

Open & Public Meetings Act

Training – Salt Lake County Council
December 11, 2018

Training Requirement

Annual training is required by statute. It is up to the Chair of the Council to ensure that the training is provided.

“The presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of [the Open & Public Meetings Act].”

Utah Code Ann. § 52-4-104(1).

New Legislation – SB 137 Amendments Relating to Government Records

S.B. 137 – Amendments related to Government Records -- This bill closed a loophole under GRAMA by creating a way for a person to request records from an improperly closed meeting.

52-4-206(5). Record of closed meetings.

(5) ~~[Both a]~~ A recording [and], transcript, report, and written minutes of a closed [meetings] meeting are protected records under Title 63G, Chapter 2, Government Records Access and Management Act, except that the records may be disclosed under a court order only as provided under Section 52-4-304.

S.B. 137 (Continued)

Under GRAMA, records from closed meetings are protected. But a person may petition a judge to find that a meeting was closed for an improper purpose or by using an improper procedure. If the judge finds that the meeting was improperly closed, then “the judge shall publicly disclose or reveal from the recording or minutes of the closed meeting all information about the portion of the meeting that was illegally closed.”

Utah Code Ann. § 52-4-304. Action challenging closed meeting

(1) Notwithstanding the procedure established under Subsection [63G-2-202](#)(7), in any action brought under the authority of this chapter to challenge the legality of a closed meeting held by a public body, the court shall:

(a) review the recording or written minutes of the closed meeting in camera; and

(b) decide the legality of the closed meeting.

(2) (a) If the judge determines that the public body did not violate Section [52-4-204](#), [52-4-205](#), or [52-4-206](#) regarding closed meetings, the judge shall dismiss the case without disclosing or revealing any information from the recording or minutes of the closed meeting.

(b) **If the judge determines that the public body violated Section [52-4-204](#), [52-4-205](#), or [52-4-206](#) regarding closed meetings, the judge shall publicly disclose or reveal from the recording or minutes of the closed meeting all information about the portion of the meeting that was illegally closed.**

(3) Nothing in this section may be construed to affect the ability of a public body to reclassify a record, as defined in Section [63G-2-103](#), as provided in Section [63G-2-307](#).

Utah Code Ann. § 63G-2-305(32)

The following records are protected if properly classified by a governmental entity: ...

(32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a public body except as provided in Section [52-4-206](#);

Closed Meetings – Review

You need three things to close a meeting: (1) a quorum; (2) a properly noticed open meeting; and (3) a two-thirds vote.

52-4-204 Closed meeting held upon vote of members -- Business -- Reasons for meeting recorded.

(1) A closed meeting may be held if:

(a) (i) a quorum is present;

(ii) the meeting is an open meeting for which notice has been given under Section 52-4-202; and

(iii) (A) two-thirds of the members of the public body present at the open meeting vote to approve closing the meeting;

Other Considerations

Four other things to consider:

- (1) May not discuss a matter except for permitted purpose;
- (2) The Council may not approve an ordinance, resolution, rule, regulation, contract, or appointment at a closed meeting;

Utah Code Ann. § 52-4-204(2)-(5)

(2) A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Section 52-4-205.

(3) An ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting.

(4) The following information shall be publicly announced and entered on the minutes of the open meeting at which the closed meeting was approved:

(a) the reason or reasons for holding the closed meeting;

(b) the location where the closed meeting will be held; and

(c) the vote by name, of each member of the public body, either for or against the motion to hold the closed meeting.

(5) Except as provided in Subsection 52-4-205(2), nothing in this chapter shall be construed to require any meeting to be closed to the public.

Other Considerations (continued)

(3) Must state and record on the minutes (a) the reasons for closing the meeting, (b) the location of the meeting, (c) how each member voted on the motion to close the meeting;

(4) Except in rare circumstances not relevant to counties, a public body is never “required” to close a meeting.

(2) A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Section 52-4-205.

(3) An ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting.

(4) The following information shall be publicly announced and entered on the minutes of the open meeting at which the closed meeting was approved:

(a) the reason or reasons for holding the closed meeting;

(b) the location where the closed meeting will be held; and

(c) the vote by name, of each member of the public body, either for or against the motion to hold the closed meeting.

(5) Except as provided in Subsection 52-4-205(2), nothing in this chapter shall be construed to require any meeting to be closed to the public.

Allowed Purposes of Closed Meetings

A meeting may be closed to discuss:

- (1) The character, professional competence, or health of a person;
- (2) Collective bargaining;
- (3) Pending or reasonably imminent litigation;

52-4-205 Purposes of closed meetings

- (a) except as provided in Subsection (3), discussion of the character, professional competence, or physical or mental health of an individual;
- (b) strategy sessions to discuss collective bargaining;
- (c) strategy sessions to discuss pending or reasonably imminent litigation; ...

Allowed Purposes of Closed Meetings (continued)

- (4) The purchase, exchange, lease, or sale of real property if public discussion will (a) disclose the appraisal or estimated value of the property under consideration; or (b) prevent the county from completing the transaction on the best possible terms;
- (5) The deployment of security personnel, devices or systems;

52-4-205 Purposes of closed meetings

(d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, if public discussion of the transaction would: (i) disclose the appraisal or estimated value of the property under consideration; or (ii) prevent the public body from completing the transaction on the best possible terms;

(e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if: (i) public discussion of the transaction would: (A) disclose the appraisal or estimated value of the property under consideration; or (B) prevent the public body from completing the transaction on the best possible terms; (ii) the public body previously gave public notice that the property would be offered for sale; and (iii) the terms of the sale are publicly disclosed before the public body approves the sale;

(f) discussion regarding deployment of security personnel, devices, or systems;

Allowed Purposes of Closed Meetings (continued)

- (6) Investigative proceedings of criminal misconduct;
- (7) Commercial information as it pertains to property taxpayers;
- (8) Trade secrets and other issues related to procurement (not common for legislative bodies).

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(g) investigative proceedings regarding allegations of criminal misconduct; ...

(k) as relates to a county legislative body, discussing commercial information as defined in Section 59-1-404; ...

(n) the purpose of considering information that is designated as a trade secret, as defined in Section 13-24-2, if the public body's consideration of the information is necessary in order to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;

(o) the purpose of discussing information provided to the public body during the procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of the meeting: (i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be disclosed to a member of the public or to a participant in the procurement process; and (ii) the public body needs to review or discuss the information in order to properly fulfill its role and responsibilities in the procurement process; or

Record of Closed Meetings

The public body must keep minutes of the closed meeting unless the meeting is closed to discuss:

- (1) the character, professional competence, or health of an individual; or
- (2) the deployment of security personnel, devices, or systems.

52-4-206 Record of closed meetings.

(1) Except as provided under Subsection (6), if a public body closes a meeting under Subsection 52-4-205(1), the public body:

(a) shall make a recording of the closed portion of the meeting; and

(b) may keep detailed written minutes that disclose the content of the closed portion of the meeting.

(2) A recording of a closed meeting shall be complete and unedited from the commencement of the closed meeting through adjournment of the closed meeting.

(3) The recording and any minutes of a closed meeting shall include:

(a) the date, time, and place of the meeting;

(b) the names of members present and absent; and

(c) the names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.

(4) Minutes or recordings of a closed meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.

(5) A recording, transcript, report, and written minutes of a closed meeting are protected records under Title 63G, Chapter 2, Government Records Access and Management Act, except that the records may be disclosed under a court order only as provided under Section 52-4-304.

(6) If a public body closes a meeting exclusively for the purposes described under Subsection 52-4-205(1)(a), (1)(f), or (2):

(a) the person presiding shall sign a sworn statement affirming that the sole purpose for closing the meeting was to discuss the purposes described under Subsection 52-4-205(1)(a), (1)(f), or (2); and

(b) the provisions of Subsection (1) of this section do not apply.