

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

FREEDOM OF INFORMATION ACT: Public access to the minutes of a public
body's open meetings

OPEN MEETINGS ACT:

PUBLIC RECORDS:

After receiving a request, a public body must make open meeting minutes available for inspection within the time periods specified in the Open Meetings Act, MCL 15.261 *et seq.* The public body may, under rules established and recorded by the public body, request advance notice of and require supervision of any inspection of the public body's record copy of open meeting minutes to protect the record from "loss, unauthorized alteration, mutilation, or destruction." MCL 15.233(3). Generally, neither advance notice nor supervision should be required for the inspection of copies of open meeting minutes.

Opinion No. 7244

March 3, 2010

Honorable Alma Wheeler Smith
State Representative
The Capitol
Lansing, MI

You have asked several questions relating to a person's right of access to a public body's meeting minutes under the Open Meetings Act (OMA), MCL 15.261 *et seq.*

Rephrasing your questions, you ask whether a public body may require a person to make an appointment to inspect a public body's meeting minutes and supervise the inspection of the minutes, and whether a public body may provide copies of the minutes in lieu of allowing a person to personally inspect the "original" minutes on demand during normal business hours.¹

¹ Your request uses the term "original minutes." The OMA does not use the term "original minutes," and it is understood that by using this terminology, you mean to refer to the record copies of minutes officially retained by a public body. This opinion will therefore use the term "record copy," as opposed to "original minutes," where appropriate.

Section 9(2) of the OMA, MCL 15.269(2), provides that "[m]inutes are public records open to public inspection, and a public body shall make the minutes available at the address designated on posted public notices pursuant to section 4." Section 9(2) further provides that the public body "shall make copies of the minutes available to the public at the reasonable estimated cost for printing and copying." MCL 15.269(2).

Section 9(3) of the OMA establishes time limits within which minutes must be made available for public inspection:

A public body shall make proposed minutes available for public inspection within 8 business days after the meeting to which the minutes refer. The public body shall make approved minutes available for public inspection within 5 business days after the meeting at which the minutes are approved by the public body. [MCL 15.269(3).]

Section 9(1) of the OMA, MCL 15.269(1), requires that corrected minutes be "available at or before the next subsequent meeting after correction." Thus, the public has a right to inspect minutes of open meetings. On the other hand, closed session minutes shall only be disclosed to the public if required in a civil action filed under sections 10, 11, or 13 of the OMA, MCL 15.270, 15.271, and 15.273. *Local Area Watch v City of Grand Rapids*, 262 Mich App 136, 145-146; 683 NW2d 745 (2004); OAG, 1985-1986, No 6353, p 255 (April 11, 1986).

The OMA contains no provisions requiring an appointment to inspect minutes or restricting the inspection to copies of minutes nor does it address how a public body is to accommodate a request to inspect minutes or copies of minutes. In applying the provisions of a statute, consideration must be given to the statute's purpose or intent, and then apply a reasonable construction that best accomplishes the purpose or intent. *People v Adair*, 452 Mich 473, 479-

480; 550 NW2d 505 (1996). The broad, inclusive language employed in the OMA attests to its pro-disclosure nature and its purpose to promote government accountability. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 221-224, 230; 507 NW2d 422 (1993).

Minutes of open meetings also are subject to disclosure as public records under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* *Hubka v Pennfield Twp*, 197 Mich App 117, 123; 494 NW2d 800 (1992). Because the OMA and FOIA share a similar purpose – to make governmental functions transparent – the FOIA's disclosure provisions provide guidance in answering these questions.

Section 3(3) of the FOIA, MCL 15.233(3), provides for a reasonable opportunity for inspection and examination of public records during usual business hours, and permits a public body to "make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions." Section 3(3) also requires a public body to "protect public records from loss, unauthorized alteration, mutilation, or destruction." The protection of public records from mutilation or destruction also is provided for in section 491 of the Michigan Penal Code, MCL 750.491. The Michigan Supreme Court has observed that "[a] statute must be read in conjunction with other relevant statutes to ensure that the legislative intent is correctly ascertained." *Bush v Shabahang*, 484 Mich 156, 167; 772 NW2d 272, 279 (2009), citing *Wayne County v Auditor General*, 250 Mich 227, 233; 229 NW 911 (1930). These provisions from the FOIA and the Penal Code should therefore guide a public body in fulfilling its obligations under the OMA.

In complying with its obligations under the OMA to provide the public access to meeting minutes, the public body must also discharge its other public functions and duties. To that end, a rule of reasonableness is applicable in providing a public body an adequate opportunity to meet the request to inspect minutes. A public body must make at least a copy of its minutes available for inspection as provided in MCL 15.269(2) of OMA. A public body must avoid undue delay in meeting a request, and is obligated to comply with the response periods of the FOIA, and the specific provisions of the OMA, such as section 9(3) for proposed and approved minutes. But to protect the integrity of its official records, and to allow sufficient time to retrieve such records, if necessary, it may be reasonable for a public body to require advance notice of, and supervision of, the inspection of a record copy of meeting minutes.

It is my opinion, therefore, that, after receiving a request, a public body must make open meeting minutes available for inspection within the time periods specified in the Open Meetings Act, MCL 15.261 *et seq.* The public body may, under rules established and recorded by the public body, request advance notice of and require supervision of any inspection of the public body's record copy of open meeting minutes to protect the record from "loss, unauthorized alteration, mutilation, or destruction." Generally, neither advance notice nor supervision should be required for the inspection of copies of open meeting minutes.

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