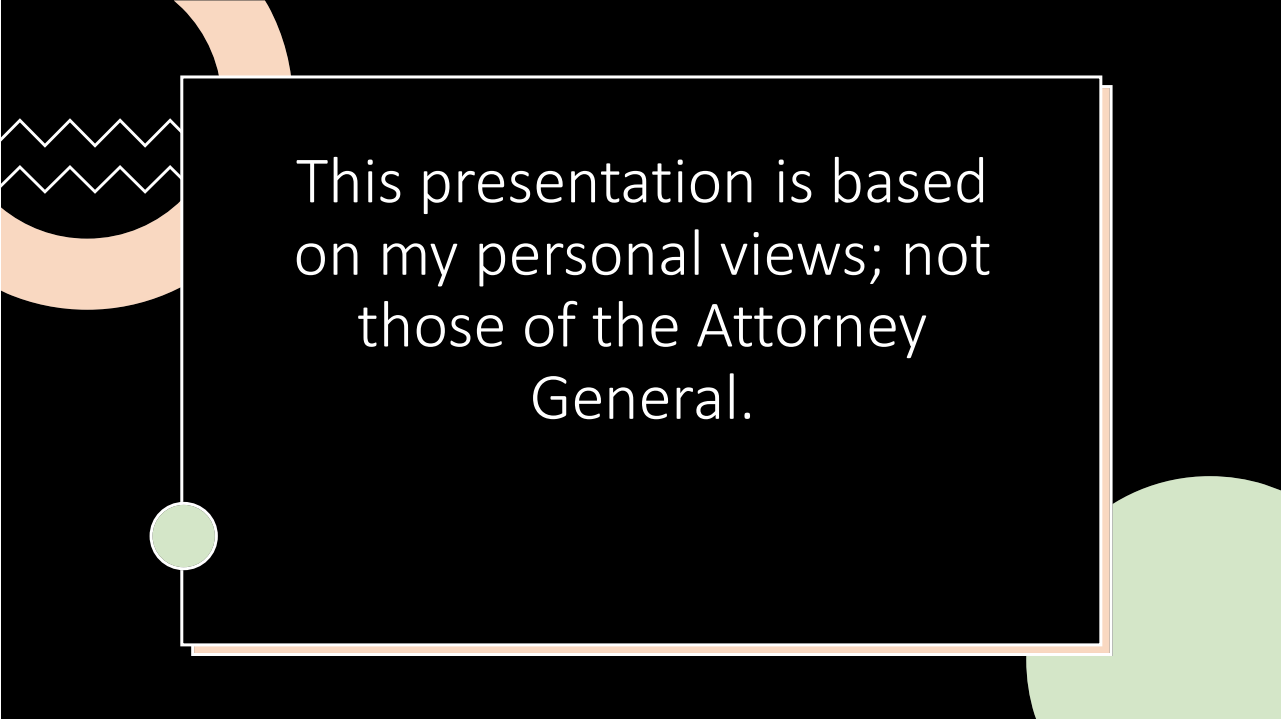


# Idaho Open Meeting Law Trends and Recent Issues

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This presentation is based on my personal views; not those of the Attorney General.

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A dark blue slide with the title "Topics Covered" in white text on the left. On the right, there are three rounded rectangular boxes stacked vertically. The top box is orange and contains the text "Considerations prior to a meeting". The middle box is red and contains the text "Tips during meetings". The bottom box is grey and contains the text "Requirements after/in-between meetings". There are decorative dotted lines and circles in the background.

3

A dark grey slide with the text "Open Meeting Law – Pamphlet and Link" in white, centered on the page.

<https://www.ag.idaho.gov/content/uploads/2018/04/OpenMeeting.pdf>

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# Overarching policy of the Open Meeting Law

Formation of public policy is public business and shall not be conducted in secret.

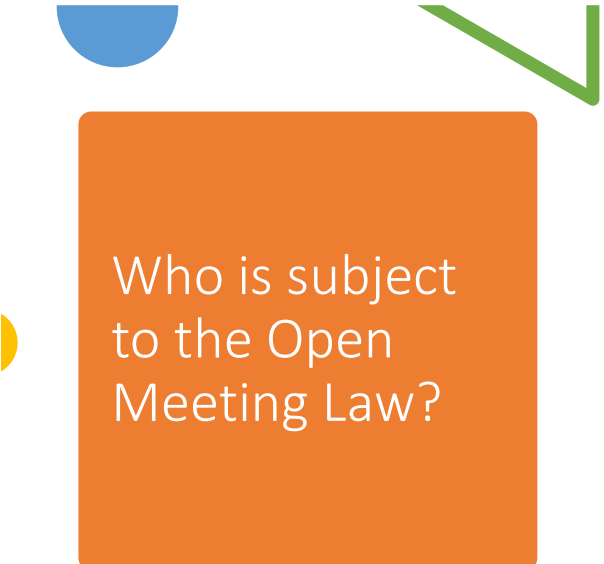
Idaho Code § 74-201

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Considerations Prior  
to a Meeting

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## Who is subject to the Open Meeting Law?

- All meetings of a governing body of a public agency
  - With exceptions outlined in Idaho Code § 74-203
- This includes subcommittees
  - If created by statute
  - And if a quorum of the subcommittee

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## What constitutes a meeting?

- The convening of a governing body of a public agency to make a decision or to deliberate toward a decision (Idaho Code § 74-202)
- Requires a quorum
- Beware of:
  - Serial emails among members
  - Attendance at social functions

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## What are the notice requirements?

### Two types of notice required

- Meeting notice
- Agenda notice

### Notice requirements are satisfied by

- Posting at principal office of the public agency or if no office exists, at the building where the meeting will be held
- If the entity maintains an online presence, then the entity must post electronically through their website or social media platform

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## What are the deadlines for posting notices and agendas?

### Regular meetings

- Notice: 5 calendar days
- Agenda: 48 hours

### If the entity holds regular meetings that are scheduled in advance

- Can satisfy notice requirement by posting once a year
- Must still post agendas 48 hours in advance

### Special meetings/executive session only

- Notice: 24 hours
- Agenda: 24 hours
- Unless there is an emergency

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## Can an agenda be amended after posting?

If more than 48 hours for regular meeting  
Or more than 24 hours for special meeting

- Simply post new agenda
- Idaho Code § 74-204(4)(a)

If less than 48 hours for regular meeting  
Or less than 24 hours for special meeting  
But prior to start of meeting

- Post as “amended agenda”
- First item on agenda must be an action item to approve amended agenda
- In motion, state good faith reason item was not included in original agenda
- Idaho Code § 74-204(4)(b)

If after the start of the meeting

- First, motion must be made to amend agenda before discussing new item
- Include good faith reason item not included in original agenda
- Can’t take action unless an emergency is declared
- Idaho Code § 74-204(c)

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Tips:  
posting  
notices and  
agendas

Should be prominent on the  
agency’s website

Easy for the public to find

Should require the public to only  
click on one link

<https://townhall.idaho.gov>

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## What to include in the Agenda

- All information the public needs to know to attend the meeting:
  - Physical location - whether in-person, telephonic or by videoconference (Governor's Executive Order has ended)
  - The videoconference link or telephone number
  - Notice of any capacity limits
- All items "known to be probable items of discussion"
- Must identify all action items
- For any executive session:
  - Must identify reason per Idaho Code § 74-206

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## Tips During Meetings

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## What rights does the public have during a meeting?

- Public has the right to attend meetings; not the right to participate in meetings
- Public/open forum - not a requirement

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## Tips During Meetings

Do not use chat/hand raise function except for technical problems

Beware of members texting/emailing

Use role call for voting to assist with accuracy

Beware of topic creep

No requirement to record except if a hearing

Beware of private conversations during breaks

Have members keep cameras on

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# Tips: Executive Session

Narrowly construed: executive session only for reason(s) set out in Idaho Code §74-206

Start with open meeting – then go into executive session

Need 2/3s vote to enter executive session

Motion must include reason from Idaho Code § 74-206

Roll call vote required on motion to enter executive session (not needed to exit)

Consider who all should be in breakout room/confirm everyone in breakout room

Can't change the subject while in executive session - must keep to Idaho Code section identified as the reason for going into executive session

Counsel may need to step in and remind client of subject creep

Must vote to re-enter open session

Don't record/Make sure if recording other parts of meeting recording is turned off

# Considerations for After the Meeting



## Minutes

- Only required to include:
  - All members of the governing body present
  - All motions proposed and their disposition
  - The results of all votes
- For any executive session:
  - Identify purpose and topic
  - Idaho Code section authorizing the executive session
- Must post within reasonable time – can post draft (drafts are public records)

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## Emails between meetings

- Beware emails/texts among members do not result in an Open Meeting Law violation
- Before sending an email/text, members should consider:
  - What is the purpose of the email/text?
  - Will it result in a discussion?
  - Do the number of members on the email/text constitute a quorum?
- Administrator of an agency may want to put the following at the end of every email to all members: “Reminder: Do not reply all to this email to ensure compliance with Idaho’s Open Meeting Law.”

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