Technology & Municipal Government
The Impact of Technology on Open Meeting Law and the Public Records Act

Secretary of State Jim Condos
WHY ARE WE HERE?

Democracy – Accountability – Openness

• The public has a right to know!
• Open meeting and public records laws protect our direct access to the decisions that affect us.
• Understanding these laws makes everyone a better citizen.
IN GOVERNMENT, THE ULTIMATE BOSS IS THE PUBLIC

Vermont Constitution - Chapter 1, Article 6.

That all power being originally inherent in and consequently derived from the people, therefore, all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them.
IN GOVERNMENT, THE ULTIMATE BOSS IS THE PUBLIC

1 V.S.A. § 311. Declaration of public policy

...public commissions, boards and councils and other public agencies in this state exist to aid in the conduct of the people's business and are accountable to them ...

1 V.S.A. § 315. Statement of policy

...free and open examination of records...

Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment...
Rapidly changing technology impacts how town officials are able to stay compliant with Vermont’s transparency laws.

- Open Meeting Law (1 V.S.A. §§ 310-314)
- Public Records Act (1 V.S.A. §§ 315-320)

An Opportunity to Do Better

Improvements in technology offer a unique opportunity to increase transparency, improve government functions and better serve Vermonters.
OPEN MEETINGS
1 V.S.A. §§ 310-314
A BRIEF OPEN MEETING LAW REFRESHER:
WHO MUST COMPLY

“PUBLIC BODIES” of the state and its municipalities:

• State and municipal boards, councils, and commissions
• Committees and subcommittees of these bodies

NOT INCLUDED:

• Individual officials
• Councils established by the Governor exclusively for policy advice
• Judicial branch
• Public Service Board
• Nonprofits (generally)
A BRIEF OPEN MEETING LAW REFRESHER: WHEN DOES THE OML APPLY?

Any time a “quorum” holds a “meeting.”

**QUORUM**: a *majority* of the entire public body.

1 V.S.A. § 172. Joint authority

When joint authority is given to three or more, the concurrence of a majority of such number shall be sufficient and shall be required in its exercise.

**MEETING**: a gathering of a quorum of a public body for the purpose of *discussing business or taking action*.
MEETING BY ELECTRONIC MEANS

A “meeting” can occur regardless of physical location.

- Members of a public body may join a “meeting” electronically
- Tools: Skype, FaceTime, phone

Make sure to test your tech in advance!

- (Especially if a quorum is dependent on it)
A member participating remotely must:
  • *Identify themselves* when the meeting convenes.
  • Be able to *hear and be heard throughout* the meeting.

If a quorum or more is participating remotely:
  • *Agenda* must *designate a physical location* where the public can attend and participate.
  • *One member* (or designee) must be *physically present*.

Any *vote not unanimous* must be taken by *roll call*.
CAN BOARDS USE EMAIL & SOCIAL MEDIA?

ABSOLUTELY YES:

• Electronic communications to schedule a meeting, organize an agenda, or distribute materials to discuss at a meeting.

PROBABLY NOT (ASK YOUR LAWYER):

• Group emails involving a quorum of a public body that discuss the body’s business.
• Collective editing of a document by a quorum.
• Participation in a Facebook group or Front Porch Forum by a quorum if the body’s business is discussed.
FAQ:
Does a discussion on social media (Facebook, Twitter, Instagram, etc.) that includes a quorum of members of a public body constitute an illegal meeting?

ANSWER:
There is no official guidance on this, however our recommended best practice is to treat online discussions like in-person discussions – “official business” should only be discussed in a properly warned public meeting.
TECHNOLOGY CAN BE USED TO INCREASE ACCESS FOR THE PUBLIC
Using online streaming services like Facebook Live is a great way to increase access for the public to tune into meetings of public bodies.

After streaming live, this video can remain posted for future viewing!

It requires a dedicated wireless internet connection. Make sure to test your connection, video and sound before you go live!

INCREASE PUBLIC INPUT OPTIONS
Tools like WebEx or GoToMeeting allow for two way communication, and are a great way to gather public input. This can be helpful for meetings scheduled during typical work hours, or for members of the public who are homebound or otherwise unable to attend in person.

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FAQ: Most everyone has a smart phone and can record video these days. Can a public body prohibit a member of the public from streaming or recording audio or video of an open meeting?

ANSWER: Nope! As long as the member of the public is not being disruptive or creating a disturbance you cannot prohibit either audio or video streaming/recording.

Embarrassment isn’t a valid reason to shut out the public!
Be Proactive!

In addition to the legal requirements for warning meetings we encourage using new technology and social media platforms to proactively outreach to the public about upcoming meetings or town/city business!

Tools: Front Porch Forum, Facebook, Twitter, etc.

Increasingly members of the public are turning to these tools for information, so use them!

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Best Practice: Set appropriate access protocols, and protect username/passwords of official government accounts.

Official Town/City social media accounts are considered official government resources, and should NOT be used for political purposes, such as promoting candidates or political agendas.

ASK YOUR LAWYER!
REFRESHER: MINUTES

**When?** No later than *five calendar days* after the meeting.

**Where?**
- Made *available* for inspection and copying *upon request*.
- Posted to a *website, if* the public body maintains or designates one (since 2014).

**What else?** *Except for draft minutes* being replaced with updates, minutes must remain *posted* to the website for *at least one year* after the meeting.
OPEN MEETINGS
1 V.S.A. §§ 310-314

QUESTIONS?
PUBLIC RECORDS
1 V.S.A. §§ 315-320
WHAT IS A “PUBLIC RECORD?”

- “Any **written or recorded (including electronic)** information,
- **regardless of physical form** or characteristics,
- which is **produced or acquired in the course of public agency business.**”

Remember: Records are not limited to paper! This means social media, email and other forms of electronic messaging.

*All government records are public records... Some public records are exempt from disclosure.*
WHO MAY ASK TO INSPECT OR COPY A PUBLIC RECORD?

Any person.

“The identity and motive of the requestor cannot be considered when weighing access to public documents.”

Shlansky v. City of Burlington and Burlington Police Department, 2010 VT 90.
FAQ: Do requests for public records need to be made in writing?

ANSWER: No, requests can come in any form, and can include social media and email. These requests must be handled in the same way as any other public records request.
FAQ: Are personal email accounts and texts public records?

**ANSWER:** Yes, any official business done using personal emails or texts is considered a public record and can be requested.* This applies to other forms of electronic communication too (Slack, WhatsApp, Google Hangouts, etc.).

**Pro tip:** Forward and reply from, or CC, your official government email in replies.

*Brady C. Toensing v. The Attorney General of Vermont
HOW DO I COMPLY?

A little advance planning…

- Work on **RECORDS MANAGEMENT**.
  - Need help? Contact the Vermont State Records and Archives Administration (VSARA) at (802) 828-3700.

- Adopt a **RECORDS POLICY**.
  - Need help? Municipal officials can call VLCT at (800) 649-7951.

- Know your **RESOURCES**.
  - “What does the law say?” → Ask the Secretary of State!
  - “Can I use this exemption?” → Ask your attorney!
Records Management Best Practices for Municipal Records

*Megan Wheaton-Book, Vermont State Archives and Records Administration (VSARA)*

This workshop will provide a broad understanding of records management. You will walk away knowing the importance of records and information management, or RIM, and you'll be able to explain the fundamentals and benefits of records management. The workshop will provide an update on the Vermont Local Records Program, a few resources regarding record keeping requirements, steps to conducting an inventory, and what to consider in writing your records management policy and procedure.
COPYING AND FEES

You may charge for copies (unless other law applies):

• The “actual cost” of providing a copy, if using own equipment.
  • Established by Secretary of State’s Uniform Fee Schedule, or by local legislative body if it so acts, using statutory factors.

• The cost of mailing or transmitting the copy.

• The cost of “staff time” associated with providing a copy, IF:
  • the time directly involved exceeds 30 minutes;
  • the agency agrees to create a new record; or
  • the agency agrees to provide the record in nonstandard format and the time directly involved exceeds 30 minutes.

An agency must provide a fee estimate upon request.

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COPYING & FEES

STAFF TIME

OUR TWO CENTS:

We think staff time charges are appropriate only if an individual requests a copy of a record, and then only for staff time over and above the time necessary to comply with a request to inspect.

We don’t recommend charging for “staff time” when:

• The requester snaps a photo of a record.
• An electronic record must be printed to present it for viewing.
• Tracking down a record takes some time.

SAFEST COURSE:

Err on the side of openness and consult your legal counsel!

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Proactively making certain public records are available and easy to find online is a great way to increase access and transparency for the public and to reduce staff time responding to requests!

This is especially true for specific records that are frequently requested.

(Examples?)
PUBLIC RECORDS
1 V.S.A. §§ 315-320

QUESTIONS?

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THANK YOU!

Please call or visit our office with any questions!

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