

Chapter One

Policy and Interpretive Principles

The Open Meetings Act is based on the General Assembly's policy determination in favor of open decision-making by governmental bodies:

It is essential to the maintenance of a democratic society that, except in special and appropriate circumstances:

(1) public business be performed in an open and public manner; and

(2) citizens be allowed to observe:

(i) the performance of public officials; and

(ii) the deliberations and decisions that the making of public policy involves.

§10-501(a) of the State Government Article.¹ The General Assembly came to this policy judgment because public and news media access to the meetings of public bodies “ensures the accountability of government to the citizens of the State.” §10-501(b)(1). Furthermore, “[t]he conduct of public business in open meetings

¹ The Open Meetings Act is codified as title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland. All statutory references in this manual are to this subtitle, unless otherwise indicated.

increases the faith of the public in government and enhances the effectiveness of the public in fulfilling its role in a democratic society.” §10-501(b)(2).²

Thus, the general rule is that if a public body is meeting and the subject matter is covered by the Open Meetings Act (matters that are discussed in the next chapter of this manual), the body must meet in open session. §10-505. While the Act sets out exceptions to this general rule, the exceptions themselves are to be “strictly construed in favor of open meetings of public bodies.” §10-508(c).

Although the Open Meetings Act is the primary State law on this topic, it is not the only potentially applicable law. If another State law applies to a meeting – for example, Article 23A, §8, on municipal legislative bodies – compliance with both laws is required to the extent possible.³ In addition, a local government might be subject to its own “sunshine” law. In the event of a conflict between the Open Meetings Act and another law on the same subject, the Open Meetings Act applies “unless the other law is more stringent.” §10-504. So, for instance, if a municipal charter requires all meetings of a town council to be open, the council may not invoke an exception in the Open Meetings Act to close a meeting.⁴

² The federal government and nearly every state have made the same policy judgment. When it enacted the Government in the Sunshine Act, 5 U.S.C. §552b, Congress declared that “the public is entitled to the fullest practicable information regarding the decision making processes of the Federal Government.” Pub. L. No. 94-409, 90 Stat. 1241 (1976). For a comprehensive review of state “sunshine” laws, see Ann Taylor Schwing, *Open Meeting Laws* (1994), and Peter G. Guthrie, Annotation, *Validity, Construction, and Application of Statutes Making Public Proceedings Open to the Public*, 38 A.L.R. 3d 1070 (1971 and Supp. 2010). The Reporters Committee for Freedom of the Press has published a survey on the public records and open meetings laws of the 50 states and District of Columbia, titled *Open Government Guide* (5th ed. 2006), available online at <http://www.refp.org/ogg/index.php>.

³ The Attorney General reviewed the continued effect of this statute and similar provisions applicable to county governing bodies and boards and commissions in the executive branch of State government in 94 Opinions of the Attorney General 161 (2009). While the earlier provisions are in large part duplicative of the Open Meetings Act, provisions prohibiting final adoption of certain measures in an executive session may not be eliminated in nonsubstantive code revision legislation. *Id.*

⁴ See *City of College Park v. Cotter*, 309 Md. 573, 525 A.2d 1059 (1987). But see *J.P. Delphay Ltd. P’ship v. Mayor and City of Frederick*, 396 Md. 180, 913 A.2d 28 (2006)

(continued...)

St. Mary's County has its own separate Open Meetings Act, codified in Article 24, Title 4, Subtitle 2 of the Maryland Code. Although the St. Mary's County Act in general is the more stringent of the two laws, a public body of the St. Mary's County government should comply with a provision of the State Open Meetings Act if the latter leads to greater public access.⁵

In 2011, the General Assembly amended the Open Meetings Act to create a new Joint Committee on Transparency and Open Government. The Committee is to review State laws and policies on transparency, serve as an informational resource for citizens, and recommend methods of increasing citizen access to government resources, publications, and actions.

⁴ (...continued)

(provisions allowing closure of meetings under the Open Meetings Act provide exception to general prohibition under Article 23A, §8). See also 94 Opinions of the Attorney General 161, 172 n.20 (2009) (recognizing that Cotter and J.P. Delphey are difficult to reconcile).

⁵ The St. Mary's County Act has been discussed and applied in 80 *Opinions of the Attorney General* 241 (1995), 89 *Opinions of the Attorney General* 22 (2004), and 95 *Opinions of the Attorney General* 152 (2010). See also advice letter from Assistant Attorney General Robert A. Zarnoch and Staff Attorney Kurt Wolfgang to Delegate J. Ernest Bell, II (November 22, 1991).