

# PENNSYLVANIA SUNSHINE ACT: QUESTIONS & ANSWERS



## A Reporter's Manual

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# TOP QUESTIONS

## 1. What is the purpose of the Sunshine Act?

A: To protect the public's right to attend all meetings of government agencies where agency business is discussed or acted upon.

## 2. What is the basic rule of the Sunshine Act?

A: Section 704 of the law requires that all official action and deliberations of agency business performed by a quorum of the members of an agency must take place at a meeting, advertised and open to the public. There are several limited exceptions that allow private deliberation of agency business, but official action (votes) can only take place at a public meeting.

## 3. Who is covered by the Act?

A: The Sunshine Act covers "agencies" and the law defines the term to include:

- Governing bodies,
- Committees of governing bodies that render advice or take official action
- Similar organizations:
  - ♦ Created by or pursuant to a statute;
  - ♦ Statute authorizes organization to perform essential governmental function; and
  - ♦ Organization exercises governmental authority and takes official action

Examples of agencies:

- The General Assembly of the Commonwealth of Pennsylvania
- The Governor's Cabinet
- Any board, council, authority or commission of the Commonwealth or any political subdivision
- Any state, municipal, township or school or charter school authority, board or commission
- Boards of Trustees of all state-related colleges, universities and charter schools
- Committees of an agency that render advice on agency business or take official action

## 4. When can an agency hold an executive session?

A: Section 708(b) of the Sunshine Act allows an executive session to be held during an open meeting, at the conclusion of an open meeting, or announced for a future time.

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## 5. What information does an agency have to announce about an executive session?

A: The reason for holding the executive session must be announced at the open meeting occurring immediately prior to or subsequent to the executive session. Agencies must announce more than a one-word reason for executive session and must provide some information to allow the public to determine the appropriateness of the private session. See *Reading Eagle Company v. City Council of Reading*, 627 A.2d 305 (Pa. Cmwlth. 1993).

The law also requires members of the agency to be notified 24 hours in advance of the date, time, location and purpose of an executive session, if the executive session is not announced for a future specific time.

## 6. What kind of issues can be discussed during an executive session?

A: Section 708(a) of the Sunshine Act allows, but does not require, executive sessions for several reasons:

**1. Employees, Officers.** To discuss any matter involving the employment of specific prospective, current or former public officers or employees. Note that the individual being discussed may request, in writing, that the matter be discussed at an open meeting. This provision does not apply to any meeting involving the appointment or selection of any person to fill a vacancy in any elected office, and this provision does not apply to independent contractors. It also does not apply to discussions regarding employment policies, as opposed to individuals.

**2. Collective Bargaining.** To hold information, strategy and negotiation sessions related to the negotiation or arbitration of a collective bargaining agreement or labor relations and arbitration.

**3. Purchase or Lease of Real Property.** To consider the purchase or lease of real property, but only up to the time an option or an agreement to purchase or lease is obtained. This provision does not apply to the sale or other disposal of publicly-owned property.

**4. Litigation.** To consult with its attorney or other professional advisor regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed. This provision does not permit private deliberation with opposing parties. *Trib Total Media v. Highlands School Dist.*, 3 A.3d 695 (Pa. Cmwlth. 2010).

**5. Confidential by Law.** To review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of the law and quasi-judicial deliberations. A general reference to the Right to Know Law is not sufficient. A law that requires confidentiality, like the Family Education Rights and Privacy Act (FERPA), would be appropriate under this executive session.

**6. Boards of Trustees.** For duly constituted committees of a board or council of trustees of a State-owned, State-aided or State-related college or university or community college or of the Board of Governors of the State System of Higher Education to discuss matters of academic admission or standings.

**7. To discuss, plan or review matters and records that are deemed necessary** for emergency preparedness, protection of public safety and security of all property in a manner that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection.

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## 7. What are the public notice requirements of the law?

A: The law requires agencies to provide public notice in a newspaper of general circulation of the regular meeting schedule at least three days prior to the first regular meeting of the year. This typically takes place in early January. The notice must include the date, time and location of regular meetings.

For any special meetings in addition to the regular schedule, the agency must provide at least 24 hours advance notice of the date, time and location of the special meeting in a newspaper of general circulation. News articles do not take the place of public notice advertising required by law. See *Bensalem Twsp. School Dist. v. Gigliotti Corp.*, 415 A.2d 123 (Pa. Cmwlth. 1980).

For recessed/reconvened meetings, agencies must provide 24 hours notice of the date, time and location at principal office of agency or public building in which meeting is to be held. A public notice advertisement is not required for recessed/reconvened meetings.

Emergency meetings do not require public notice, but the meeting must be open.

The public notice provision of the Sunshine Act is found in section 709.

## 8. What information must be recorded in meeting minutes?

A: Written minutes must be kept at all open meetings. The minutes must, at a minimum, include:

- The date, time and place of meeting;
  - The names of members present;
  - The substance of all official actions and a record by each individual member of the roll call votes taken; and
  - The names of all citizens who appeared officially and the subject of their testimony.
- The meeting minute provision of the Sunshine Act is found in section 706.

## 9. Can I record public meetings?

A: Yes. The Sunshine Act allows anyone in attendance to record a public meeting.

Section 711 of the Sunshine Act allows attendees to record public meetings, and this extends to both audio and video recordings. Agencies can implement reasonable rules and regulations governing the conduct of public meetings, including recording, but any policy that interferes with or discourages the ability to record public meetings is unreasonable and not permitted.

# SUNSHINE LAW: TOP QUESTIONS

## 10. Are committees covered by the Sunshine Act?

A: Yes, agency committees are covered by the Sunshine Act.

The Sunshine Act applies anytime a quorum deliberates agency business or takes official action.

Section 703 of the Act defines "agency" as:

*"The body, and all committees thereof authorized by the body to take official action or render advice on matters of agency business, of all the following: the General Assembly, the executive branch of the government of this Commonwealth, including the Governor's Cabinet when meeting on official policymaking business, any board, council, authority or commission of the Commonwealth or of any political subdivision of the Commonwealth or any State, municipal, township or school authority, school board, school governing body..."*

By definition, committees that take official action or render advice on matters of agency business are "agencies" under the law and subject to all its provisions, such as advertising and holding public meetings, keeping official minutes, allowing public comment and recording at each public meeting.

Committees can do most of the work on a specific item or area of agency business, with recommendations often adopted without additional deliberation by the larger board. By including committees in the definition of "agency," the General Assembly recognized and codified the public's right to witness and participate at all stages of decision and policy making. The public must be able to witness and participate in committee meetings in order to fully understand and help shape public policy.

## 11. Do agencies have to allow public comment at public meetings?

A: Yes, the Sunshine Act requires an opportunity for public comment at all public meetings.

Section 710.1 of the Sunshine Act requires political subdivisions and authorities created by political subdivisions to offer an opportunity for public comment at all regular and special meetings on matters of concern, official action or deliberation that are or may be before the board, and this must occur prior to official action. This right is broad, and may not be limited to agenda items only. The public has the right to bring issues to the attention of public officials during public meetings, and anything that discourages that right is unreasonable.

Public comment can be limited to residents or taxpayers under the Sunshine Act, and can be limited to the beginning of the meeting. However, it is important to understand that the opportunity for public comment must be meaningful and prior to all official action, so agencies must be transparent about proposed action and facilitate public comment when issues arise during public meetings.

It is also important to note that time limits for public comment are widely used across the Commonwealth. In many circumstances, a time limit on public comment is reasonable, but in others, it may not be. Any policy that imposes a time limit on public comment must also include a provision that allows additional time when the circumstances require it.

## SUNSHINE LAW: TOP QUESTIONS

### **12. Do agencies have to provide meeting agendas in advance of meetings?**

A: Yes, the Sunshine Act requires agencies to provide a meeting agenda that includes a listing of each matter of agency business that will be or may be the subject of deliberation or official action at the meeting.

The agenda must be posted at least 24 hours in advance of the meeting at the agency's meeting place and at the agency's principal office as well as posted on the agency's website, if it maintains one. Copies of the agenda must also be available at the meeting to anyone in attendance.

This agenda requirement was added by Act 65 of 2021, and neither the law nor the courts have provided guidance on how specific agenda listings must be. In the meantime, the Office of Open Records (OOR) has posted guidance with respect to agenda specificity on their [website](#). The OOR states that for the time being agencies should rely on the decision in Reading Eagle Company v. City Council of Reading, 627 A.2d 305 (Pa. Cmwlth. 1993) for guidance. The OOR uses the court's holding regarding the specificity of executive session announcements to advise that agenda items be as detailed as possible.

### **13. Are agency deliberation and official action limited to the issues listed on the agenda?**

A: In general, yes, although there are several exceptions to this general rule, including emergency business relating to a real or potential emergency involving a clear and present danger to life or property and business arising within 24 hours of the meeting if it is de-minimis in nature and does not involve spending public money or creating a contract.

### **14. What can I do if I believe there's been a violation of the Sunshine Act?**

A: There are civil and criminal penalties for violating the Sunshine Act, and the law must be enforced by the public.

The Sunshine Act allows a judge in a civil action to invalidate any action taken in violation of the law or fashion other appropriate remedies, including injunctive relief and the award of attorney fees. In order to pursue the civil penalties in the law, a civil complaint must be filed within 30 days of the alleged violation, or 30 days of the alleged violation's discovery, but no longer than one year. The party filing the Sunshine Act challenge bears the burden to show that a violation occurred.

In the criminal context, it is a summary offense to intentionally violate the Act, punishable by fines of \$100-\$1000, plus court costs for a first offense, and up to \$2000 for second and subsequent offenses. A private criminal complaint can be filed against individual elected officials by any person who believes the law was violated. Once filed, the county district attorney will review the allegations and decide whether prosecution is appropriate.

The civil and criminal penalties are rarely imposed, but alleged violations should be brought to light and pursued where appropriate.

