



THE CITIZEN ADVOCACY CENTER'S GUIDE TO THE MINNESOTA GOVERNMENT DATA PRACTICES ACT AND MINNESOTA OPEN MEETING LAW

(Issued 12/08)

Open government statutes are cornerstone laws that ensure the public's capacity to play an essential role in the democratic process. They provide the mechanism by which people can knowledgeably discuss public issues, make informed political judgments, and monitor public officials and government agencies to ensure that government is acting in the public interest. To that end, the following is a general guide to the Minnesota Government Data Practices Act and Open Meeting Law statutes produced by the Citizen Advocacy Center.

GOVERNMENT DATA PRACTICES ACT

In 1979, the Minnesota General Assembly enacted the Minnesota Government Data Practices Act (the MGDPA). The MGDPA and the state's various public records laws, though lengthy and complicated, establish a flexible standard for differentiated levels of access to data for different circumstances. Within specified limitations, the Act allows anyone to inspect and obtain copies of all government data, *i.e.*, public records, prepared, possessed, used by, or in the control of any government entity, *i.e.*, public office. This access to government information is fundamental to the system of open government in Minnesota, and to the rights of citizens to be informed about the actions of public bodies on matters of public concern. Anyone (including individuals, groups, associations, corporations, firms, partnerships or organizations) may obtain access to government-held information, unless the data falls into one of the specific data exemptions discussed below or MGDPA exemptions for public data.

WHAT INFORMATION IS AVAILABLE?

There are several types of classified data specified under the MGDPA, and special rules defining how each data type changes classification or becomes public and therefore available under a records request. Public data is government data that may or may not identify an individual but is available to any member of the public for any reason. Some examples of the public data available under the Act are: orders, rules, policy statements, planning policies and decisions, reports or studies, public contracts, the names, titles and salaries of public employees, and the voting records of all public bodies. Electronic mail records are considered a disclosable public record under the MGDPA. Summary data pertains to statistical records and reports derived from data on individuals in which individuals are not identified and from which neither their identities nor any other characteristics that could uniquely identify individuals are ascertainable. This data is public data unless classified as not-public by

182 N. York St.,

Elmhurst, IL 60126

Phone: (630) 833-4080

Fax: (630) 833-4083

Website:

www.citizenadvocacycenter.org

E Mail:

cac@citizenadvocacycenter.org

Building Democracy for the 21st Century

another statute, federal law or temporary classification.

The following are data that are typically exempt from production under the MGDPA. Private data is about individuals which can be disclosed only to the subject of the data or to government entities and employees whose work assignments reasonably require access to the data. For example, welfare system data about individuals is generally private, *e.g.*, names of persons who are receiving welfare benefits. Confidential data pertains to individuals that even the individuals themselves cannot be told, *e.g.*, information from an investigation regarding adoption records. Note that even if the confidential data itself cannot be disclosed to individuals, individuals do retain the right to know whether an agency is maintaining confidential data about them. Nonpublic data pertains to a business or other entity that is only accessible by the subject of the data (data becomes public only with subject's consent or 10 years after creation/receipt of data, unless the government determines it against public interest), *e.g.*, inactive criminal investigation data.

WHO IS SUBJECT TO THE LAW?

Only government entities are subject to the MGDPA. This typically includes state agencies, record-keeping systems, political subdivisions, corporations or non-profits under contract, state university system and school districts, and any officer, board, or authority appointed for an agency or ordinance or any level of local government (counties, districts, charter cities, towns, etc.). A "Responsible Authority" is the individual in a state agency or statewide system who is made responsible for the entity's data by law or by the Commissioner of Administration; in a political subdivision,

he or she is the individual designated to be responsible for data by the local governing body. For the purposes of the MGDPA, it is typically the Responsible Authority who is the relevant entity. The judiciary is not subject to this law, but court records and proceedings generally are open to the public.

HOW TO FIND INFORMATION

Under the MGDPA, every government entity must make their existing records available to the public. By law, records containing government data must be kept in an arrangement that makes them conveniently accessible. However, the MGDPA does not require these bodies to answer specific questions, create new records or keep a central library or index of all government records. Consequently, if a requestor does not know which government entity has the records that they are seeking, an informal, polite telephone call may be the best place to start. Speaking with those government entities who have the names or responsibilities related to the topic might help identify the appropriate body to which a request should be addressed.

Each government entity must appoint a data practices compliance official. The Responsible Authority may fill this role and usually does. The public may direct questions and concerns about data access or other data problems to this individual. In addition, each Responsible Authority must prepare a public document that describes every kind of private or confidential data an agency has, and a document on the rights of data subjects and the procedures for data access by the subject of the data. The Responsible Authority must develop procedures to assure that data on individuals are accurate, complete, current and secure.

HOW TO MAKE A REQUEST

• Put it in writing

An informal telephone call or visit may help to identify the type of records desired and the government entity in possession of the records, but, to be official, a request for a public record must be made in writing. A written request will allow a requestor to take advantage of the appeal mechanisms provided in the MGDPA. A requestor should also date and retain a copy of the letter for their records. Also, if a request is sent by certified mail and a return receipt is requested, the requestor will be able to prove the date on which the request was received.

Also, be sure to check with the government entity from which information is being sought to determine if there are specific requirements for filing an MGDPA request. Some government entities require certain forms to submit a request or require that requests be delivered in person. Keep in mind that a government entity may not require a requestor to identify themselves or list a reason for his or her request in either a written or in-person request.

• Be specific

A letter must specify the data that the requestor wants. If all records of a broad category are requested, collecting the records might unduly burden the government entity, which could justify a delay or refusal to release the records. If a requestor wants information on a certain topic, but knows there are some kinds of material they do not want (*e.g.*, newspaper clippings, or records created before or after a certain date), he or she can ask that these be omitted. A requestor should also state their preferred format (*e.g.*, paper copy or computer disk). A specific request will avoid confusion and high copying fees.

SAMPLE REQUEST LETTER

Date

(If desired: Certified mail -- return receipt requested)
(name and title of official) (address of appropriate office of the public body)

Dear *(name)*,

Pursuant to the Minnesota Government Data Practices Act, Chapter 13 of the Minnesota Statutes, this is a request for a copy of the following data: *(Describe the subject or the documents containing the information that you want).*

If any record or portion of a record responsive to this request is contained in a record or portion of a record deemed unresponsive to the request, I would like to inspect the entire document. Under the Minnesota Government Data Practices Act, all non-exempt portions of any partially-exempt documents must be disclosed.

If any fee in excess of \$___ will be incurred in fulfilling this request, please obtain my approval before the fee is incurred. *(Or, if applicable, request a fee reduction or waiver: I request a waiver of any fees your office would ordinarily impose in responding to a request. I do not seek these records for commercial purposes and I intend to disseminate the information because disclosure is in the public interest in that it _____.)*

If any records or portions of records are withheld, please state the exemption on which you rely, the basis on which the exemption is invoked, and the address to which an appeal should be addressed. Thank you for your prompt consideration of my request. If you have any questions, or if I can be of assistance, please contact me at _____.

Sincerely,

(name)

WHAT IT MAY COST

- **Copying costs, actual costs and development costs**

The government cannot charge a fee for inspecting data, except when providing for remote access that enhances the data or access at the person's request. However, the MGDPA allows government entities to charge for producing copies of data. If 100 or fewer black-and-white pages are requested, then the fee will be no more than 25 cents per page and no actual costs may be charged. Otherwise, the fee may cover the actual costs of searching for, compiling, or electronically transmitting the data (including employee time under certain conditions, as discussed more fully below).

Additionally, actual costs may be charged in the discretion of the Responsible Authority if the request entails more than 100 pages of copies and the staff is required to retrieve documents, use certain materials (paper, copier ink, staples, diskettes, video or audio cassettes, etc.), write or modify a computer program to format data, incur mailing costs, or incur vehicle costs directly involved in transporting data to the appropriate facility when necessary to provide copies. If the requested data has commercial value and is a "substantial and discrete portion" of work developed with significant public funds, then the copy fee can reflect actual development costs for the information. The government must give a justification of such costs upon request.

In the case of copies of private data, a Responsible Authority's ability to recover costs is very limited, including only actual reproduction costs associated only with making, certifying, compiling, and electronically transmitting or mailing.

- **Fee waiver or reduction**

The MGDPA does not provide for a fee waiver or reduction in any circumstances. However, a requestor may seek a waiver or reduction if disclosure is in the public interest. One might receive a waiver or reduction if the requestor is (a) requesting information on the health, safety and welfare or the legal rights of the general public, (b) planning to disseminate this information, or (c) will not receive a personal or commercial benefit from the disclosure of the documents. Ordinarily, a requestor does not have to explain why he or she wants access to a public record, but to qualify for a fee waiver or reduction, he or she should explain what they plan to do with the information.

THE AGENCY RESPONSE

The MGDPA establishes that a government entity must respond to a government data request as soon as reasonably possible. No exact time period is provided. A requestor has a right to be informed in writing by the Responsible Authority of the specific law or classification that justifies the denial of their request.

HOW TO APPEAL

If a public records request is denied, the requestor has no administrative appeal right and must proceed directly to court for potential relief. However, prior to engaging in litigation, the requestor may seek an administrative opinion to support their legal case and should do so if possible. An individual denied access to data by the Responsible Authority's decision or the Responsible Authority itself may ask the Commissioner of Administration to issue an opinion with respect to the nature of the data sought. Such opinions are not binding on a public agency, but must be given deference by a court in a proceeding regarding the

data. There is no time limit for requesting an opinion from the Commissioner of Administration. If the Commissioner decides not to issue an opinion, he or she will provide a notice of that decision within 5 days of the receipt of the request. If the Commissioner issues an opinion, it must occur within 20 days of receipt of the request, however, the commissioner may “for good cause” extend this deadline for one additional 30-day period.

A person denied access to government records pursuant to an MGDPA request may bring a lawsuit in the district court of the county where the records are kept or in any county for state agencies. The Responsible Authority may be sued, in addition to the particular agency. In an action seeking compliance with the MGDPA, the statute states that “the matter shall be heard as soon as possible.” No statute of limitations is set forth in the MGDPA for initiating a state court lawsuit.

Note that the MGDPA and regulations provide an administrative appeals process for *individuals* who are the subject of government data. The individual must have made a data challenge disputing the release of government data about him or her with the responsive government entity and the responsive entity must have failed to protect all of the data identified in the data challenge. Such administrative appeals procedures can be reviewed in Minnesota Administrative Rules, Section 1205.1600.

DAMAGES, COSTS AND ATTORNEYS’ FEES

Significant civil and criminal penalties are available for violations under the MGDPA. Any aggrieved person may enforce the MGDPA by bringing a lawsuit seeking to compel compliance or obtain an injunction.

An action to compel compliance must be heard “as soon as possible.” A person who wins a lawsuit alleging losses as a result of violation of the MGDPA may be awarded compensation for the loss and for costs of the lawsuit and reasonable attorneys’ fees. If a court has to issue an order to compel compliance, then it can impose civil penalties up to \$1,000 payable to the state general fund. Also, exemplary damages between \$1,000 to \$15,000 may be awarded for willful violations.

Any person who willfully violates the MGDPA is guilty of a misdemeanor. Moreover, willful violation of the MGDPA by any public employee constitutes just cause for suspension without pay or dismissal of the public employee.

Red Flag: If the court determines that an action brought under the MGDPA is frivolous and without merit and a basis in fact, it may award reasonable costs and attorneys’ fees to the Responsible Authority. Therefore, if a lawsuit is determined to be frivolous and without merit, the plaintiff may be required to pay the government entity’s costs and attorneys’ fees for the entire lawsuit, which would be very costly.

EXEMPTED INFORMATION

The MGDPA exempts various kinds of information from disclosure. Government entities may, but are not required to, withhold from disclosure certain categories of public records. If a requested record contains some exempt and some non-exempt information, the Act requires that the government entity delete the exempt material and disclose the rest.

The categories of data subject to potential disclosure are exhaustive and may be reviewed here:

https://www.revisor.leg.state.mn.us/bin/getpub.php?pubtype=STAT_CHAP&year=current&chapter=13

STRENGTHS OF THE LAW

Following are a summary of several strengths of the Minnesota Government Data Practices Act:

- The MGDPA benefits from a strong presumption of coverage. The MGDPA establishes a presumption that government data are public and are accessible by the public for both inspection and copying unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public.
- The MGDPA includes substantial civil and criminal penalties for violations and was recently amended to increase money penalties. Any aggrieved person may enforce the MGDPA by bringing a lawsuit seeking to compel compliance or obtain an injunction, and may be awarded compensation for the loss and for costs of the lawsuit and reasonable attorneys' fees. If a court issues an order to compel compliance, it may impose civil penalties up to \$1,000 payable to the state general fund and assess between \$1,000 to \$15,000 for willful violations as exemplary damages. In addition, any person who willfully violates the MGDPA is guilty of a misdemeanor and willful violation of the MGDPA by any public employee constitutes just cause for suspension without pay or dismissal of the public employee. Minnesota's imposition of extensive penalties for MGDPA violations demonstrates the state's commitment to enforcing its public records law.
- Minnesota has demonstrated an impressive commitment to the state's open government laws by establishing a state office dedicated exclusively to educating both the public and elected officials on the state's open government laws. Minnesota's Information Policy Analysis Division (IPAD) in the Minnesota Department of Administration is responsible for the providing technical assistance and consultation; working with individuals, organizations, government entities, and the Legislature in drafting, proposing, and tracking legislation; assisting the Commissioner of Administration in performing duties under the open government laws; preparing explanatory publications to assist government entities in performing their duties and to assist individuals in actualizing their rights and much more. Although IPAD is not a statutorily created office and does not have the power to sanction government bodies that violate the MGDPA, it is actively involved in advancing MGDPA compliance in Minnesota.
- The Minnesota Coalition of Government Information (Coalition) fills a crucial role in advancing state open government law by providing comprehensive guidance on the MGDPA and other public records laws. The Coalition is an invaluable resource for individuals and government entities seeking a better understanding of the often bewildering public records laws in Minnesota.

RECOMMENDATIONS FOR REFORM

Following are a summary of several weaknesses of the Minnesota Government Data Practices Act and potential reforms:

- The MGDPA and related public records laws are extraordinarily complicated and inherently confusing. Unlike most states, which have one public records statute, Minnesota has dozens of data practices laws, regulations interpreting these laws, and differentiated levels of access to data for different people established in the laws. The state has failed to provide any comprehensive guidance on its public records laws despite the fact that it is difficult for average members of the public to decipher them.
- It is sometimes difficult to find the appropriate Responsible Authority under the MGDPA, thus stripping the law's remedies from a public records requestor. It is not uncommon for individuals to find it confusing to know exactly who to sue under the MGDPA; worse yet, sometimes there is no proper authority to sue.
- Responsible Authorities are often unable to comply with the MGDPA when requests seek electronic data. Since government data are public regardless of their format, the storage of such information in electronic format should not legally affect its openness. However, reports indicate that agencies are starting to encounter problems in turning over large databases to requestors. Technological advances must be incorporated in the law.

- The MGDPA explicitly provides that an individual seeking to enforce the Act may, in fact, be ordered to pay reasonable costs and attorneys' to the Responsible Authority if the court determines that the individual's lawsuit against the Responsible Authority is frivolous and without merit and a basis in fact. This award provision creates a substantial disincentive for individuals to bring legal action for MGDPA violations and should be removed from the law.

OPEN MEETING LAW

The Minnesota Open Meeting Law (OML), originally enacted in 1957, requires that meetings of governmental bodies generally be open to the public. The Minnesota Supreme Court has articulated three critical purposes of the law: to prohibit actions being taken at a secret meeting where it is impossible for the interested public to become fully informed about a public board's decisions or to detect improper influences; to assure the public's right to be informed; and to afford the public an opportunity to present its views to the public body. *St. Cloud Newspapers, Inc. v. District 742 Community Schools*, 332 N.W.2d 1, 4 (Minn. 1983). The OML promotes public participation in local government. It requires public bodies to hold open meetings, provide the public with adequate notice of meeting times so that citizens may freely attend, and keep records of public meetings. The Act gives citizens the right to be present to observe government meetings, except in limited circumstances designed to protect the public interest or personal privacy concerns.

WHAT IS A MEETING?

The OML covers gatherings of a quorum or more members of the governing body, or a quorum of a committee, subcommittee board, department or commission at which members discuss, decide or receive information as a group on issues relating to the official business of that governing body. The Minnesota Supreme Court held that “chance or social gatherings” are not subject to the OML even if a quorum is present. *St. Cloud Newspapers Inc. v. District 742 Community Schools*, 332 N.W.2d 1, 6 (Minn. 1983).

THE OPEN MEETING LAW APPLIES TO PUBLIC BODIES

Notably, the OML applies to all levels of state and local government. Public bodies include any state agency, board, commission, or department when it is required or permitted by law to transact public business in a meeting, the governing body of any school district, unorganized territory, county, city, town, or other public body, and a committee, subcommittee, board, department, or commission of a public body subject to the law. Meetings may be held by interactive television if specified conditions are met to ensure openness and accessibility for attendees.

In 1990, the State Legislature passed a law separate from the OML that requires all legislative meetings be open to the public. The law applies to House and Senate floor sessions and to meetings of committees, subcommittees, conference committees, and legislative commissions. See Minn. Stat. § 3.055.

WHAT DOES IT MEAN TO BE OPEN?

Public Notice

For regular meetings, public bodies must keep schedules of the meeting on file at their offices. If a person receives actual notice of meeting of a public body at least 24 hours before the meeting, all notice requirements of the OML are satisfied with respect to that person regardless of the method of receiving notice. In addition, a schedule of the regular meetings must be on file in the City Clerk’s office and available to City staff and the public. If there is a deviation in the meeting time or place, notice must be provided as required for a special meeting.

For special meetings, the public body must give three days written notice of the date, time, place and purpose. The notice of a special meeting must include the “purpose of the meeting” and be posted on the principal bulletin board of the public body, or if the public body has no principal bulletin board, on the door of its usual meeting room. In addition to posting the notice, the public body must mail or deliver a copy of the notice to each person who has filed a written request for notice of special meetings with the public body.

For emergency meetings, there is no time limit for giving notice, though the statute provides that notice must be given “as soon as reasonably practicable after notice has been given to the members.”

The OML requires public bodies to comply with the notice provisions listed above for closed meetings.

Agendas

The OML fails to specify agenda requirements for meetings covered by the law. However, if printed materials relating

to agenda items are prepared by or at the direction of the governing body, and are distributed or available to those members, one copy of these same materials must be available in the meeting room for inspection by the public.

CONVENIENCE

All meetings required to be public must be held at specified times and places which are convenient and open to the public. Meetings must, therefore, be more than technically open (*i.e.*, held in open rather than closed session). An open meeting in an inconvenient place violates the OML.

Nevertheless, meetings are not required to be held in locations to accommodate *all* interested members of the public.

Convenience is not a rule of absolute accessibility, but of reasonable accessibility. However, with knowledge that a meeting place would be too small to accommodate the number of citizens who wish to attend a meeting, with the availability of larger alternative venues, and with the refusal to change the meeting place due to a desire to inconvenience the public, the OML is violated. *Gerwin v. Livingston County Board*, 802 N.E.2d 410 (Ill. App. Ct. 4th Dist., 2003).

RECORDING PUBLIC MEETINGS

The OML is silent regarding whether meetings may be taped or filmed. However, the Attorney General has opined that an individual may tape a meeting as long as the taping does not have a significantly adverse effect on the order of the proceedings or impinge on constitutionally protected rights. Minn. Op. Atty. Gen., 63a-5, Dec. 4, 1972. It is reasonable to conclude that an individual may tape or film meetings so long as that individual's conduct is not disruptive.

RECORDING CLOSED MEETINGS

The 2008 Omnibus Data Practices Bill (Minnesota Session Laws 2008, Chapter 315) revised the OML to require that all closed meetings of a public body be electronically recorded at the expense of the public body (except those meetings closed as permitted by the attorney-client privilege). The revised law mandates that these recordings must be preserved for at least three years, unless otherwise provided by law.

WRITTEN MINUTES

The OML does not specifically require that minutes be taken of events occurring at a regular meeting. The only statutory requirement is that votes taken at a meeting required to be public will be recorded in a journal kept for that purpose, which must be open to the public during normal business hours. The vote of each member must be recorded on appropriations of money, except for payments of judgments and claims and amounts fixed by statute.

WHEN MAY A PUBLIC BODY CLOSE A MEETING OR HOLD AN EXECUTIVE SESSION?

The OML does not explicitly define a closed meeting. Instead, it provides mandatory and discretionary subjects for closing meetings.

Any portion of a meeting *must* be closed if expressly required by other law or if the following types of data (*i.e.*, records) are discussed: (1) data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults; (2) active investigative data as defined in Minnesota Statutes, Section 13.82(7) or internal affairs data relating to allegations of

law enforcement personnel misconduct collected or created by a state agency, statewide system, or political subdivision; (3) educational data, health data, medical data, welfare data, or mental health data that are not public data under Minnesota Statutes, Sections 13.32, 13.3805(1), 13.384, 13.46(2) or 13.46(7); or (4) an individual's medical records governed by Minnesota Statutes, Sections 144.291 to 144.298. In addition, a public body must close one or more meetings for preliminary consideration of allegations or charges against an individual subject to its authority. If the members conclude that discipline of any nature may be warranted as a result of those specific charges or allegations, further meetings or hearings relating to those specific charges or allegations held after that conclusion is reached must be open. Further, the OML does not apply to any state agency, board, or commission when exercising quasi-judicial functions involving disciplinary hearings.

A meeting *may* be closed under the following conditions: if disclosure of the information discussed would pose a danger to public safety or compromise security procedures or responses; to discuss strategy and proposals for labor negotiations conducted under the Public Employment Labor Relations Act; to evaluate the performance of an individual who is subject to its authority, so long as the public body identifies the individual to be evaluated prior to closing a meeting and at its next open meeting, the public body summarizes its conclusions regarding the evaluation; if the closure is expressly authorized by statute or permitted by the attorney-client privilege; to determine the asking price for real or personal property to be sold by the government entity; to review confidential or nonpublic appraisal data under Minnesota Statutes, Section 13.44(3); and to develop or

consider offers or counteroffers for the purchase or sale of real or personal property.

Generally, before closing a meeting, a public body must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed. Special provisions apply to certain closing meetings, as follows: to discuss labor negotiations, the time and place of the closed meeting must be announced at a public meeting; if the meeting to be closed is regular, special or emergency, the public body must follow the notice provisions that apply to the particular type of meeting to be closed; and if a public body proposes to close a meeting to evaluate the performance of an individual subject to its authority, it must identify the individual at an open meeting, prior to closing the meeting.

WHAT TO DO IF AN OPEN MEETINGS LAW VIOLATION IS SUSPECTED

If present at a meeting where a violation of the OML may have occurred, ONE should raise this matter with the public body and insist that they comply with the terms of the Act. There are no administrative channels for contesting a violation under the OML. Therefore, if the public body refuses to comply, only the courts can provide relief. However, prior to engaging in litigation, one may seek an administrative opinion to support his or her legal case and should do so if possible.

Both public bodies subject to the OML and individuals may seek advice on the application of the law and compliance guidance from the Commissioner of Administration. A governing body or person requesting an opinion of the Commissioner of Administration must pay a \$200 fee if the commissioner decides, within

his or her discretion, to issue an opinion. There is no time limit for requesting an opinion from the Commissioner of Administration.

If the Commissioner decides not to issue an opinion, he or she will provide a notice of that decision within 5 days of the receipt of the request. If the Commissioner issues an opinion, it must occur within 20 days of receipt of the request, however, the commissioner may “for good cause” extend this deadline for one additional 30-day period. Opinions of the Commissioner of Administration are not binding, but a 2008 amendment to the OML has established that a court is now required to give the opinions deference. However, a governing body that conforms to an opinion is not liable for fines, attorneys’ fees or any other penalty, or forfeiture of office.

An individual may bring an action in district court seeking injunctive relief or damages. There are no time limits on bringing a lawsuit in state court. The court may award reasonable costs, disbursements, and attorneys’ fees of up to \$13,000 to any party in an OML action. Attorneys’ fees may not be awarded against a member of the public body unless the court finds there was an intent to violate the law. A person who intentionally violates the OML is subject to a civil penalty up to \$300 for a single occurrence, which cannot be paid by the public body. An individual who intentionally violates the law in three or more legal actions involving the same governmental body forfeits the right to serve on that body for a time equal to the term the person was serving. No criminal penalties are available for OML violation.

Red Flag: If the court determines that an action brought under the OML is frivolous and without merit, it may award reasonable

costs and attorneys’ fees to the public body. Therefore, if a lawsuit is determined to be frivolous and without merit, the plaintiff may be required to pay the public body’s costs and attorneys’ fees for the entire lawsuit, which would be very costly.

STRENGTHS OF THE LAW

Following are a summary of several strengths of the Minnesota OML:

- The OML benefits from a strong presumption of coverage built into the statute, which requires that meetings of governmental bodies generally be open to the public. The Minnesota Supreme Court has articulated three critical purposes of the law: to prohibit actions being taken at a secret meeting where it is impossible for the interested public to become fully informed about a public board’s decisions or to detect improper influences; to assure the public’s right to be informed; and to afford the public an opportunity to present its views to the public body.
- A significant strength of the OML is its robust penalty provisions. While only individuals can bring litigation to enforce the OML, the potential fines for OML violations are remarkably high. A person who intentionally violates the OML is subject to a civil penalty up to \$300 for a single occurrence, which cannot be paid by the public body. In addition, the court may award reasonable costs, disbursements, and attorneys’ fees of up to \$13,000 to any party in an OML action.
- The OML benefits from flexible and lenient closed meetings requirements. While the statute requires mandatory closed sessions

for a limited range of subjects, it permits a public body to exercise discretion whether to close a meeting for matters that are usually subject to closed sessions. The absence of certain matters from the mandatory closed session list advances open government in Minnesota by providing government bodies with the latitude to keep meetings open to the public.

- Minnesota has demonstrated an impressive commitment to the state's open government laws by establishing a state office dedicated exclusively to educating both the public and elected officials on the state's open government laws. Minnesota's Information Policy Analysis Division (IPAD) in the Minnesota Department of Administration is responsible for the following: providing technical assistance and consultation; working with individuals, organizations, government entities, and the Legislature in drafting, proposing, and tracking legislation; assisting the Commissioner of Administration in performing duties under the open government laws; preparing explanatory publications to assist government entities in performing their duties and to assist individuals in actualizing their rights; preparing model forms, policies, and procedures to assist in compliance; consulting on complex legal, technical, and policy issues; and consulting with the information technology community to ensure that information systems are developed that comply with data practices laws. Although IPAD is not a statutorily created office and does not have the power to sanction government bodies

that violate the OML, it is actively involved in advancing OML compliance in Minnesota.

RECOMMENDATIONS FOR REFORM

Following are a summary of several weaknesses of the Minnesota OML and potential reforms:

- Minnesota has extremely weak requirements regarding appropriate agenda notice and minutes at open meetings. The OML fails to specify any significant agenda requirements for meetings covered by the statute. There is no requirement that an agenda for a regular meeting include details regarding the meeting, such as final actions to be considered, property transactions, or specific business items to be discussed. Further, the OML does not specifically require that minutes be taken of events occurring at a regular meeting. The OML's bare bones minutes requirement similarly impedes government transparency as documentation of policy discussions is not required. Paired with the scant agenda requirement, the OML fails to inform individuals of what to expect from meetings, or what has occurred at them.
- Certain closed session provisions also undermine transparency and accountability. While Minnesota's two-tiered system for mandatory versus discretionary closed meetings provides public bodies with some flexibility regarding entering closed sessions, it cannot be ignored that the state requires closed meetings for various subjects without exception. Government entities have no discretion to make meetings public

in cases involving certain disciplinary hearings and educational data, health data, medical data, welfare data, or mental health data that are not public data, among other areas.

- The OML explicitly provides that an individual seeking to enforce the Act may, in fact, be ordered to pay reasonable costs and attorneys' fees to the public body for a lawsuit the court finds to be frivolous and without merit. This award provision creates a substantial disincentive for individuals to bring legal action for OML violations and should be removed from the law.

FOR MORE INFORMATION

This contains a general description of the Minnesota Government Data Practices Act and suggestions for how to use it effectively. For specific language, consult the Act itself, Chapter 13 of the Minnesota Statutes. For access to federal records, consult the federal Freedom of Information Act, 5 U.S.C. § 552. To view the Minnesota Open Meeting Law in its entirety, please refer to the actual legislation at Minn. Stat. 13D.01 *et. seq.*

DISCLAIMER

This guide is not intended to be legal advice, but only an overview of open government laws. You are advised to consult an attorney before taking any legal action. References to procedures and laws are only summaries and are not meant to be complete or all encompassing. If you have questions or desire further information, call (630) 833-4080.

©Copyright 2008 Citizen Advocacy Center. All rights reserved. No part of these materials may be reproduced in any form or by any means without the prior, written permission of the Citizen Advocacy Center.

The Citizen Advocacy Center, a nonpartisan, 501(c)(3), non-profit organization is dedicated to building democracy for the 21st century by strengthening the public's capabilities, resources, and institutions for better self-governance. If you are interested in more information about the Center, becoming a volunteer, or making a tax-deductible contribution to the Center, please feel free to contact us.