

# Open Meetings Law Informational Session

for the Governor's Council on Domestic Abuse,  
Committees and Workgroups

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Wisconsin Department of Children and Families

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## Before We Begin

- This presentation does not constitute legal advice.
- Please hold questions until the end of the presentation.
- Wisconsin Open Meetings Law Compliance Guide provides detailed guidance:
  - [https://www.wisdoj.gov/Open%20Government/OML\\_guide.pdf](https://www.wisdoj.gov/Open%20Government/OML_guide.pdf)



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## Why an Open Meetings Law?

- Open meetings allow for government transparency, which furthers democracy.

“In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that **the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.**” Wis. Stat. § 19.81(1).



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## Big Picture

- Wis. Stat. § 19.81
- Applies to all meetings of governmental bodies.
- Governmental bodies must give notice prior to meetings.
- Meetings must be held publicly, meaning the meeting is reasonably accessible and open to all members of the public.
- May be held in open or closed session, however, only limited exceptions authorize a closed session.
- Open Meetings Law is broadly interpreted to promote the policy of openness.



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## Governmental Body

- Definition: A state or local agency, board, committee, council, department or public body corporate created by constitution, statute, ordinance, rule or order. Wis. Stat. § 19.82(1).
- Includes purely advisory bodies.
- “Order” has been interpreted broadly and includes a directive, either formal or informal.
- The Governor’s Council on Domestic Abuse, as well as its committees, subcommittees, and workgroups are governmental bodies.

For more information, see [Open Meetings Compliance Guide](#) pp. 1-8





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## Meeting

- Definition: A convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power, or duties delegated to or vested in the body.
- If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purposes named above.
- Does not include any social or chance gathering or conference “which is not intended to avoid this subchapter.”
- Wis. Stat. § 19.82(2).

For more information, see [Open Meetings Compliance Guide](#) pp. 9-13

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# Notice



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## General Requirements

- Public Notice (Wis. Stat. § 19.84)
  - Must include the time, date, place and subject matter of the meeting.
    - Subject matter means general topic of items to be discussed.
      - “Old business”, “new business”, “miscellaneous business”, “agenda revisions”, etc. do not identify subjects and do not comply with open meetings laws.
      - Comment made by the members of a governmental body should not be lumped together as “member comments” or similar titles; members and officials have a higher standard of specificity than the general public.
    - No requirement to notice a vote if the general subject is noticed.
    - Contemplated closed sessions’ subject matter must also be noticed. Wis. Stat. § 19.84(2).
  - Must be at least 24 hours in advance of the meeting (where for “good cause” notice is impossible or impracticable, and then as soon as possible and at least two hours in advance).
  - There are specific requirements as to where it is published.

For more information, see **Open Meetings Compliance Guide** pp. 14-19



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## Notice Generally

- Wis. Stat. § 19.84
  - Notice must include the time, date, place and subject matter of the meeting.
  - Subject matter means the general topic of items to be discussed.
    - Describing subject matter as “old business,” “new business,” “miscellaneous,” “agenda revisions,” etc. does not comply with Open Meetings Law because it does not actually identify the specific discussion subject.
    - While it is fine to describe time for public comment as simply, “public comment” or something similar, *member* comment should not be described as generally, as members & officials have a higher standard of specificity than the general public.
  - No requirement to notice a vote if the general subject is noticed.

For more information, see **Open Meetings Compliance Guide** pp. 14-19



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## Notice of Closed Sessions

- Subject matter of closed sessions must also be noticed. Wis. Stat. § 19.84(2).
  - The Wisconsin Attorney General has advised that notice of closed sessions must contain **both** of the following:
    - The specific nature of the business to be discussed
    - The exemption(s) under which the chief presiding officer believes a closed session is authorized.

For more information, see **Open Meetings Compliance Guide** p. 18



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## Required Recipients

- The chief presiding officer of a governmental body or their designee must give notice of each meeting to:
  - (1) the public;
  - (2) any members of news media who have submitted a written request for notice; and
  - (3) the official newspaper designated pursuant to statute, or if none exists, a news medium likely to give notice in the area.

**It is incredibly important to view (1), (2), and (3) as three separate required groups, all of which must be noticed separately to comply with Open Meetings Law.**

- There are various methods of providing notice that can be used for each group above.



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## Timing of Notice

- Notice must be given at least 24 hours in advance of the meeting, unless, for “good cause,” notice in this time frame is impossible or impracticable.
- Even if notice is delayed for “good cause,” notice still must be given at least two hours in advance of the meeting.
- If there is any doubt whether “good cause” exists, the governmental body should provide the full 24-hour notice.
- Sundays and legal holidays **are excluded** from the 24-hour notice calculation. Wis. Stat. § 990.001(4)(a).

For more information, see **Open Meetings Compliance Guide** pp. 18-19



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# General Requirements



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## Open Sessions: Accessibility and Participation

- The public has the right to attend and observe open session meetings.
- Meetings must be held in places reasonably accessible to the public and be open to all.
- A governmental body may but is not required to allow public comment or participation.
- If a governmental body intends to allow a public comment period, such a period **must** be included on the meeting notice.
- During a public comment period, a body may receive information from the public and may discuss any subject raised by the public, **but the body may not take formal action.**

For more information, see [Open Meetings Compliance Guide](#) pp. 19-24



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## Open Sessions: Remote Meetings

- The Wisconsin Attorney General has advised that telephonic or virtual meetings are generally permissible under the law.
- The public **must** still have a way of joining/monitoring the telephonic or virtual meeting.
  - For virtual meetings, it is highly recommended that the meeting notice include a phone number the public can call to request another means of access to the meeting if they are unable to join using the internet.

For more information, see [Open Meetings Compliance Guide](#) pp. 21-22



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## Open Sessions: Voting

- Generally, voting should take place in open session.
- *Unless otherwise specifically provided*, no secret ballots may be used except for where the vote is to elect officers of the body.
- Any member may require a roll-call vote.

For more information, see [Open Meetings Compliance Guide](#) pp. 23-25



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## Closed Sessions Generally

- Wis. Stat. § 19.85
- Every meeting must begin in open session.
- A motion must be passed to commence a closed session. The vote must be recorded.
- The chief presiding officer must announce and record in the open session:
  - The nature of the business to be discussed; and
  - The specific statutory exemption that allows for a closed session (listed in Wis. Stat. § 19.85(1)).



For more information, see [Open Meetings Compliance Guide](#) pp. 25-30



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## Closed Sessions: Scope and Attendance

- Limited scope
  - When a governmental body is in closed session, it must limit its discussion to the specific business for which the closed session was authorized and may not take up any other matters.
- Attendance
  - A body has discretion to allow anyone to attend a closed session.
  - No duly elected or appointed member of a body may be excluded from any meeting of that body—whether closed or open.
  - A member also may not be excluded from a meeting of a subunit of the body, unless the body has a rule to the contrary.

For more information, see [Open Meetings Compliance Guide](#) pp. 26-30



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## Closed Sessions: Statutory Bases

- (a) **Deliberating about a case** that has been the subject of a judicial or quasi-judicial trial or hearing before the body.
- (b) Considering **dismissal, demotion, licensing or discipline of a public employee** or the investigation of charges against the employee.
- (c) Considering **employment, promotion, compensation, or performance evaluation data** of a public employee.
- (d) Considering specific applications of probation, extended supervision or parole, or **considering strategy for crime detection or prevention**.
- (e) Deliberating or negotiating the purchase of public properties, the investing of public funds, or conducting "other specified public business" whenever **competitive or bargaining reasons require a closed session**.
- (f) Considering **sensitive personal information** that would be likely to have a substantial adverse effect upon an individual's reputation.
- (g) **Conferring with legal counsel** about strategy related to litigation.

For more information, see **Open Meetings Compliance Guide** pp. 26-30



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## Closed Sessions: Voting

- The Wisconsin Supreme Court has held that a body *may* vote in closed session if the vote is integral to the authorized subject of the closed session. *State ex rel. Cities Serv. Oil Co. v. Bd. of Appeals*, 21 Wis. 2d 516, 124 N.W.2d 809 (1963).
- The Wisconsin Court of Appeals has indicated that a body *should* vote in open session unless a closed vote is expressly authorized. *State ex rel. Schaeve v. Van Lare*, 125 Wis. 2d 40, 370 N.W.2d 271 (Ct. App. 1985).
- **So, in general, votes should take place in open session unless it would compromise the purpose of the closed session.**

For more information, see **Open Meetings Compliance Guide** p. 31



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# Recordkeeping Requirements



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## Recordkeeping Requirements

- Wis. Stat. § 19.88(3)
  - A governmental body must create and preserve a record of all motions and roll-call votes at its meetings.
  - Minutes are the most common way to meet this requirement.
  - Although the law does not prescribe a timeframe, it is best practice to record this at the meeting or as soon thereafter as practicable.
  - **Meeting records are public records under the Public Records Law.**

For more information, see [Open Meetings Compliance Guide](#) pp. 23-25



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## Enforcement and Penalties



- Who can enforce the Open Meetings Law?
  - The Wisconsin Attorney General and local district attorneys.
  - Individuals can file a verified complaint with the district attorney.
- What are the penalties for violations of Open Meetings Law?
  - A member of a governmental body who **knowingly** attends a meeting held in violation of the Open Meetings Law can be subject to a forfeiture of between \$25 and \$300 for each violation.
  - A court may void any action taken at a meeting held in violation of the Open Meetings Law if the court finds that the interest in enforcing the law outweighs any interest in maintaining the validity of the action.
- The Attorney General has express statutory authority to respond to requests for advice on the Open Meetings Law from any person.

For more information, see [Open Meetings Compliance Guide](#) pp. 32-34



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## Frequently Asked Questions



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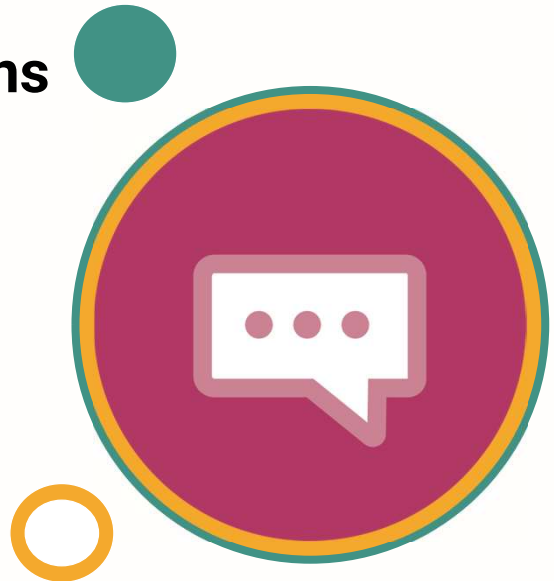
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## Frequently Asked Questions

Can e-mails among the members of a body be considered a “meeting”?

- Yes. When there are e-mails among more than one half of the body discussing matters within the scope of the body, it is considered “a meeting.”
- To prevent holding unintended “meetings,” best practice is:
  - Avoid group discussion about matters within the scope of the body outside of official noticed meetings.
  - Don’t “reply all” to group e-mails.
  - Don’t forward messages to the full group.

For more information, see [Open Meetings Compliance Guide](#) pp. 11-12



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## Frequently Asked Questions

If a Zoom link for a meeting doesn’t work, can a new one be sent out at the beginning of the meeting?

- Because a zoom link on a meeting notice provides the public with the access information, a meeting cannot be held on a new zoom link that is circulated at the beginning of a meeting to members because it would not be accessible to public members (as it would not have been included on the meeting notice).

For more information, see [Open Meetings Compliance Guide](#) pp. 21-22



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## Frequently Asked Questions

What if survivors want to share their stories with members out of the public eye?

- The Open Meetings Law allows for closed sessions in a limited set of situations, as noted above, including when discussing **sensitive personal information** that would be likely to have a substantial adverse effect upon an individual's reputation.
- The closed session and subject matter of the closed session needs to be included on the meeting notice.
- To go into closed session, the body must follow the requirements of Wis. Stat. 19.85(1) (as discussed on previous slide).

For more information, see **Open Meetings Compliance Guide** pp. 25-31



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## Frequently Asked Questions

What are some areas that are governed by a body's policies/bylaws and not the Open Meetings Law?

- Election of chairs
- Frequency of meetings
- How meetings are conducted (outside of notice, openness, accessibility and record-keeping requirements)
- Requirements for a quorum
- Whether to have a roll call of the public at meetings



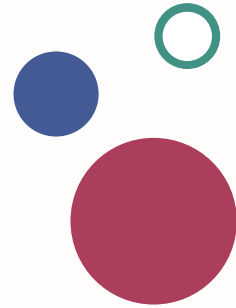
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## Frequently Asked Questions

What if a quorum of the members of a body are attending another meeting or conference (other than a “social or chance gathering”)?

- There is a *presumption* in the Open Meetings Law that if more than half of a governmental body is present, the gathering is a “meeting” of that body.
- BUT the presumption can be rebutted by the members demonstrating that they did not discuss any matter in the body’s realm of authority.
- To avoid this issue, the meeting/conference could be noticed as an open meeting of the body.
- A single notice can be used if the notice plainly indicates a joint meeting will be held and names the participating bodies, and notice is posted in a place where notices are generally published/posted for each body involved.

For more information, see [Open Meetings Compliance Guide](#) p. 13



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## Frequently Asked Questions

Can Open Meetings Law apply when there are fewer than one half of the members of a body present?

- There are rare situations in which separate groups of members (less than half) meet in series, and tacitly or expressly agree to act uniformly in sufficient numbers to reach a quorum.
- This is called a “walking quorum,” and it violates the Open Meetings Law.
- If there is no agreement between members to act uniformly in order to reach a quorum, exchanges among separate groups of members may take place without violating the Open Meetings Law.

For more information, see [Open Meetings Compliance Guide](#) p. 13



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# Governor's Council on Domestic Abuse

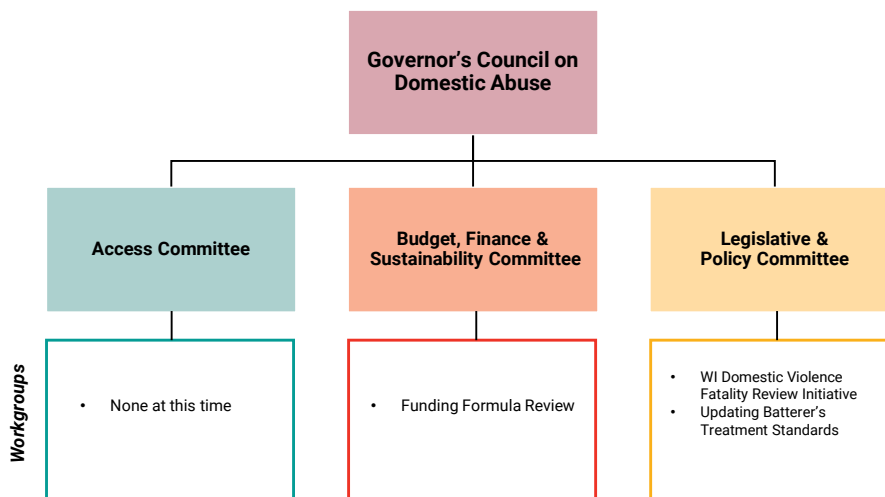
DCF Support for Committees and Workgroups

*We are here to help!*



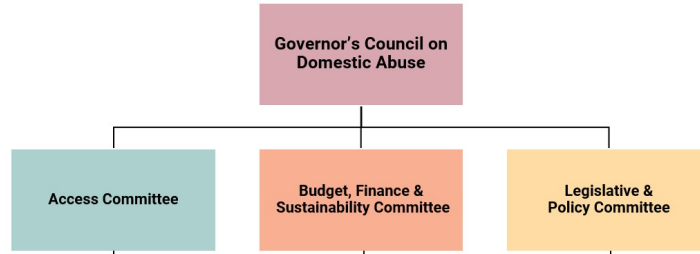
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## Council Breakdown



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# Council Committees



### Agendas

- DCF Staff will work with Committee Co-chairs to draft the agenda

### Minutes

- DCF Staff will take minutes at the meeting and provide a draft to the Committee Co-chairs for review

**DCF Staff will publicly notice all meetings & agendas, and schedule Zoom meetings**

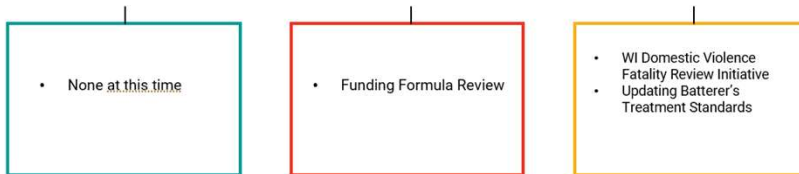


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# Committee Workgroups



Workgroups



### Agendas & Minutes

- Templates provided by DCF in advance
- Agendas: if possible, please provide to DCF staff at least 10 days prior to meeting
- Minutes: if possible, please provide to DCF staff within 48 hours of completed meeting
- DCF staff will publicly notice all meetings & agendas, and schedule Zoom meeting



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## Resources

- Wisconsin Open Meetings Law Compliance Guide:

- [https://www.wisdoj.gov/Open%20Government/OML\\_guide.pdf](https://www.wisdoj.gov/Open%20Government/OML_guide.pdf)

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