



**Agenda
For
Board of Elections Special Called Meeting
Training Room, Lexington Road
May 6, 2018
4:00 pm - 8:00 pm**

1. Welcome and Introductions
2. Overview of the Day
3. Roles and Responsibilities (Chairman, Board Members, Staff Members, Poll Workers, Director)
4. Open Meetings Open Records Overview (Attorney's Office)
5. Activity: Why did you join this board? Report Out
6. **What is our Mission?**
 - a) Who Needs Us?
 - b) What do they need and why?
 - c) What must we deliver to meet their needs?
7. What will it look like when we achieve our mission?
8. Wrap-Up
9. Adjourn – Next Meeting May 8th 4-8 pm

**PRESENTATION TO THE
ATHENS-CLARKE COUNTY BOARD OF ELECTIONS AND
REGISTRATION**

MAY 6, 2019

Disclaimer: This handout is intended to provide general information to the Athens-Clarke County Board of Elections and Registration, and *should not* be construed as legal advice. Please contact the Attorney's Office with any specific questions or concerns. The Attorney's Office serves as legal counsel for the Athens-Clarke County Board of Elections and Registration, and does not provide legal advice or representation to members of the general public. Members of the general public *may not* rely on any information in this handout as legal advice.

I. Introduction.

The handout is intended to provide basic information regarding the Georgia Open Meetings Act, O.C.G.A. §§ 50-14-1, et seq., and the Georgia Open Records Act, O.C.G.A. §§ 50-18-70, et seq. This is not a comprehensive document; rather, this handout and the associated presentation are intended to provide members of the Athens-Clarke County Board of Elections and Registration¹ with enough information to allow them to spot potential open meeting or open record issues. If Board members have any specific questions regarding such issues, please contact the Attorney's Office at (706) 613-3035, or send an email to Attorney Bill Berryman and Chief Assistant Attorney John Hawkins.

¹ The Athens-Clarke County Board of Elections and Registration will hereinafter be referred to simply as the "Board."

II. Primer on the Attorney's Office.

The Athens-Clarke County Attorney's Office is in the "in-house" legal office for the Unified Government of Athens-Clarke County, Georgia, and the Attorney is one of Unified Government's "Charter officers," meaning one of the specific officer positions created in Article IV of the Charter of Athens-Clarke County, Georgia. The Attorney's Office is currently comprised of the following employees:

Bill Berryman, Attorney
John Hawkins, Chief Assistant Attorney
Michael Petty, Assistant Attorney
Sherrie Hines, Assistant Attorney
Robin Gailey, Legal Assistant
Sean Palmateer, Investigator

The Attorney's Office provides legal services to the Mayor & Commission, the Manager's Office, the constitutional officers of Athens-Clarke County (e.g., the Sheriff and the Tax Commissioner), and various departments, divisions, boards, commissions, and authorities of the Unified Government. These services include:

- Representing the Unified Government or its various departments, divisions, boards, commissions, and authorities in lawsuits and administrative proceedings (unless outside counsel is appointed).
- Drafting ordinances and resolutions for the Mayor & Commission.
- Drafting and reviewing contracts and real estate documents for the Unified Government.
- Prosecuting ordinance violations, and representing the Unified Government in parking, red light camera, and school bus camera cases before the Municipal Court of Athens-Clarke County, Georgia.
- Researching legal authorities and providing legal guidance or advice to the Mayor & Commission, the Manager's Office, constitutional officers, and the various departments, divisions, boards, commissions, and authorities of the Unified Government.

In its role as the legal counsel for the Unified Government, the Attorney's Office provides legal advice, guidance, and representation to the Board. For sake of clarity, the Attorney's Office does not represent any of the Board members in their individual capacity; rather, the Attorney's Office represents the Board, a legal entity created under the laws of the State of Georgia, as a whole.

III. Primer on the Georgia Open Meetings Act.

1. What is the Georgia Open Meetings Act?

The Georgia Open Meetings Act, O.C.G.A. §§ 50-14-1 through 50-14-6, provides the dos and don'ts for meetings of public bodies.

2. What is the purpose of the Act?

The Act “was enacted in the public interest to protect the public—both individuals and the public generally—from “closed door” politics” *EarthResources, LLC v. Morgan County*, 281 Ga. 396, 399 (2006) (quoting *The Atlanta Journal v. Hill*, 257 Ga. 398, 399 (1987)).

3. Who is covered under the Act?

The applicable statute, O.C.G.A. § 50-14-1, uses the term “agency,” which is broadly defined to include state government entities, counties, cities, and “every department, agency, board, bureau, office, commission, authority, or similar body” of a county or city.

4. What is a “meeting” under the Act?

The applicable statute, O.C.G.A. § 50-14-1, defines a “meeting” as

(i) The gathering of a quorum of the members of the governing body of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon; or

(ii) The gathering of a quorum of any committee of the members of the governing body of an agency or a quorum of any committee created by the governing body at which any official business, policy, or public matter of the committee is formulated, presented, discussed, or voted upon.

As a general matter, this statute requires that all meetings be open to the public.

5. If Board members meet at a restaurant and discuss Board business, is this a meeting under the Act?

If a quorum of the members are present, yes.

6. What does the Act say about meeting minutes?

Under the Act, public bodies are required to maintain minutes. The applicable statute, O.C.G.A. § 50-14-1, requires minutes to have the following information: “the names of the members present at the meeting, a description of each motion or other proposal made, the identity of the persons making and seconding the motion or other proposal, and a record of

all votes.” The same statute requires public bodies to approve minutes of previous meetings at its next regular meeting.

7. Are there certain gatherings that are not considered meetings under the Act?

Yes. Under O.C.G.A. § 50-14-1, there are certain gatherings that are not considered meetings. These are:

- Inspection of physical facilities or property (no discussion of official business or taking any official action)
- State-wide, multijurisdictional, or regional meetings to participate in seminars or courses of training (no official action)
- Meeting with officials of the legislative or executive branches of the state or federal government at state or federal offices (no official action)
- Traveling to a meeting or gathering (no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum)
- Social, ceremonial, civic, or religious events (no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum)

8. Are there certain meetings or portions of meetings that may be closed to the public?

Yes. A public body may hold an executive session to discuss certain topics. Common examples are discussions with the public body’s attorney regarding a pending lawsuit, discussions regarding purchase or sale of real estate, or certain personnel matters. There are procedures a public body *must* follow to enter into an executive session. If you believe that a matter is appropriate for an executive session, the Attorney’s Office can offer specific guidance to ensure that the Board follows the proper procedures.

9. Are the Act and “parliamentary procedure” the same thing?

No. While they overlap in some aspects, these are two different things. The Act provides rules to ensure that the public has access to meetings of public bodies and can access basic information regarding the decisions made by public bodies. The term “parliamentary procedure” refers to the rules by which public bodies conduct their meetings, and these rules help to ensure that public bodies conduct their meetings in a smooth, courteous, and organized manner. A public body’s bylaws or rules of procedure generally describes the parliamentary procedure that a public body will follow, and most of the boards, authorities, and commissions of the Unified Government adopt *Robert’s Rules of Order* in their bylaws to set the basic rules of getting the floor, making motions, discussion after motions, etc.

IV. Primer on the Georgia Open Records Act.

1. What is the Georgia Open Records Act?

The Georgia Open Records Act, O.C.G.A. §§ 50-18-70 through 50-18-77, describes the basic principles for public access to government records.

2. What is the purpose of the Act?

In O.C.G.A. § 50-18-70, the General Assembly of Georgia describes the Act's purpose as follows: "The General Assembly finds and declares that the strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society; and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions."

3. Who is covered by the Act?

According to O.C.G.A. § 50-18-70, the Act covers all "agencies," as that term is defined in O.C.G.A. § 50-14-1 (see Question No. 3 in the Primer on the Georgia Open Meetings Act). The Act also covers a few other organizations that are not relevant for our purposes today.

4. What is covered by the Act?

In short, the Act requires public bodies to produce or allow access to "public records," which O.C.G.A. § 50-18-70 defines as "all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency." *As a reminder, this includes emails, text messages, and social media communications!*

5. How does the Act work?

O.C.G.A. § 50-18-71 describes the precise procedure. In general, a person will submit a request to a public body for records. The public body then has three (3) business days to respond to the request, either with the records themselves—if they exist and are otherwise not exempt from disclosure—or an estimate of how long it will take to retrieve the records and make them accessible. The Act permits public bodies to "impose a reasonable charge for the search, retrieval, redaction, and production or copying costs for the production of records."

6. Are there certain records or information that are exempt from the Act?

Yes. The Act itself contains almost fifty (50) exceptions in O.C.G.A. § 50-18-72. These exceptions include things like attorney-client privileged communications, confidential attorney work product, and records that reveal things like a person's social security number,

bank account information, personal email address, personal cell number, or day and month of birth. Also, other provisions of Georgia law contain exceptions to the Act. For instance, under O.C.G.A. § 21-2-225, voter registration applications are exempt. Because of the variety of exceptions, it is important to consult with the Attorney's Office if any questions arise.

7. If we don't have a certain record that someone has requested, does the Act require us to create it?

No. We only have to produce records that exist at the time of the request. O.C.G.A. § 50-18-71(j); *see also Schulten, Ward & Turner, LLP v. Fulton-DeKalb Hosp. Auth.*, 272 Ga. 725, 726 (2000) (Government agency "cannot have custody of that which does not exist.").

8. What should I do if someone has submitted an Open Records Act request to me?

There is an established procedure for submitting records requests to the Unified Government; however, if someone submits a request to you in your capacity as a Board member, please let Elections Department staff and the Attorney's Office know as soon as possible. *Please do not produce any records on your own! Staff is responsible for reviewing and responding to records requests in accordance with the Act, including redaction of all information that is restricted by law. Thus, all such requests should be routed through staff.*