



ACLU

**AMERICAN CIVIL LIBERTIES UNION
of NEW JERSEY**

**Your right to attend
public meetings
is protected.**



**THE SUNSHINE
LAW**

A GUIDE TO THE NEW JERSEY SUNSHINE LAW

The “Sunshine Law,” otherwise known as the Open Public Meetings Act (OPMA), gives the public the right to be present at meetings of public bodies and to witness in full detail the deliberation, policy formulation and decision making of public bodies.

What does the Sunshine Law require?

The Sunshine Law requires public bodies to provide the public with:

- Adequate advance notice of all its meetings;
- The right to attend its meetings; and
- Reasonably comprehensive minutes of all meetings.

Who is covered under the Sunshine Law?

The law applies to any “public body” of the state, county, or municipal level of government.

A “public body” is defined as any commission, authority, board, council, committee or group of two or more organized under the laws of this state that:

- Is collectively empowered as a voting body and performs a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal relations of any person; or
- Is collectively authorized to spend public funds.

The law does not apply to the judiciary, juries, parole boards, the State Commission of Investigation, the Apportionment Commission, political party committees or any purely advisory committees.

What meetings are subject to the Sunshine Law?

A public body’s meeting is subject to the law if it is:

- Open to all the public body’s members;
- Attended by an effective majority of the members of that public body, regardless of whether they attend in person or by telephone or other means of communication; and
- Held with the intent to discuss or act upon public business.

Are all meetings open to the public?

The Sunshine Law generally requires all meetings of public bodies to be open. However, a public body may exclude the public from portions of a meeting, commonly referred to as “executive” or “closed” sessions.

Before going into a closed session, a public body must first adopt a resolution at a meeting which is open to the public stating:

- The general nature of what will be discussed in the closed session; and
- The time when the information discussed in private will be disclosed to the public.

When can public bodies exclude the public from a meeting?

The Sunshine Law allows public bodies to exclude the public when discussing:

- Matters considered confidential by law or court rule;
- Matters that would diminish the chances of receiving federal funds if released to the public;
- Material which would constitute an unwarranted invasion of individual privacy;
- Collective bargaining agreements, including negotiations about them;
- Matters involving investments of or real estate transactions with public funds, or the setting of banking rates, where disclosure of information could adversely affect the public interest;
- Tactics and techniques used in protecting the safety and property of the public and investigations of violations or possible violations of the law; Pending or anticipated litigation or contract negotiations involving the public body, and matters covered by the attorney-client privilege;
- Personnel matters including the employment, appointment or termination of current or prospective employees (unless affected individuals request for the matter be discussed); or
- Deliberations that could result in a fine or the suspension or loss of a license or permit (but only after an initial public hearing on that subject).

How much advance notice is required?

Public bodies are required to provide the public with “adequate notice” of all their meetings. Adequate notice may be provided:

- On an annual basis; or
- At least 48 hours prior to each meeting.

Public bodies providing annual notice must provide the time, date, and location (if known) of each meeting, within seven days of the annual organization or reorganization meeting of the public body. If there is no organization or reorganization meeting, such a notice must be provided by January 10th.

If a public body wishes to reschedule a meeting or convene a meeting not listed on the annual notice, it must provide 48 hours notice. The notice must contain the time, date, location and, to the extent known, the agenda of the meeting.

All notices must be:

- Posted in at least one public place reserved for public announcements;
- Published in two newspapers;
- Filed with appropriate Municipal or County Clerk or the Secretary of State if the public body has statewide authority; and
- Mailed to any person upon request.

What if an urgent matter arises?

A public body should provide adequate notice for all meetings, but may convene without notice if all of the following criteria are met:

- Three-quarters of the members present vote in favor of conducting a meeting without notice;
- The meeting is required to deal with urgent or important matters and a delay for the purpose of providing adequate notice would likely result in substantial harm to the public interest;
- The meeting is limited to only the urgent and important matters;
- Notice of the meeting is provided as soon as possible; and
- The need for such a meeting could not have been reasonably foreseen at a time when adequate notice could have been provided, or such need could have been foreseen and the public body subsequently provides reason(s) why adequate notice was not provided.

Public bodies are required to provide a statement in the meeting minutes detailing the urgent matters, the time, place and manner, that notice was provided and other information related to the criteria listed above.

What kind of meeting minutes are required?

Public bodies must keep “reasonably comprehensible” minutes of all their meetings. At a minimum, the minutes must reflect the time and place, members present, subjects considered, actions taken, and the votes of each member.

The minutes must also include a statement indicating that:

- Adequate notice was provided for the meeting (specifying the time, date, and manner in which the notice was provided), or
- Adequate notice was not provided and an explanation for the failure of the public body to provide adequate notice.

You have the right to obtain meeting minutes for both public and closed sessions.

Do I have the right to speak at public meetings?

The law currently requires municipal governing bodies and school boards to set aside a portion of every meeting for public comments. Other public bodies may also allow public comments, but they are not required to do so.

If a public body provides a time for public comment, it may adopt written policies that require speakers to sign up in advance and that limit the time of each speaker.



Members of the public look on while the Union County Board of chosen Freeholders apologizes to ACLU-NJ client Bruce Paterson for unlawful actions taken during a public meeting.

When addressing the public body, the public body is not required to respond to your questions. The public body cannot censor your speech during a public comment portion because it does not agree with you or like what you are saying. The public body also cannot prohibit comments based on subject matter so long as the comments relate to any issue “that a member of the public feels may be of concern to the residents of the municipality or school district.”

Do I have the right to record public meetings?

Although the Sunshine Law does not address this topic, the New Jersey Supreme Court held in *Tarus v. Pine Hill*, 189 N.J. 497 (2007) that members of the public have a common law right to videotape public meetings, subject to only reasonable restrictions. You also have the right to audiotape public meetings as well.

A public body may adopt written policies that reasonably restrict recording to ensure that the recording does not disrupt the meeting. The policies could require you to sign up in advance to record the meeting and may limit the number of people recording and the number of cameras, as well as their position, lighting and location.

What can I do if a public body violates the Sunshine Law?

You may file a lawsuit in the Superior Court of New Jersey to void any action taken by a public body at a meeting in violation of the Sunshine Law. However, the lawsuit must be filed within 45 calendar days after the public body’s action has been made public. You may also apply to the court for an injunction or other relief to ensure the public body complies with the law in the future.

Additionally, you may file a complaint with the County Prosecutor or the Attorney General, which could result in fines for any person that knowingly violates the law. Currently, the fine is \$100 for the first offense, and between \$100 and \$500 for any subsequent offenses.

Can a public body correct a violation of the Sunshine Law?

Yes. A public body may remedy a violation by subsequently holding a public meeting that conforms with the law and reconsiders the public business previously discussed and acted upon. ■

ACLU-NJ RESOURCES

The ACLU-NJ provides the following publications and materials to the public free of charge. If you would like to receive these materials, please email us at info@aclu-nj.org or visit www.aclu-nj.org/publications

- Students' Rights Handbook
- Know Your Rights cards in English, Spanish, Arabic and other languages
- Bust cards in English, Spanish, Portuguese and other languages
- Confidential Informant Report: An Exploratory Study of the Use of Confidential Informants in New Jersey
- The Rights of Immigrants in New Jersey

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- Racial Justice
- Religious Freedom
- Student & Youth rights
- Voting Rights

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- Yes, you may share my name and mailing address with other charities.**

Allowing the ACLU to exchange your name helps us to grow our membership and better protect civil liberties. Find out more about sharing contact information at: www.aclu-nj.org/sharing

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For more information about the ACLU-NJ's
Open Governance Project, visit:
www.aclu-nj.org/theissues/opengovernment/



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