



# Open Meetings & Open Records Guide





# Table of Contents

I.	Introduction .....	1
II.	Open Meetings Overview .....	2
III.	Open Records Overview .....	6
IV.	FAQs .....	7



# Introduction

In Tennessee, there are two main state laws pertaining to local government transparency. These laws, often referred to as Open Meetings laws and Open Records laws, apply to conducting meetings and the public's ability to access governmental records. The goal of these laws is to ensure that the public has the ability to see and understand what governmental officials are doing and how they are making decisions. This guide will cover how these laws apply to local boards of education.



# Open Meetings Overview

Before the Open Meetings Law was passed, many School Board and other government meetings were conducted outside the public view. This was not always intentional. Often, the public was simply not informed about the meeting. With the passage of the law in 1974, the legislature required that meetings of School Boards, both regular and special, be open to the public (TCA 8-44-101).

This is an area of the law to which School Board members must pay special attention. If a Board decision is made at a meeting that is in violation of the sunshine law, as it is commonly called, the action may be determined “null and void” (TCA 8-44-105).

Despite straightforward language in the statute, much confusion exists regarding the provisions of the Open Meetings Law and exceptions to the law that have been created by the courts and the legislature. This section describes in detail the requirements of the law and discusses exceptions that are relevant to School Board members.

## Purpose

The purpose of the Open Meetings Law is to ensure that all citizens have an opportunity to be present at public meetings. “The General Assembly declares it to be the policy of the state that the formation of public policy and decision is public business and shall not be conducted in secret” (TCA 8-44-101).

It is noteworthy to recognize that the law does not require that the public be given a chance to participate in a public meeting. Rather, the law only requires that the public be given notice of the public meeting and that all public meetings be held in public. Nothing prohibits a School Board from conducting business if no member of the public shows up at a meeting for which adequate notice has been given.

## Meetings Defined

A meeting is defined as the convening of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision in any matter. A public body consists of two or more members who have the authority to make decisions for or recommendations to a public body on a policy (TCA 8-44-102). Any regular or special meeting of the Board of Education during which Board members deliberate toward or make a decision, whether formal action is taken or not, must be an open meeting.

In 1989, a federal district court in Tennessee determined that the gathering of School Board members at the Superintendent’s house before the regularly scheduled Board meeting was not a “meeting” in violation of the sunshine law. The court, in *Bundren v. Peters*, stated: “Although the kind of social gathering that occurred... could easily be utilized to circumvent the spirit of the Act, the evidence was clear that the (Superintendent) may have spoken with two-to-three, perhaps four, members of the



seven-member Board about some public business. He did not speak individually or in a group to all members or even about the same topics.... The Superintendent manipulated the Board to the precipice of a violation but the Board did not go over the edge by deliberating or deciding public business.”

## Chance Meeting

According to TCA 8-44-102, a chance meeting is not considered a public meeting. However, “no such chance meetings...shall be used to decide or deliberate public business in circumvention of the spirit of the [Open Meetings Law].” Board members who run into each other at the grocery store, for example, can comment generally on a Board meeting, but they should not discuss items that are to be decided on or be deliberated by the Board.

## On-Site Inspection

TCA 8-44-102 states that “meeting does not include any on-site inspection of any project or program.” If two or more Board of Education members decide to inspect the building of a new school, for example, this is not a public meeting.

## Adequate Notice

The statute requires that notice be given of a board meeting, and that notice should be “adequate” (TCA 8-44-103).

The courts have determined that the question of what is “adequate” depends on the totality of the circumstances. “Adequate public notice means adequate notice under the circumstances, or such notice based on the totality of the circumstances as would fairly inform the public.” In one Tennessee case, *Neese v. Paris Special Sch. Dist.*, 813 S.W.2d 432, 433 (Tenn. Ct. App. 1990), the Court of Appeals held that a misleading notice is inadequate. In that case, the Board of Education had taken a retreat to discuss an important educational concept, clustering, that was being considered in its schools.

Announcement of the retreat was given at a regular Board meeting, although the minutes did not reflect the announcement. A local radio station also reported that the Board voted to hold a retreat. The Board’s normal practice of notifying the public of its regular meetings was to report the date, time, and general agenda of the meeting to three media representatives in town: the local newspaper and two radio stations.

The court stated that to be “adequate,” the notice should have indicated that the clustering concept was going to be discussed at the retreat. “Certainly ‘adequate public notice under the circumstances’ is not met by misleading or insufficient notice.” This case should not be interpreted to say that Boards of Education must indicate specifically all the items to be discussed at an upcoming Board meeting. The court felt that the “clustering” concept was so politically significant that, to be fair, the Board needed to inform the public that it was going to be the primary subject of the retreat. Every Board of Education should adopt a policy that specifies what is “adequate” notice for its regular and special meetings.



## Minutes

The Open Meetings Law requires that minutes of a public meeting “shall be promptly and fully recorded, shall be open to public inspection, and shall include . . . a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of a roll call” (TCA 8-44-104).

## No Secret Votes

Additionally, the Open Meetings Law requires that all votes be public. This means that votes must be taken by a public voice vote, public ballot, or public roll call. Secret votes or ballots are not allowed (TCA 8-44-104).

## Violations of the Law

Any action taken at a meeting that is in violation of the Open Meetings Law shall be void and of no effect unless it involves a legal commitment affecting the public debt of the school board, (TCA 8-44-105). The courts may issue injunctions, may impose penalties, and may take other necessary action to enforce the law.

## Exceptions to the Law

There are two exceptions to the Open Meetings Law that are relevant to school boards. The first is based on attorney-client privilege and was created by the Tennessee Supreme Court. By contrast, the second exception comes from a statute created by the General Assembly.

The Tennessee Supreme Court has carved out the main exception to the law based on the attorney-client privilege. In *Smith County Education Association v. Anderson*, the court stated that meetings between a School Board and its attorney during which discussion of present litigation takes place may be held in private. School Board members may provide their attorney with facts and information regarding the lawsuit. The school board attorney may advise the School Board about legal ramifications of the facts. But the court emphasized that the exception is limited, “Once any discussion whatsoever begins among the members of the public body regarding what action to take based upon advice of counsel, whether it be settlement or otherwise, such discussion shall be open to the public and failure to do so shall constitute a clear violation of the Open Meetings Law.”

In *Van Hooser v. Warren County Board of Education*, the court extended the exception created in the Smith County case. In addition to attorney-Board discussions involving actual litigation, the court held that attorney-Board discussions of pending controversy could be held in private. Pending controversy was defined as controversy that was likely to result in litigation. Tennessee’s courts have since affirmed that decision in *Marie Lee v. Franklin City Board of Education* and again in *Baltrip v. Norris*, 23 S.W.3d 336 (TN. Ct. App. 2000).



The second exception was established by the General Assembly and also relates to the need to keep certain topics discussed by the Board of Education private. TCA 49-6-804(b) establishes, “Any meeting concerning school security, the district-wide school safety plans or the building-level school safety plans shall not be subject to the open meetings laws.” This statute goes on to state that while the meeting will not be open to the public, notice of the meeting must still be provided. Further, the law prohibits any discussion of other topics during such a meeting.



# Open Records Overview

Generally, governmental records are open for public inspection per Tennessee law. This state law (TCA 10-7-503) was written broadly with the goal of ensuring transparency for the public. Over the years, Tennessee courts have consistently upheld a far-reaching interpretation of this statute to cover almost all materials created by a local government. Accordingly, it is essential that Boards of Education understand this law and how to comply with it.

One key portion of the law that Boards must be aware of is the requirement for each school district to have an open records policy. This policy must establish:

- The process for requesting access to public records;
- The process for responding to public records requests;
- A statement of any fees charged for copies of public records; and
- The name or title of the entity's Public Record Request Coordinator.

Additionally, it is important to be aware of who can make a request and how the district is obligated to respond under state law. Per the Open Records Law, any citizen of Tennessee can make an open records request. To establish the identity of the requestor, the records request coordinator can ask to see the individual's government issued photo identification. The statute further provides that citizens can use the following methods to submit public records requests: Asking in person, calling to ask; fax; via the U.S. mail; email; or by using an electronic portal (if the district maintains one).

Once the district receives an open records request, the records request coordinator will need to review the request to determine: (1) whether the district has the requested records; and (2) how the district should respond. The first task is often more straightforward than the second. In determining how the district should respond, the records request custodian will need to determine how long it will take to organize the relevant documents. If sensitive information (bank account information, Social Security Numbers, personal contact information, etc.) needs to be redacted and if the request involves reviewing a large number of documents, these factors can require the district to involve additional staff in preparing the documents for review or in making copies. For example, some districts have responded to requestors stating that they will need over a month to prepare the requested documents. Especially in situations where a significant amount of work is required to prepare the documents, it is essential to provide the requestor with the amount of time it will take to prepare the request along with any fees that will be assessed to cover the cost of producing copies and/or utilized to cover the amount of staff time needed to assist in the preparation.



# FAQs

## Open Meetings

### How Long Has Tennessee Had a “Sunshine Law”?

“The general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.” With those words in 1974, the Tennessee General Assembly ushered in a new era of open government in Tennessee that is still being refined today. The “Open Meetings Act”, more commonly referred to as the “Sunshine Law”, has been the subject of heated debate ever since its passage

### What Is an Open Meeting?

The law provides a relatively simple and straightforward definition of an open meeting. “All meetings of any governing body are declared to be public meetings open to the public at all times.” On its face the meaning seems clear but the law has been subject to many challenges over the years. Essentially, any time there are two or more board members discussing a topic that the Board might vote on, the Open Meetings law should be adhered to.

### Are We Required to Give Notice?

The law requires that Boards give adequate public notice of all meetings. A governmental body is also required to give adequate public notice of special meetings “not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided by law. These notice requirements are in addition to, and not in substitution of, any other notice required by law” (TCA 8-44-103).

### Are Meeting Minutes Required?

The law states that “minutes of a meeting of any such governmental body shall be promptly and fully recorded, shall be open to public inspection, and shall include, but not be limited to, a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of roll call” (TCA 8-44-104(a)).

There are a number of opinions, legal and otherwise, as to how detailed minutes should be. The law requires the specific items listed above to be included in your minutes and beyond that it is a local decision as to how sparse or detailed your minutes will be.



## How Is the Open Meetings Law Enforced?

As with so many other laws, to enforce the Sunshine Law we must turn to the courts. The law states that the circuit courts, chancery courts, and other courts which have equity jurisdiction, have jurisdiction to issue injunctions, impose penalties, and otherwise enforce the law. This means that a court could require the Board to submit to monitoring of their actions for a period of time to ensure that they continue to follow state law.

Additionally, should the court find that there was a violation Boards and Board Members may be placed under a permanent injunction to not violate this law. Each separate occurrence of such meetings not held in accordance with state law constitutes a separate violation.

## Open Records

### What is a Public Record?

The definition of a public or state record is quite extensive and includes all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material regardless of physical form or characteristics. However, just because a document was created on a school district computer does not mean that document is necessarily a public record. A document is only a public record if it was made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency (TCA 10-7-503).

### Must Records Be Available 24/7?

No, the only requirement is that all state, county and municipal records shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

### How Quickly Must We Comply with a Record's Request?

The statute states that the record must be made available "promptly" but does not specifically define that term. The law does provide that if it is not practicable for the record to be promptly available for inspection the records custodian has seven (7) business days to do one of the following:

- Make the information available;
- Deny the request in writing or by completing a records request response form developed by the office of open records counsel and including in the response the basis for the denial; or
- Furnish the requestor a completed records request response form, also developed by the office of open records counsel, stating the time reasonably necessary to produce the requested records.



### **May We Recover All or Part of the Cost Involved in Producing Records?**

A records custodian may require a requestor to pay the custodian's reasonable costs incurred in producing the requested materials and to assess reasonable costs in the manner established by the office of open records counsel. The Office of Open Records is required to develop and maintain a schedule of reasonable charges which is available on their website. The schedule sets per page copying charges and outlines procedures for calculating labor charges.

### **What Happens If We Don't Respond Properly?**

If the governmental entity fails to respond in the manner described by law that constitutes a denial and the person making the request can then bring an action in circuit or chancery court.

### **Do We Have to Sort Through Files to Compile Information?**

The law doesn't require the entity to sort through files to compile information but the person requesting such information must be allowed to inspect the non-exempt records.

### **What If a Record Does Not Exist?**

A record that doesn't exist does not have to be created. However, if a record does exist but private information has to be redacted, that does not constitute creating a new record and the record must be redacted and produced if requested.

### **May We Require the Request to Be Written?**

The law states that a records custodian may not require a written request or assess a charge to view a public record unless required by law but may require a request for copies of public records to be written or made on a form developed by the office of records counsel.

### **What if the Request Is Vague or Broad?**

Any request shall be sufficiently detailed to enable the records custodian to identify the specific records to be located or copied.

### **Are There Exceptions?**

Yes, there are some exceptions related to employee and student records, as outlined below.

### **Employee Records**

State, county, municipal or other public employees, including former employee, or applicant to such position, enjoy some protection under the law. The following personal information must be treated as confidential:

- Telephone numbers and addresses;
- Bank account information;
- Social security number;



- Driver license information except where driving or operating a vehicle is part of the employee's job or incidental to the employee's job;
- The same information of immediate family members or household members;
- Emergency contact information; and
- Personal email addresses.

However, the government agency may not use the presence of this information in documents as an excuse to deny access. The information, whenever possible, must be redacted.

This general rule for public employees also applies to teachers except that teacher evaluations are specifically addressed by statute. All records containing the results of individual teacher evaluations administered pursuant to the policies, guidelines and criteria adopted by the State Board of Education shall be treated as confidential. This exception does not prevent the local Board of Education from utilizing the evaluations to fulfill their lawful function, including the release of such records to parties conducting research.

### **How Must Student Records Be Handled?**

The records of students in public educational institutions shall be treated as confidential. The law clearly states that unless an employee of a school system is authorized to view this confidential information, they may not view it. This includes information that relates to academic performance, financial status of a student or the student's parent or guardian, and medical or psychological treatment or testing.

There is an exception for agencies authorized by the educational institution to conduct specific research or otherwise authorized by the Board. Either the student or the parent or guardian of a minor student attending any institution of elementary or secondary education, may consent to these records released.

The governing board of the institution and the department of education shall have access on a confidential basis to such records as are required to fulfill their lawful functions otherwise, they too are denied access.

Statistical information not identified with a particular student may be released to any person, agency, or the public; and information relating only to an individual student's name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed.

### **May Any Student Information Be Released?**

Under the federal Family Educational Rights and Privacy Act (FERPA), K-12 student information designated annually by the school district may be released (directory information), though parents may still opt-out.



### **May Parents View Video Footage from School Bus Cameras?**

Beginning in 2019, Boards of Education must adopt a policy that allows parents to view photographs or video footage collected from a camera or video camera inside a school bus. The law does not require the installation of cameras, only that a policy establishing the viewing process be adopted if there are one or more buses with a camera. The policy must require that footage be viewed under the supervision of the Director/designee and establish the requisite duration for maintaining record of footage. The policy must also comply with state and federal privacy laws. Best practice would be to limit the viewing, in duration and portion of the footage, to the incident in question, if feasible and practicable considering the technological capabilities of the school system.

### **How Do Citizen's Enforce Rights Guaranteed by the Open Records Law?**

If a governmental entity denies access, a citizen is entitled to petition the circuit or chancery court and to obtain judicial review of the actions taken to deny access. The court may direct that the records being sought be submitted under seal for review by the court and no other party. The decision of the court constitutes a final judgment on the merits.

The official who denies access bears the burden of proof in such an action and the justification for nondisclosure must be shown by a preponderance of the evidence. The court is required to render written findings of fact and conclusions of law and may exercise full injunctive remedies and relief and must broadly construe the law so as to give the fullest possible access to public records.

### **Is a Public Official Liable if She Releases Information That Causes Damage?**

That public official is not to be held criminally or civilly liable. However, if a public official knows that a record is public and willfully refuses to disclose it, the court may assess all reasonable costs involved in obtaining the record including attorneys' fees against the governmental entity. The court may consider guidance from the Office of Open Records counsel.

### **Are Minutes of a Governmental Entity Public Records BEFORE They Are Approved?**

Generally, working papers and other temporary documents of a governmental entity are considered public records, particularly when these documents lead to a final or permanent record. The key difference is that temporary records may be scheduled for disposal as authorized.



# TSBA

Tennessee School Boards Association

## About TSBA

A statewide non-profit organization, the Tennessee School Boards Association is a federation of all the state's school boards. It serves as an advocate for the interests of Tennessee's public school students and school districts and provides in-service training and technical assistance for more than 950 Board of Education members.

TSBA was founded in 1939, and in 1953, the Tennessee General Assembly officially recognized TSBA as the "organization and representative agency of the members of school boards in Tennessee."



525 Brick Church Park Drive  
Nashville, TN 37207  
615-815-3900  
[www.tsba.net](http://www.tsba.net)