If the custodian cannot comply with the request because of “exceptional difficulty or the extensiveness of the request,” the custodian must provide a written explanation of the delay, including the earliest practicable date for complying with the request, an estimate of the expected cost, and a chance to modify or prioritize the items within the request. Neb. Rev. Stat. § 84-712.02(3).
3. If the request for reproduction of documents is denied, the records custodian must provide a written denial as soon as practicable and without delay, but no more than four business days after actual receipt of the request. The written denial, among other things, must identify the legal basis for the denial.

B. How long to wait.

Neb. Rev. Stat. § 84-712.01(3) specifies that the custodian must respond to a written record request “as soon as practicable and without delay, but not more than four business days after actual receipt of the request.” Although the custodian may have as many as four days following the receipt of the records request, a response may come more quickly, particularly if the request is routine or not exceptionally difficult or extensive.

There is an exception to Neb. Rev. Stat. § 84-712.01(3) for requests that cannot with reasonable good faith efforts be fulfilled within the four-day deadline because the request is exceptionally difficult to fulfill or the request is too extensive. In this case, the custodian must, within the four-day time frame, provide a written explanation of why the custodian cannot comply with the deadline and must identify (1) the earliest practicable date for furnishing the copies, (2) an estimate of the expected cost, and (3) an opportunity for the requester to modify or prioritize the request.

1. Statutory, regulatory or court-set time limits for agency response.

Neb. Rev. Stat. § 84-712.01 (3) (Cum. Supp. 2004) specifically requires an agency to comply with a request “as soon as is practicable and without delay, but not more than four business days after actual receipt of the request.” A court order may require more prompt action than that depending on the circumstances.

2. Informal telephone inquiry as to status.

Not specified.

3. Is delay recognized as a denial for appeal purposes?

As long as the custodian sends a written explanation within four business days after actual receipt of the request that explains the reason for the delay in complying with the request, the delay should not be treated as a denial for appeal purposes.

4. Any other recourse to encourage a response.

If an agency refuses to respond to a written request for documents, there are several options:

a. File an action in district court for speedy relief by a writ of mandamus action.

b. File a petition with the attorney general to review the matter to determine whether the custodian has failed to comply with Neb. Rev. Stat. § 84-712 to 84-712.03. If the attorney general orders the custodian to disclose the record, and the agency fails to do so, the individual denied may sue in court or demand in writing that the attorney general sue the agency within fifteen (15) days.

C. Administrative appeal.

1. Time limit.

If the requester has not received a response within the statutory time limit (four days after the custodian receives the request), or has not received a request for extra time to comply with the request, or has not received a denial, a follow-up request should be made, either formally or informally.

2. To whom is an appeal directed?

a. Individual agencies.

There is no statutory procedure for appeal within the agency denying the request. An informal “appeal,” initiated by writing in a letter to the superior of the person denying the request, is occasionally effective.

b. A state commission or ombudsman.

There is no state commission or ombudsman to handle or oversee public records issues.

c. State attorney general.

A person denied rights under the public records law may “petition the attorney general to review the record and determine whether it may be withheld from public inspection.” Neb. Rev. Stat. § 84-712.03. There are no formal requirements for this “petition,” but it should identify the record withheld, include a copy of the agency’s denial letter, refer to any statutory authority that the requester feels compels access and request action pursuant to § 84-712.03. The “petition” may simply be a letter to the attorney general.

Under § 84-712.03, the attorney general must determine whether access should be granted within 15 calendar days of submission of the petition. If it is determined that the record may not be withheld, the attorney general must order the public body to immediately disclose the record. *Id.* If the public body continues to withhold the record, the requester may bring suit or demand, in writing, that the attorney general bring suit in the name of the state. If such demand is made, the attorney general must bring suit within 15 calendar days. The requester has an absolute right to intervene in any suit brought by the attorney general. *Id.*

3. Fee issues.

None specified.

4. Contents of appeal letter.

None specified. An informal “appeal,” initiated by writing in a letter to the superior of the person denying the request, is occasionally effective.

a. Description of records or portions of records denied.

There is no law on point.

b. Refuting the reasons for denial.

There is no law on point.

5. Waiting for a response.

Not addressed.

6. Subsequent remedies.

If the public body continues to withhold the record, the requester may bring suit or demand, in writing, that the attorney general bring suit in the name of the state.

D. Court action.

1. Who may sue?

“Any person” denied rights granted by the public records law may seek a writ of mandamus, compelling disclosure of the record. Neb. Rev. Stat. § 84-712.03(1). In addition, under § 84-712.03(2), if the attorney general determines that withheld records should be made public, he must demand that the custodian disclose the records. If the custodian does not comply with the attorney general’s direction, the attorney general must bring suit in the name of the state. The requester has an absolute right to intervene in any suit brought by the attorney general. *Id.*

2. Priority.

Neb. Rev. Stat. § 84-712.03 provides in part: “Proceedings arising under this section, except as to the cases the court considers of greater importance, shall take precedence on the docket over all other cases and shall be assigned for hearing, trial, or argument at the earliest practicable date and expedited in every way.”

3. Pro se.

Action may be brought *pro se*. It is probably better to ask the attorney general to sue rather than to bring a *pro se* action.

4. Issues the court will address:

“In any suit filed under this section, the court has jurisdiction to enjoin the public body from withholding records, to order disclosure, and to grant such other equitable relief as may be proper.” Neb. Rev. Stat. § 84-712.03.

5. Pleading format.

No statutory provision regarding pleading of public record violation. *See* Neb. Rev. Stat. § 25-2156 to 25-2169 for general mandamus requirements.

6. Time limit for filing suit.

No limitation period is stated in public records statutes. A four-year statute of limitations probably applies. *See* Neb. Rev. Stat. § 25-212 (“An action for relief not hereinbefore provided for can only be brought within four years after the cause of action.”) A requester failing to bring suit within a reasonable time may be guilty of laches.

7. What court.

Suit must be filed “in the district court within whose jurisdiction the state, county, or political subdivision officer who has custody of the public record can be served.” Neb. Rev. Stat. § 84-712.03.

8. Judicial remedies available.

“In any suit filed under this section, the court has jurisdiction to enjoin the public body from withholding records, to order disclosure, and to grant such other equitable relief as may be proper.” Neb. Rev. Stat. § 84-712.03.

9. Litigation expenses.

“In any case in which the complainant seeking access has substantially prevailed, the court may assess against the public body which had denied access to their records, reasonable attorney fees and other litigation costs reasonably incurred by the complainant.” Neb. Rev. Stat. § 84-712.07.

a. Attorney fees.

The court can assess reasonable attorney fees in a case in which the complainant has substantially prevailed.

b. Court and litigation costs.

The court can assess litigation costs reasonably incurred by the complainant if he or she has substantially prevailed.

10. Fines.

Only if the custodian is prosecuted and convicted of a crime under § 84-712.09. Conviction under that statute is a Class III misdemeanor, which carries a possible maximum fine of \$500.

11. Other penalties.

“Any official who shall violate the provisions of [the public records statutes] shall be subject to removal or impeachment and in addition shall be deemed guilty of a Class III misdemeanor.” Neb. Rev. Stat. § 84-712.09.

12. Settlement, pros and cons.

Not addressed.

E. Appealing initial court decisions.

1. Appeal routes.

From district court to Nebraska Court of Appeals. *See* Neb. Rev. Stat. § 24-1106.

2. Time limits for filing appeals.

Notice of appeal and docket fee must be filed with clerk of district court within one month after judgment. Neb. Rev. Stat. § 25-1912.

For time limits on filing transcript, bill of exceptions and briefs in Court of Appeals, *see* Neb. Rev. Stat. § 25-1912 and *Neb. Sup. Ct. R.* §§

3. Contact of interested amici.

Neb. Court of Appeals may allow *amici* participation, at its discretion. *See Neb. Sup. Ct. R.* 9 and 11. Persons seeking *amici* assistance should contact Nebraska Press Association and Nebraska Broadcasters Association. In addition, the Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

F. Addressing government suits against disclosure.

This issue has not yet come up in Nebraska.

Open Meetings

I. STATUTE -- BASIC APPLICATION.

A. Who may attend?

"The public" has a right to attend all or any part of a meeting of a "public body," except closed sessions as defined by statute. Neb. Rev. Stat. § 84-1412. There is no statutory or court definition of "the public," but the phrase does include "the media." *Grein v. Board of Education*, 216 Neb. 158, 163, 343 N.W.2d 718, 722 (1984).

B. What governments are subject to the law?

The statute applies to various "public bodies" (see below) of state, county and local governments, including "governing bodies" of all political subdivisions, the governing bodies of all agencies of the executive department that are created pursuant to state law, and all independent boards, commissions, bureaus, committees, councils, subunits or any other bodies created pursuant to state law. Neb. Rev. Stat. § 84-1409.

1. State.

See above.

2. County.

See above.

3. Local or municipal.

See above.

C. What bodies are covered by the law?

1. Executive branch agencies.

The statute does not specifically address application to chief executive officers, such as governor or mayor, but would apply to such individuals to the extent they are members of bodies referred to below. Statute applies to "governing bodies" of all state executive agencies, Neb. Rev. Stat. § 84-1409 (1)(a)(ii), "governing bodies" of all political subdivisions, executive or otherwise, § 84-1409 (1)(a)(i), all study or advisory committees of the executive department of the state, § 84-1409 (1)(a)(iv), and advisory committees of "governing bodies" of all political subdivisions, executive or otherwise, § 84-1409 (1)(a)(v).

a. What officials are covered?

See above.

b. Are certain executive functions covered?

See above.

c. Are only certain agencies subject to the act?

See above.

2. Legislative bodies.

The Nebraska Legislature and its committees are not expressly subject to the Public Meetings Law, although one writer has opined to the contrary. *See Note, Nebraska Unicameral Rule 3, Section 15: To Whom Must the Door Be Open?* 64 Neb. L. Rev. 282 (1985). Neb. Const. Art. III, § 11, provides "the doors of the Legislature and of Committees of the Whole, shall be open, unless when the business shall be such as ought to be kept secret." Rule 3, § 15, Rules of Nebraska Unicameral Legislature (2005), provides that executive sessions of legislative committees may be closed to general public, but open to "members of the news media."

3. Courts.

The Public Meetings Law does not apply to courts, "unless a court or other judicial body is exercising rulemaking authority, deliberat-

ing, or deciding upon the issuance of administrative orders.” Neb. Rev. Stat. § 84-1409. The Nebraska Attorney General has opined that quasi-judicial proceedings conducted by entities that would otherwise be considered “public bodies” are not subject to the Public Meetings Law. See Op. Att’y Gen. No. 99046 (11-15-99); Op. Att’y Gen. No. 93065 (7-27-93); Op. Att’y Gen. No. 210 (5-11-84). Neb. Const. Art. I, § 13, states “All courts shall be open . . .” Neb. Rev. Stat. § 24-1001 provides, “All judicial proceedings of all courts established in this state must be open to the attendance of the public unless otherwise specified by statute.” Nebraska Supreme Court has promulgated “Guidelines For Use By Nebraska Courts in Determining When and Under What Conditions a Hearing Before Such Court May Be Closed In Whole or In Part To The Public” (1986).

4. Nongovernmental bodies receiving public funds or benefits.

County agricultural societies, which are private corporations that receive tax funds, are public bodies subject to Public Meetings Law. *Nixon v. Madison Co. Ag. Soc’y*, 217 Neb. 37, 348 N.W.2d 119 (1984). Rule of cited case appears to have broad application. A 1992 amendment to the statute includes within the definition of “public body” “instrumentalities exercising essentially public functions.” Neb. Rev. Stat. § 84-1409(1)(vi).

5. Nongovernmental groups whose members include governmental officials.

No law.

6. Multi-state or regional bodies.

No case law. There is a serious federal constitutional question whether a state can unilaterally enforce its laws against an agency created by an interstate compact of which the state is a member and to which Congress has given its consent. The Nebraska Attorney General has opined that the open meeting law does not apply to the Central Interstate Low-Level Radioactive Waste Commission, an administrative body created by an interstate compact. Op. Att’y Gen. No. 89008 (2-14-89).

7. Advisory boards and commissions, quasi-governmental entities.

Advisory boards of public bodies at both state and local level are subject to law. Neb. Rev. Stat. § 84-1409(1)(a)(v).

8. Other bodies to which governmental or public functions are delegated.

“Instrumentalities exercising essentially public functions” are subject to law. Neb. Rev. Stat. § 84-1409(1)(a)(vi).

9. Appointed as well as elected bodies.

Public Meetings Law draws no distinctions between elected and appointed positions or bodies. The Public Meetings Law applies to appointed bodies, as well as elected bodies. § 84-1409(1)(a)(iii) and (iv).

D. What constitutes a meeting subject to the law.

1. Number that must be present.

Public Meetings Law does not define number of members of public body that must be present, nor does it define a quorum, or effect of absence of a quorum. A 1992 amendment states that the Public Meetings Law does not apply to subcommittees of public bodies “unless a quorum of the public body attends a subcommittee meeting.” Neb. Rev. Stat. § 84-1409(1)(b)(i). Particular statutes governing individual boards, agencies or public bodies may define such requirements.

2. Nature of business subject to the law.

Meetings of public bodies “for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action by the public body,” are subject to Public Meetings Law. Neb.

Rev. Stat. § 84-1409(2).

a. “Information gathering” and “fact-finding” sessions.

If a quorum of the public body is present, the open meetings law applies to information gathering or fact-finding sessions. “Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body.” Neb. Rev. Stat. § 84-1409(2).

b. Deliberations toward decisions.

These should be covered by the open meetings law. See above (“discussion of public business” and “formation of tentative policy”).

3. Electronic meetings.

a. Conference calls and video/Internet conferencing.

Neb. Rev. Stat. § 84-1411(2) (Cum. Supp. 2010) allows videoconference meetings for statewide public bodies, subject to certain restrictions (i.e., no more than one-half of bodies’ meetings in a calendar year may be by videoconference, and at least one member of body must be present at each site of the videoconference). Emergency meetings of public bodies may be held “by means of electronic or teleconferencing equipment.” Neb. Rev. Stat. § 84-1411(4) (Cum. Supp. 2010).

b. E-mail.

No law, but Neb. Rev. Stat. § 84-1411(5) (Cum. Supp. 2004) allows emergency meetings by “electronic . . . equipment.”

c. Text messages.

There is no law on point.

d. Instant messaging.

There is no law on point.

e. Social media and online discussion boards.

There is no law on point.

E. Categories of meetings subject to the law.

Neb. Rev. Stat. § 84-1409(2) makes “all regular, special, or called meetings, formal or informal, of any public body [see generally I.C. above] for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body,” subject to the terms of the Public Meetings Law.

1. Regular meetings.

a. Definition.

The definition of regular meetings, together with notice publication requirements, are sometimes contained in separate statutes governing each individual board, agency, etc.

b. Notice.

Public bodies subject to Public Meetings Law must give “reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes.” Neb. Rev. Stat. § 84-1411(1) (Cum. Supp. 2010).

(1). Time limit for giving notice.

Public Meetings Law requires only that “reasonable advance . . . notice” be given. What is reasonable remains a question of interpretation, but should be more than a posting in three public places at 10:00 p.m. the evening before a special meeting. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979). Separate statutes governing particular public bodies may contain more specific requirements.

(2). To whom notice is given.

Notice given to “public” generally. Additionally, “the secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at the meeting.” Neb. Rev. Stat. § 84-1411(4) (Cum. Supp. 2010).

(3). Where posted.

Public Meetings Law does not define, although particular statutes governing specific public bodies may.

(4). Public agenda items required.

Notice must contain agenda of subjects known at time of publicized notice, or else statement that current agenda is available for public inspection at principal office of public body. Neb. Rev. Stat. § 84-1411(1) (Cum. Supp. 2010). Agenda may not be altered within 24 hours of meeting, except for “items of an emergency nature.” *Id.*

(5). Other information required in notice.

Notice must state “time and place of each meeting.” Neb. Rev. Stat. § 84-1411.

(6). Penalties and remedies for failure to give adequate notice.

Meeting held pursuant to inadequate notice may be declared void by district court. Neb. Rev. Stat. § 84-1414(1) (Cum. Supp. 2010); *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 287 (1979). Court may award attorney fees to party successfully attacking inadequate notice. § 84-1414(3). Knowing violation of statute by member of public body is a Class IV misdemeanor for first violation, Class III misdemeanor for second and subsequent violations. Neb. Rev. Stat. § 84-1414(4).

c. Minutes.**(1). Information required.**

Minutes must show time, place, members present and absent, and the substance of all matters discussed. Neb. Rev. Stat. § 84-1413(1) (Cum. Supp. 2010). Minutes must state how each member voted on roll call vote. Neb. Rev. Stat. § 84-1413(2) (Cum. Supp. 2008).

(2). Are minutes public record?

Yes. “The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.” Neb. Rev. Stat. § 84-1413(4) (Cum. Supp. 2010). Minutes are available for public inspection within 10 working days after meeting or prior to next convened meeting, whichever is earlier. Neb. Rev. Stat. § 84-1413(5) (Cum. Supp. 2010).

2. Special or emergency meetings.**a. Definition.**

None. However, the nature of the emergency must be stated in the minutes. Neb. Rev. Stat. § 84-1411(5) (Cum. Supp. 2010).

b. Notice requirements.

No specific notice requirements for emergency meetings, except news media must be informed as outlined in I.E.1.b(2) above. Neb. Rev. Stat. § 84-1411(5) (Cum. Supp. 2010).

(1). Time limit for giving notice.

There are no specific notice requirements for emergency meetings.

(2). To whom notice is given.

No specific notice requirements for emergency meetings, except news media must be informed as outlined in I.E.1.b(2) above. Neb. Rev. Stat. § 84-1411(5) (Cum. Supp. 2010).

(3). Where posted.

There is no law on point.

(4). Public agenda items required.

No specific notice requirements for emergency meetings, except news media must be informed as outlined in I.E.1.b(2) above. Neb. Rev. Stat. § 84-1411(5) (Cum. Supp. 2010).

(5). Other information required in notice.

No specific notice requirements for emergency meetings, except news media must be informed as outlined in I.E.1.b(2) above. Neb. Rev. Stat. § 84-1411(5) (Cum. Supp. 2010).

(6). Penalties and remedies for failure to give adequate notice.

No specific notice requirements for emergency meetings, except news media must be informed as outlined in I.E.1.b(2) above. Neb. Rev. Stat. § 84-1411(5) (Cum. Supp. 2010).

c. Minutes.**(1). Information required.**

In addition to the time, place, members present and absent, the substance of all matters discussed and how each member voted on roll call vote, the nature of emergency and any formal action taken must be listed in minutes, and must be available to public no later than end of the next business day following the emergency meeting. Neb. Rev. Stat. § 84-1411(5) (Cum. Supp. 2010).

(2). Are minutes a public record?

Yes.

3. Closed meetings or executive sessions.**a. Definition.**

“Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting.” Neb. Rev. Stat. § 84-1410(1). Statute offers nonexclusive, illustrative examples of reasons for closed session. *See* Section II of this outline below.

b. Notice requirements.

Proposed closed session should be included in agenda, unless it is properly considered an emergency. Neb. Rev. Stat. § 84-1411(1) (Cum. Supp. 2010).

c. Minutes.**(1). Information required.**

“The vote of each member on the question of holding a closed session, the reason for the closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes.” Neb. Rev. Stat. § 84-1410(2). While the minutes must include the information detailed in Neb. Rev. Stat. § 84-1410(2), no other information needs to be provided in the minutes of a closed meeting. *See* Neb. Op. Att’y Gen. No. 98045 (11-3-98) (providing that minutes of all matters discussed need not be kept when a public body is meeting in closed or executive sessions).

(2). Are minutes a public record?

The Nebraska Attorney General ruled that a public body in closed session need not keep minutes of the closed meeting discussion in part because the minutes are a matter of public record and therefore would defeat the purpose of a closed meeting. Neb. Op. Att’y Gen. No. 98045 (11-3-98).

d. Requirement to meet in public before closing meeting.

“The vote to hold a closed session shall be taken in open session.” Neb. Rev. Stat. § 84-1410(2).

e. Requirement to state statutory authority for closing meetings before closure.

Yes. “The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes.” Neb. Rev. Stat. § 84-1410(2) (Reissue 2010). If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session.” Neb. Rev. Stat. § 84-1410(2).

f. Tape recording requirements.

No law. A bill that would have required public bodies to record closed sessions was killed by the Legislature in the 2001 session.

F. Recording/broadcast of meetings.

All or any part of a meeting of a public body, except for closed sessions, discussed below, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing. Neb. Rev. Stat. § 84-1412(1). Public body may make and enforce “reasonable rules” regarding conduct of persons attending, videotaping, televising, photographing, broadcasting or recording its meetings. Neb. Rev. Stat. § 84-1412(2).

1. Sound recordings allowed.

All or any part of a meeting of a public body, except for closed sessions, discussed below, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

2. Photographic recordings allowed.

All or any part of a meeting of a public body, except for closed sessions, discussed below, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

G. Are there sanctions for noncompliance?

Neb. Rev. Stat. sec. 84-1414(4) makes it a Class IV misdemeanor for first offense and a Class III misdemeanor for second and subsequent offenses for any member of a public body who knowingly violates or conspires to violate the open meetings law, or who remains at a meeting knowing that the public body is violating the law.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

The exemption provision of Public Meetings Law, allowing closed or executive sessions, is contained in Neb. Rev. Stat. § 84-1410 (Cum. Supp. 2004).

1. Character of exemptions.

a. General or specific.

Closed session is allowed generally by majority vote of members of public body, “if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting.” Neb. Rev. Stat. § 84-1410(1). The law provides that, “[c]losed sessions may be held for, but shall not be limited to, such reasons as” those listed in the specific exemptions. Neb. Rev. Stat. § 84-1410(1).

The “public interest” under § 84-1410, “is that shared by citizens in general and by the community at large concerning pecuniary or legal rights and liabilities.” *Grein v. Board of Education*, 216 Neb. 158, 164, 343 N.W.2d 718, 723 (1984). Where public finances are involved, the “public interest” ordinarily demands an open meeting. *Id.* The reputa-

tion to be protected may not be that of the public body, and “slight discomfort” to an individual is insufficient to overcome the presumption of openness. *Id.*

b. Mandatory or discretionary closure.

Closure is discretionary with the public body, subject to the limits of the Public Meetings Law. The Public Meetings Law does not require closure. Neb. Rev. Stat. § 84-1410(4).

2. Description of each exemption.

Public Meetings Law allows for closed sessions where the closed session is “clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual.” The Public Meetings Law then lists nonexclusive examples deemed to meet this standard. Those examples are discussed below.

Strategy sessions. Neb. Rev. Stat. § 84-1410(1)(a) allows public body to meet in closed session for “[s]trategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent evidenced by communication of a claim or threat of litigation to or by the public body.”

Discussion of security. Neb. Rev. Stat. § 84-1410(1)(b) allows public body to meet in closed session for “[d]iscussion regarding deployment of security personnel or devices.”

Investigating crime. Neb. Rev. Stat. § 84-1410(1)(c) allows public body to meet in closed session for “[i]nvestigative proceedings regarding allegations of criminal misconduct.”

Job performance evaluation. Neb. Rev. Stat. § 84-1410(1)(d) allows public body to meet in closed session for “[e]valuation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting.”

Election or appointment of new member. A closed session may *not* be held for purposes of “discussion of the appointment or election of a new member to any public body.” Neb. Rev. Stat. § 84-1410(1).

B. Any other statutory requirements for closed or open meetings.

Closed sessions may be held only upon the affirmative vote of a majority of members of the public body, in open session. The entire motion, the vote of each member on the closure question, and the time when the closed session commenced and concluded, must be stated in the minutes. Closed session discussion is restricted to consideration of matters set forth in minutes as reason for closed session. Open session must be reconvened before any formal action may be taken. An individual member of the public body may challenge closure if discussion exceeds stated reason for closed session. A public body may not fail to invite members, or rely on chance meetings, social gatherings or electronic communications to circumvent statutory provisions. Neb. Rev. Stat. § 84-1410.

A vote in open session without discussion, following closed session, may be mere rubber stamping of decisions actually reached in closed session, and violates public meetings law. *Grein v. Board of Education, supra.* Good faith motivation is not cure for noncompliance with public meetings law, nor is it defense to lawsuit seeking nullification of action taken at illegal closed session. *Id.*

C. Court mandated opening, closing.

There are no statutory provisions for court mandated closing of meetings. For discussion of court-mandated opening, see Section IV below.

III. MEETING CATEGORIES -- OPEN OR CLOSED.

A. Adjudications by administrative bodies.

Neb. Rev. Stat. § 84-1409(1)(b)(ii) provides that “entities conducting judicial proceedings” are not public bodies for purposes of the

public meeting laws. The attorney general has extrapolated from this statutory language, and has opined that administrative bodies engaged in “quasi – judicial proceedings” are not subject to the public meeting laws. Op. Atty Gen. No. 99046(1999). Neb. Rev. Stat. § 84-1410(1) (Cum. Supp. 2008) states that a closed session is allowed generally by majority vote of members of public body, “if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting”. See also, Section I.C.3 above regarding quasi-judicial proceedings.

B. Budget sessions.

No specific exemption, *but see Grein v. Board of Education*, 216 Neb. 158, 164, 343 N.W.2d 718, 723 (1984). Where public finances are involved, the “public interest” ordinarily demands an open meeting. *Id.*

C. Business and industry relations.

No specific exemption, *but see Grein v. Board of Education*, 216 Neb. 158, 164, 343 N.W.2d 718, 723 (1984). Where public finances are involved, the “public interest” ordinarily demands an open meeting. *Id.*

D. Federal programs.

No specific exemption, *but see Grein v. Board of Education*, 216 Neb. 158, 164, 343 N.W.2d 718, 723 (1984). Where public finances are involved, the “public interest” ordinarily demands an open meeting. *Id.*

E. Financial data of public bodies.

No specific exemption. But, the “public interest” ordinarily demands that discussions of financial data be open to the public. *Grein v. Board of Education*, 216 Neb. 158, 164, 343 N.W.2d 718, 723 (1984).

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

No specific exemption, *but see Grein v. Board of Education*, 216 Neb. 158, 164, 343 N.W.2d 718, 723 (1984). Where public finances are involved, the “public interest” ordinarily demands an open meeting. *Id.* The reputation to be protected may not be that of the public body, and “slight discomfort” to an individual is insufficient to overcome the presumption of openness. *Id.*

G. Gifts, trusts and honorary degrees.

No specific exemption.

H. Grand jury testimony by public employees.

No specific exemption. However, a closed session is allowed generally by majority vote of members of public body, “if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting.” Neb. Rev. Stat. § 84-1410(1).

I. Licensing examinations.

No specific exemption.

J. Litigation; pending litigation or other attorney-client privileges.

Neb. Rev. Stat. § 84-1410(1)(a) allows public body to meet in closed session for “[s]trategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent evidenced by communication of a claim or threat of litigation to or by the public body.” *Id.*

K. Negotiations and collective bargaining of public employees.

Neb. Rev. Stat. § 84-1410(1)(a) allows public body to meet in closed session for “[s]trategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent evidenced by communication of a claim or threat of litigation

to or by the public body.” *Id.* Negotiation guidance is not considered “formal action” for purposes of Public Meetings Law. Neb. Rev. Stat. § 84-1410(2).

1. Any sessions regarding collective bargaining.

See above.

2. Only those between the public employees and the public body.

See above.

L. Parole board meetings, or meetings involving parole board decisions.

No specific exemption. However, the privacy exemption might apply. See Neb. Rev. Stat. § 84-1410(1). The Nebraska Attorney General has found that parole hearings before the Nebraska Parole Board are quasi-judicial proceedings that are not subject to the Public Meetings Law. Op. Att’y Gen. No. 63065 (7-27-93).

M. Patients; discussions on individual patients.

No specific exemption. However, the privacy exemption might apply. See Neb. Rev. Stat. § 84-1410(1) (Cum. Supp. 2004).

N. Personnel matters.

1. Interviews for public employment.

No specific exemption. However, a closed session is allowed generally by a majority vote of members of public body, “if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting.” Neb. Rev. Stat. § 84-1410(1). The attorney general has opined that interviews of applicants for public employment must take place in open session. Op. Att’y Gen. No. 94035 (5-11-94). In connection with legislation that made public employment application materials public records, there was substantial legislative history made indicating that the Legislature agrees with the attorney general’s opinion that interviews of applicants for public employment must take place in open session.

2. Disciplinary matters, performance or ethics of public employees.

Neb. Rev. Stat. § 84-1410(1)(d) allows a public body to meet in closed session for “[e]valuation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting.”

3. Dismissal; considering dismissal of public employees.

Neb. Rev. Stat. § 84-1410(1)(d) allows public body to meet in closed session for “[e]valuation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting.”

O. Real estate negotiations.

Negotiations for purchase of land need not be conducted at an open meeting, but deliberations of public body as to whether an offer to purchase real estate should be made should take place in an open meeting. *Pokorny v. City of Schuyler, supra.*

P. Security, national and/or state, of buildings, personnel or other.

Neb. Rev. Stat. § 84-1410(1)(b) allows public body to meet in closed session for “[d]iscussion regarding deployment of security personnel or devices.”

Q. Students; discussions on individual students.

No specific exemption. However, the privacy exemption might apply. See Neb. Rev. Stat. § 84-1410(1).

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

A. When to challenge.

1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

Public meetings law does not provide for pre-meeting challenge of contemplated closed session, although request to attorney general may operate in that way.

2. When barred from attending.

Closed meeting is void if successful suit filed within 120 days of meeting. Closed meeting is voidable if successful suit filed after 120 days from meeting, but before one year after meeting. Suit is time-barred if not filed within one year of meeting. Neb. Rev. Stat. § 84-1414(1).

3. To set aside decision.

Actions taken may be voidable if successful suit filed after 120 days from meeting, but before one year after meeting. Suit is time-barred if not filed within one year of meeting. Neb. Rev. Stat. § 84-1414(1).

4. For ruling on future meetings.

Public Meetings Law does not provide for ruling on future meetings. As a matter of equity law, court may not enjoin future violations of Public Meetings Law unless reasonable probability of specific future violations is proved. *Greim v. Board of Education*, 343 N.W.2d 718 (1984).

5. Other.

N/A.

B. How to start.

1. Where to ask for ruling.

a. Administrative forum.

No specific administrative forum provided, although letter to public body pointing out violation is occasionally successful.

b. State attorney general.

The county attorney for the county in which the public body meets and the Nebraska Attorney General “shall enforce the provisions of” the Public Meetings Law. Neb. Rev. Stat. § 84-1414(2). There is no specific enforcement procedure stated. A letter informing the county attorney or attorney general of violations should be sufficient.

c. Court.

“Any citizen of this state” may sue in district court in the county in which the public body meets to seek compliance with Public Meetings Law. Neb. Rev. Stat. § 84-1414(3).

2. Applicable time limits.

Closed meeting is void if successful suit filed within 120 days of meeting. Closed meeting is voidable if successful suit filed after 120 days from meeting, but before one year after meeting. Suit is time-barred if not filed within one year of meeting. Neb. Rev. Stat. § 84-1414(1).

3. Contents of request for ruling.

No statutory requirements as to contents. Rules issued by the Nebraska Supreme Court, “Nebraska Rules of Pleading in Civil Actions,” govern pleadings in civil cases. If complaining party files suit, such action must comply with general rules governing civil cases.

4. How long should you wait for a response?

No time limits for response stated in statute. A two-to-three week response period should be sufficient in administrative forum. Resolution on merits in court will take longer.

5. Are subsequent or concurrent measures (formal or informal) available?

No statutory authority. Ultimate subsequent measure is filing suit in district court.

C. Court review of administrative decision.

1. Who may sue?

“Any citizen of this state” may sue in district court in county in which public body meets to seek compliance with Public Meeting Law. Neb. Rev. Stat. § 84-1414(3).

2. Will the court give priority to the pleading?

No provision for expedited review. Depends on judge.

3. Pro se possibility, advisability.

Complaining party may bring case *pro se*. It is probably wiser to ask the county attorney or attorney general to bring suit. Members should inquire to Nebraska Press Association or Nebraska Broadcasters Association.

4. What issues will the court address?

a. Open the meeting.

Although there is no specific statutory authority, a party may be able to obtain a temporary restraining order against a contemplated violation of Public Meetings Law.

b. Invalidate the decision.

A court may declare a decision that violates law void. Neb. Rev. Stat. § 84-1414(1).

c. Order future meetings open.

Probably not.

5. Pleading format.

Nebraska Rules of Pleading in Civil Actions govern pleadings in civil cases. If complaining party files suit, such action must comply with general rules governing civil cases.

6. Time limit for filing suit.

Suit is time-barred if not filed within one year of meeting. Neb. Rev. Stat. § 84-1414(1).

7. What court.

District court for county in which public body meets. Neb. Rev. Stat. § 84-1414(3).

8. Judicial remedies available.

A court may declare decision in illegal closed session void. Neb. Rev. Stat. § 84-1414(1). Although there is no specific statutory authority, a party may be able to obtain a temporary restraining order against a contemplated violation of Public Meetings Law.

9. Availability of court costs and attorneys’ fees.

Court may award court costs and attorney’s fees to successful plaintiff. Neb. Rev. Stat. § 84-1414(3).

10. Fines.

Knowing violation of Public Meetings Law is Class IV misdemeanor for first violation and Class III misdemeanor for second and subsequent violations. Neb. Rev. Stat. § 84-1414(4). Maximum penalty for Class IV misdemeanor is \$500 fine; no imprisonment available. Neb. Rev. Stat. § 28-106(1). Maximum penalty for Class III misdemeanor is three months imprisonment, \$500 fine, or both. *Id.*

D. Appealing initial court decisions.

1. Appeal routes.

From district court to Nebraska Court of Appeals. *See* Neb. Rev. Stat. § 24-1106.

2. Time limits for filing appeals.

Notice of appeal and docket fee must be filed with clerk of district court within one month after judgment. Neb. Rev. Stat. § 25-1912. For time limits on filing transcript, bill of exceptions and briefs in Court of Appeals, *see* Neb. Rev. Stat. § 25-1912 (Reissue 1995) and Neb. Sup. Ct. R. §§ 2-101, 2-102, 2-104, 2-105 and 2-109.

3. Contact of interested amici.

Neb. Court of Appeals may allow *amici* participation, at its discretion. *See* Neb. Sup. Ct. R. §§ 2-109 and 2-111. Persons seeking *amici* assistance should contact Nebraska Press Association and Nebraska Broadcasters Association. In addition, the Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

V. ASSERTING A RIGHT TO COMMENT.

A. Is there a right to participate in public meetings?

The public has the right to attend and the right to speak at meetings of public bodies except for closed sessions. Neb. Rev. Stat. § 84-1412(1). The governing body, however, is authorized to make and enforce "reasonable rules and regulations regarding the conduct of persons attending, speaking at . . . its meetings" and may choose to prevent citizen comments at a meeting. But, the body "may not forbid public participation at all meetings." Neb. Rev. Stat. § 84-1412(2). The public body may not refuse admission to any member of the public for failure to identify themselves, but the public body may require any member of the public to identify himself or herself before addressing the public body. Neb. Rev. Stat. § 84-1412(3).

B. Must a commenter give notice of intentions to comment?

No statutory requirement to give notice of intentions to comment, although an individual public body may make and enforce reasonable rules and regulations regarding the conduct of citizens attending or speaking at the meeting, which, if reasonable, may include the requirement that the commentator give notice of intentions to comment. Neb. Rev. Stat. § 84-1412(2).

C. Can a public body limit comment?

Presumably, a public body can limit comment if the public body determines that this is a reasonable rule or regulation regarding the meeting. Neb. Rev. Stat. § 84-1412(2).

D. How can a participant assert rights to comment?

No statutory guidance, although a public body may establish reasonable rules and regulations regarding how a participant asserts his or her rights to comment.

E. Are there sanctions for unapproved comment?

No authority.

Appendix

Model letter for records request

Dear [Custodian of Records]:

This is a request for [access to] [copies of] the public records described below, made pursuant to the Nebraska public records statutes, *Neb. Rev. Stat. §§ 84-712 et seq.* [and, if applicable, the Nebraska Criminal History Information Act, *Neb. Rev. Stat. §§ 29-3520 and 3521*].

I desire [access to] [copies of] the following records:

[Here, describe the records sought with as much detail as possible.]

I understand that you may charge a fee not exceeding the actual cost of making the copies available, and I agree to pay such fee. If the cost of the copies sought in this request will exceed \$ _____, please let me know that before making the copies.

Pursuant to Section 84-712, you are required to provide the [access] [copies] requested in this letter within four business days from your receipt of this letter, or else provide the written explanation required by that statute.

While I am confident that the records requested are public records under the statutes, if for any reason you deny this request, please provide the information required by Section 84-712.04, specifically:

(a) A description of the contents of the records withheld and a statement of the specific reasons for the denial, correlating specific portions of the records to specific reasons for the denial, including citations to the particular statute and subsection thereof expressly providing the exception under section 84-712.01 relied on as authority for the denial;

(b) The name of the public official or employee responsible for the decision to deny the request; and

(c) Notification to the requester of any administrative or judicial right of review under section 84-712.03.

You may transmit the copies to the address listed above. I am preparing news information for current publication and it is therefore important to me that I receive the requested records in a timely manner. If there is anything I can do to clarify this request for you, or otherwise assist your fulfillment of this request, you can reach me at [telephone number].

Thank you for your attention.

Sincerely,

[Name]

Statute

Open Records

Neb. Rev. Stat. § 84-712 et seq.

§ 84-712. Public records; free examination; memorandum and abstracts; copies; fees.

(1) Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, as defined in section 84-712.01, are hereby fully empowered and authorized to (a) examine the same, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

(2) Copies made by citizens or other persons using their own copying or photocopying equipment pursuant to subdivision (1)(a) of this section shall be made on the premises of the custodian of the public record or at a location mutually agreed to by the requester and the custodian.

(3)

(a) Copies may be obtained pursuant to subdivision (1)(b) of this section only if the custodian has copying equipment reasonably available. Such copies may be obtained in any form designated by the requester in which the public record is maintained or produced, including, but not limited to, printouts, electronic data, discs, tapes, and photocopies.

(b) Except as otherwise provided by statute, the custodian of a public record may charge a fee for providing copies of such public record pursuant to subdivision (1)(b) of this section, which fee shall not exceed the actual cost of making the copies available. For purposes of this subdivision,

(i) for photocopies, the actual cost of making the copies available shall not exceed the amount of the reasonably calculated actual cost of the photocopies,

(ii) for printouts of computerized data on paper, the actual cost of making the copies available shall include the reasonably calculated actual cost of computer run time and the cost of materials for making the copy, and

(iii) for electronic data, the actual cost of making the copies available shall include the reasonably calculated actual cost of the computer run time, any necessary analysis and programming, and the production of the report in the form furnished to the requester. State agencies which provide electronic access to public records through a gateway service shall obtain approval of their proposed reasonable fees for such records pursuant to sections 84-1205.02 and 84-1205.03, if applicable, and the actual cost of making the copies available may include the approved fee for the gateway service.

(c) This section shall not be construed to require a public body or custodian of a public record to produce or generate any public record in a new or different form or format modified from that of the original public record.

(d) If copies requested in accordance with subdivision (1)(b) of this section are estimated by the custodian of such public records to cost more than fifty dollars, the custodian may require the requester to furnish a deposit prior to fulfilling such request.

(4) Upon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, but not more than four business days after actual receipt of the request, either

(a) access to, or, if copying equipment is reasonably available, copies of the public record,

(b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or

(c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request.

§ 84-712.01. Public records; right of citizens; full access; fee authorized.

(1) Except when any other statute expressly provides that particular information or records shall not be made public, public records shall include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

(2) When a custodian of a public record of a county provides to a member of the public, upon request, a copy of the public record by transmitting it from a modem to an outside modem, a reasonable fee may be charged for such specialized service. Such fee may include a reasonable amount representing a portion of the amortization of the cost of computer equipment, including software, necessarily added in order to provide such specialized service. This subsection shall not be construed to require a governmental entity to acquire computer capability to generate public records in a new or different form when that new form would require additional computer equipment or software not already possessed by the governmental entity.

(3) Sections 84-712 to 84-712.03 shall be liberally construed whenever any state, county, or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, payroll, check, receipt, or other record of receipt, cash, or expenditure involving public funds is involved in order that the citizens of this state shall have the full right to know of and have full access to information on the public finances of the government and the public bodies and entities created to serve them.

§ 84-712.02. Public records; claimants before United States Department of Veterans Affairs; certified copies free of charge.

When it is requested by any claimant before the United States Department of Veterans Affairs or his or her agent or attorney that certified copies of any public record be furnished for the proper and effective presentation of any such claim in such department, the officer in charge of such public records shall furnish or cause to be furnished to such claimant or his or her agent or attorney a certified copy thereof free of charge.

§ 84-712.03. Public records; denial of rights; remedies.

Any person denied any rights granted by sections 84-712 to 84-712.03 may elect to:

(1) File for speedy relief by a writ of mandamus in the district court within whose jurisdiction the state, county, or political subdivision officer who has custody of the public record can be served; or

(2) Petition the Attorney General to review the matter to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with such sections. This determination shall be made within fifteen calendar days of the submission of the petition. If the Attorney General determines that the record may not be withheld or that the public body is otherwise not in compliance, the public body shall be ordered to disclose the record immediately or otherwise comply. If the public body continues to withhold the record or remain in noncompliance, the person seeking disclosure or compliance may (a) bring suit in the trial court of general jurisdiction or (b) demand in writing that the Attorney General bring suit in the name of the state in the trial court of general jurisdiction for the same purpose. If such demand is made, the Attorney General shall bring suit within fifteen calendar days of its receipt. The requester shall have an absolute right to intervene as a full party in the suit at any time.

In any suit filed under this section, the court has jurisdiction to enjoin the public body from withholding records, to order the disclosure, and to grant such other equitable relief as may be proper. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court may view the records in controversy in camera before reaching a decision, and in the discretion of the court other persons, including the requester, counsel, and necessary expert witnesses may be permitted to view the records, subject to necessary protective orders.

Proceedings arising under this section, except as to the cases the court considers of greater importance, shall take precedence on the docket over all other cases and shall be assigned for hearing, trial, or argument at the earliest practi-

cable date and expedited in every way.

§ 84-712.04. Public records; denial of rights; public body; provide information.

(1) Any person denied any rights granted by sections 84-712 to 84-712.03 shall receive in written form from the public body which denied the request for records at least the following information:

(a) A description of the contents of the records withheld and a statement of the specific reasons for the denial, correlating specific portions of the records to specific reasons for the denial, including citations to the particular statute and subsection thereof expressly providing the exception under section 84-712.01 relied on as authority for the denial;

(b) The name of the public official or employee responsible for the decision to deny the request; and

(c) Notification to the requester of any administrative or judicial right of review under section 84-712.03.

(2) Each public body shall maintain a file of all letters of denial of requests for records. This file shall be made available to any person on request.

§ 84-712.05. Records which may be withheld from the public; enumerated.

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(1) Personal information in records regarding a student, prospective student, or former student of any educational institution or exempt school that has effectuated an election not to meet state approval or accreditation requirements pursuant to section 79-1601 when such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as such section existed on January 1, 2003;

(2) Medical records, other than records of births and deaths and except as provided in subdivision (5) of this section, in any form concerning any person; records of elections filed under section 44-2821; and patient safety work product under the Patient Safety Improvement Act;

(3) Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(8) Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; lock combinations; or public utility infrastructure specifications or design drawings the public disclosure of which would create a substantial likelihood of endangering public safety or property, unless otherwise provided by state or federal law;

(9) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities with which the division has entered into contractual relationships. Nothing in this subdivision shall allow the division to withhold from the public any information relating to amounts paid persons or entities with which the division has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the city, village, or county where the prize winner resides;

(10) With respect to public utilities and except as provided in sections 43-512.06 and 70-101, personally identified private citizen account payment and customer use information, credit information on others supplied in confidence, and customer lists;

(11) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

(12) Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. The lawful custodian of the correspondence, memoranda, and records of telephone calls, upon approval of the Executive Board of the Legislative Council, shall release the correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature to any person performing an audit of the Legislature. A member's correspondence, memoranda, and records of confidential telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;

(13) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act;

(14) Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act;

(15) Job application materials submitted by applicants, other than finalists, who have applied for employment by any public body as defined in section 84-1409. For purposes of this subdivision, job application materials means employment applications, resumes, reference letters, and school transcripts, and finalist means any applicant who is offered and who accepts an interview by a public body or its agents, representatives, or consultants for any public employment position; and

(16) Records obtained by the Public Employees Retirement Board pursuant to Section 84-512;

(17) Social security numbers; credit card, charge card, or debit card numbers and expiration dates; and financial account numbers supplied to state and local governments by citizens.

(18) Information exchanged between a jurisdictional utility and City pursuant to Section 66-1867.

§ 84-712.06. Public record; portion provide; when.

Any reasonably segregable public portion of a record shall be provided to the public as a public record upon request after deletion of the portions which may be withheld.

§ 84-712.07. Public records; public access; equitable relief; attorney's fees; costs.

The provisions of sections 84-712, 84-712.01, 84-712.03 to 84-712.09, and 84-1413 pertaining to the rights of citizens to access to public records may be enforced by equitable relief, whether or not any other remedy is also available. In any case in which the complainant seeking access has substantially prevailed, the court may assess against the public body which had denied access to their records, reasonable attorney fees and other litigation costs reasonably incurred by the complainant.

§ 84-712.08. *Records; federal government; exception.*

If it is determined by any federal department or agency or other federal source of funds, services, or essential information, that any provision of sections 84-712, 84-712.01, 84-712.03 to 84-712.09, and 84-1413 would cause the denial of any funds, services, or essential information from the United States Government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information.

§ 84-712.09. *Violation; penalty.*

Any official who shall violate the provisions of sections 84-712, 84-712.01, and 84-712.03 to 84-712.08 shall be subject to removal or impeachment and in addition shall be deemed guilty of a Class III misdemeanor.

§ 84-713. *Settled claims; record required; contents; public record; certain settlement agreements; public agency; agenda item; applicability of section.*

(1) A public entity or public agency providing coverage to a public entity, public official, or public employee shall maintain a public written or electronic record of all settled claims. The record for all such claims settled in the amount of fifty thousand dollars or more, or one percent of the total annual budget of the public entity, whichever is less, shall include a written executed settlement agreement. The settlement agreement shall contain a brief description of the claim, the party or parties released under the settlement, and the amount of the financial compensation, if any, paid by or to the public entity or on its behalf.

(2) Any claim or settlement agreement involving a public entity shall be a public record but, to the extent permitted by sections 84-712.04 and 84-712.05 and as otherwise provided by statute, specific portions of the claim or settlement agreement may be withheld from the public. A private insurance company or public agency providing coverage to the public entity shall, without delay, provide to the public entity a copy of any claim or settlement agreement to be maintained as a public record.

(3) Except for settlement agreements involving the state, any state agency, or any employee of the state or pursuant to claims filed under the State Tort Claims Act; any settlement agreement with an amount of financial consideration of fifty thousand dollars or more, or one percent of the total annual budget of the public entity, whichever is less, shall be included as an agenda item at the next meeting of a public agency providing coverage to a public entity and as an agenda item on the next regularly scheduled public meeting of the public body for informational purposes or for approval if required.

(4) For purposes of this section, a confidentiality or nondisclosure clause or provision contained in or relating to a settlement agreement shall neither cause nor permit a settlement agreement or the claim or any other public record to be withheld from the public. Nothing in this section shall require a public official or public employee or any party to the settlement agreement to comment on the settlement agreement.

(5) For purposes of this section:

(a) Confidentiality or nondisclosure clause or provision means any covenant or stipulation adopted by parties to a settlement agreement that designates the settlement agreement, the claim, or any other public record as confidential, or in any other way restricts public access to information concerning the settlement agreement or claim;

(b) Public body means public body as defined in subdivision (1) of section 84-1409;

(c) Public entity means a public entity listed in subdivision (1) of section 84-712.01; and

(d) Settlement agreement means any contractual agreement to settle or resolve a claim involving a public entity or on behalf of the public entity, a public official, or a public employee by (i) the public entity, (ii) a private insurance company, or (iii) a public agency providing coverage. . .

(6) This section does not apply to claims made in connection with insured or self-insured health insurance contracts.

Open Meetings

Neb. Rev. Stat § 84-1407 et seq.

§ 84-1407. *Act, how cited.*

Sections 84-1407 to 84-1414 shall be known and may be cited as the Open Meetings Act.

§ 84-1408. *Declaration of intent; meetings open to public.*

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

§ 84-1409. *Terms, defined.*

For purposes of the Open Meetings Act, unless the context otherwise requires:

(1)

(a) Public body means

(i) governing bodies of all political subdivisions of the State of Nebraska,

(ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska,

(iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law,

(iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence,

(v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions.

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body,

(ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders, and (iii) the Policy Cabinet created in section 81-3009;

(2) Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body; and

(3) Videoconferencing means conducting a meeting involving participants at two or more locations through the use of audio-video equipment which allows participants at each location to hear and see each meeting participant at each other location, including public input. Interaction between meeting participants shall be possible at all meeting locations.

§ 84-1410. *Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.*

(1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. Closed sessions may be held for, but shall not be limited to, such reasons as:

(a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;

(b) Discussion regarding deployment of security personnel or devices;

(c) Investigative proceedings regarding allegations of criminal misconduct; or

(d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting.

Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.

(2) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the minutes as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

(3) Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for

(a) the protection of the public interest or

(b) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. Such challenge and its disposition shall be recorded in the minutes.

(4) Nothing in this section shall be construed to require that any meeting be closed to the public. No person or public body shall fail to invite a portion of its members to a meeting, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.

(5) The act does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

§ 84-1411. Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.

(1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than

(a) twenty-four hours before the scheduled commencement of the meeting or

(b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than fifty counties in this state, or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if:

(a) Reasonable advance publicized notice is given;

(b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used;

(c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference;

(d) At least one member of the state entity, advisory committee, or governing body is present at each site of the videoconference or telephone conference; and

(e) No more than one-half of the state entity's, advisory committee's, or governing body's meetings in a calendar year are held by videoconference or telephone conference.

Videoconferencing, telephone conferencing, or conferencing by other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(3) A meeting of a board of an educational service unit, of the governing body of an entity formed under the Interlocal Cooperation Act or the Joint Public Agency Act, or the Municipal Cooperative Financing Act, or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by telephone conference call if:

(a) The territory represented by the member public agencies of the entity or pool covers more than one county;

(b) Reasonable advance publicized notice is given which identifies each telephone conference location at which a member of the entity's or pool's governing body will be present;

(c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the entity or pool or at a place which will accommodate the anticipated audience;

(d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;

(e) At least one copy of all documents being considered is available to the public at each site of the telephone conference call;

(f) At least one member of the governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice;

(g) The telephone conference call lasts no more than one hour; and

(h) No more than one-half of the entity's or pool's meetings in a calendar year are held by telephone conference call, except that the governing body of risk management pool that meets at least quarterly and the advisory committees of the governing body may each hold more than one-half of its meetings by telephone conference call if the governing body's quarterly meetings are not held by telephone conference call or videoconferencing.

Nothing in this subsection shall prevent the participation of consultants, members of the press, and other nonmembers of the governing body at sites not identified in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(5) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

§ 84-1412. Meetings of public body; rights of public; public body; powers and duties.

(1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 84-1410, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

(2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

(3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting, nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body may require any member of the public desiring to address the body to identify himself or herself.

(4) No public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

(5) No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state.

(6) No public body shall be deemed in violation of this section if it holds a meeting outside of this state if, but only if:

(a) A member entity of the public body is located outside of this state and the meeting is in that member's jurisdiction;

(b) All out-of-state locations identified in the notice are located within public buildings used by members of the entity or at a place which will accommodate the anticipated audience;

(c) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including making a telephone conference call available at an in-state location to members, the public, or the press, if requested twenty-four hours in advance;

(d) No more than twenty-five percent of the public body's meetings in a calendar year are held out-of-state;

(e) Out-of-state meetings are not used to circumvent any of the public government purposes established in the Open Meetings Act;

(f) Reasonable arrangements are made to provide viewing at other in-state locations for a videoconference meeting if requested fourteen days in advance and if economically and reasonably available in the area; and

(g) The public body publishes notice of the out-of-state meeting at least twenty-one days before the date of the meeting in a legal newspaper of statewide circulation.

(7) The public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at the meeting.

(8) Public bodies shall make available at the meeting or the in-state location for a telephone conference call or videoconference, for examination and

copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

§ 84-1413. Meetings; minutes; roll call vote; secret ballot; when.

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a municipality which utilizes an electronic voting device which allows the yeas and nays of each member of the city council or village board to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

§ 84-1414. Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.

(1) Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after but within one year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one year of the action.

(2) The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the Open Meetings Act.

(3) Any citizen of this state may commence a suit in the district court of the county in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of the Open Meetings Act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of the act to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this section.

(4) Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

