

Disclosure of Records Scheduled for Discussion at Open Meetings

Shoshanah V. Bewlay, Executive Director, Committee on Open Government

Kristin A. O'Neill, Assistant Director, Committee on Open Government

Since 2012, § 103(e) of the Open Meetings Law has required public bodies or agencies that host public bodies to make available to the public, within reasonable limitations, the records scheduled to be discussed during open meetings prior to the meetings. Until recently, the Open Meetings Law did not address how far in advance of a meeting such records were required to be made available. Effective October 19, 2021, Chapter 481 of the Laws of 2021 amended § 103(e) of the Law to require that copies of records be made available to the public at least 24 hours before a public meeting, to the extent practicable. Records may be available for a reasonable fee and/or by posting them online.

The Law addresses two types of records: first, those that are required to be made available pursuant to FOIL; and second, proposed resolutions, law, rules, regulations, policies or amendments thereto. When either is scheduled to be discussed during an open meeting, the law requires that they be made available to the public, to the extent practicable, at least 24 hours prior to the meeting. |

It is important to stress that the amendments involve an effort to take advantage of today's information technology to promote transparency and citizen participation in government, and to reduce waste. The new amendment states: "[i]f the agency in which a public body functions (i.e., a state department, a county, city, town, village or school district) maintains a regularly and routinely updated website and utilizes a high speed internet connection," records scheduled to be discussed "shall be posted on the website to the extent practicable at least 24-hours prior to the meeting."

Posting records online can reduce an agency's costs associated with requests made under the Freedom of Information Law (FOIL). Agencies need not spend time retrieving paper records, photocopying the records,

or carrying out the administrative tasks involved with charging fees for copies.

The phrase quoted twice in § 103(e), “to the extent practicable,” is intended to ensure that the amendment is implemented reasonably and without undue burden or cost to an agency. In our view, this limiting language permits a public body to introduce amendments to a resolution, policy, local law, etc., at the meeting, under certain circumstances (including emergencies or where posting in advance is not otherwise practicable) even if the language was not made available to the public 24 hours prior to the meeting.

We emphasize that the potential obligation to make records available on request or online is limited to records that are “scheduled to be the subject of a discussion” during an open meeting.” If there is a basis for conducting an executive session, a portion of a meeting that may be closed, records scheduled to be discussed during the executive session are not required to be disclosed. Further, if a proposed policy offered by the head of an agency, a mayor, a town supervisor or a superintendent of schools was preceded by recommendations or opinions expressed by staff or members of a public body, those recommendations, opinions or similar materials fall outside the coverage of the amendment and need not be disclosed. See FOIL § 87(2)(g).

Through the disclosure of records scheduled to be discussed during open meetings, the public may be better able to understand and appreciate the issues facing government. Interested and civic-minded citizens can offer information and points of view that can assist in improving the operation of government to the benefit of our communities