

Minutes of BPBCA BOG August 28th, 2024, FOIA Workshop - 08/28/24

Date and time: 08/28/24 6:00 PM to: 08/28/24 7:34 PM

Present: Brooke Stevens, Recording Secretary, Jim Schepker, BOG Chair, Colleen Chapin, BOG Member, Peter Baril, BOG Member, Bill Bayne, BOG Member, John Cellino, Will Fountain, Emeritus, Absent:, Peter Meggers, BOG Member, Arlene Garrow, BOG Vice-Chair

CC: Russell Blair, Director of Education and Communications for the Freedom of Information Commission

Location: BPBCA Clubhouse, 6 Sunset Avenue, Niantic, CT, & Via Zoom

Link: <https://app.meetingking.com/meetings/417764>

Topics

1. Call to Order

Note Chairman Schepker called the FOIA Workshop to order at 6:00 p.m., noted a quorum was present, and introduced Russell Blair, the Director of Education and Communications for the Freedom of Information Commission.

Note Mr. Schepker stated that Mr. Blair would conduct a presentation tonight to explain how adhering to FOIA guidelines can enhance the management of our business affairs, ensuring that every member of the Association is thoroughly informed about the decision-making processes at Black Point.

2. FOIA Presentation

Note Mr. Blair clarified that FOIA represents the Freedom of Information Act, which fosters transparent and open governance. He underscored the significance of grasping FOIA's fundamentals, its relevance to different boards and commissions, and his presentation engaged the attendees in a discussion on the subtopics outlined below:

2-1. History of FOIA

Note FOIA was enacted in 1975 and has since been updated to accommodate modern technology such as email and remote meetings. The FOIA Commission was established to enforce the law and ensure compliance.

2-2. FOIA Basics

Note FOIA covers both meetings and records.

Public access to meetings and records is a key component.

The law does not guarantee the right to speak at public meetings; Boards can decide whether to allow public comments and set rules for them.

2-3. FOIA Compliance and Enforcement

Note The FOIA Commission operates based on complaints.

Complaints can be filed for issues like improper meeting notices or denied records requests.

The Commission can order training or impose fines for violations.

2-4. Public Agency Definition

Note Public agency includes any piece of government, such as state agencies, towns, or taxing districts. Subcommittees of boards are also covered by FOIA and must adhere to its requirements for meetings and records.

2-5. Working Groups and Subcommittees

Note Informal working groups do not need to adhere to FOIA if they are not formally designated. Subcommittees must follow FOIA requirements for meetings and records. Avoid having a quorum of board members in informal working groups.

Note ****Working Group Example****

A board assigns three members to look into a specific issue and report back at the next meeting.

1. The three members gather information and discuss the issue.
2. They report their findings to the full board at the next meeting.
3. This informal working group does not need to adhere to FOIA as it is not a formal subcommittee.

2-6. Public Meeting Attendance

Note Anyone can attend public meetings, including those who are not part of the association. Attendees cannot be denied entry if they refuse to identify themselves. If someone wants to speak at the meeting, they may be required to provide their name and address. ****This applies to both in-person and virtual meetings.**

2-7. Definition and Requirements of Public Meetings

Note A quorum of a multi-member public agency triggers a public meeting. Public meetings must be noticed, have an agenda, and minutes must be taken. Communication among a quorum, even electronically, can be considered a meeting.

2-8. Email and Electronic Communication

Note Less than a quorum can discuss board matters via email. A quorum should not discuss or act on board business via email or text. Logistical communications such as meeting dates, are exceptions. ****Board members should avoid discussing board business via email if a quorum is involved to ensure transparency and public participation.**

2-9. Public Meeting Recordings

Note Anyone can record a public meeting without prior permission. Recordings should not disrupt the meeting. Zoom meetings must be recorded if there is no in-person component.

2-10. Meeting Notices and Agendas

Note Regular meeting schedules must be published by January 31st.

Special meetings require a notice and agenda posted 24 hours in advance.

Agendas must be publicly available and not just sent to board members.

**Meeting notices and agendas must be made available to the public in a timely manner to ensure transparency and public participation.

2-11. Adding Agenda Items

Note Items can be added to regular meeting agendas with a two-thirds board vote.

Items cannot be added to special meeting agendas once posted.

**Board members can add items to the agenda during regular meetings with a two-thirds vote but cannot do so for special meetings.

2-12. Meeting Minutes

Note Minutes must be filed within seven calendar days for regular meetings.

Minutes must be filed within seven business days for special meetings.

Emergency meeting minutes must be filed within 72 hours.

**Timely filing of meeting minutes is crucial for maintaining records and ensuring public access to meeting details.

Note Minutes are meant to be a recording of the votes of all members on any items.

The statute does not explicitly mention the word 'minutes' but requires reducing votes to writing.

Required elements in the minutes include attendance, votes, and identification of how each member voted.

Executive session attendance must also be recorded, including non-board members.

Discretion is allowed for additional content in the minutes.

Minutes must be filed within seven days, regardless of board approval.

2-13. Emergency Meetings

Note Emergency meetings are held without prior notice or agenda.

Used only when immediate action is required.

Minutes must be filed within 72 hours, stating the reason for the emergency.

**Emergency meetings are rare and only held when immediate action is necessary. Minutes must be filed promptly, explaining the emergency.

2-14. Filing Requirements

Note Minutes must be sent to the Town Clerk's office, even if posted online or on social media.

Consideration of minutes can be added to the agenda for the next meeting.

Changes to minutes can be discussed and reflected in subsequent meeting minutes.

Amended minutes can be reposted on the website if significant changes are made.

By statute, minutes and agendas must be filed with the Town Clerk's office.

Posting online is optional but does not replace the requirement to file with the Clerk's office.

2-15. Access to Public Records

Note Public records must be accessible during regular office hours.

There must be a way for people to inspect records, even if no physical office exists.

Records cannot be kept in private homes without public access.

**Public records must be accessible during regular office hours. If no physical office exists, arrangements must be made for public inspection.

2-16. Records Retention

Note Records retention is not part of FOIA.

The Office of Public Records Administrator enforces records retention rules.

Municipal records can be destroyed after a certain period, depending on their type.

If space is an issue, old records can be legally destroyed.

**The Office of Public Records Administrator, part of the Connecticut State Library, enforces records retention rules.

2-17. Minutes for Virtual Meetings

Note Minutes are required even for virtual meetings.

Recorded meetings can result in shorter minutes.

Public comments can be linked to the video recording instead of being listed in the minutes.

Note **Online-only meetings must be recorded and posted on the website within seven days.

**Recordings must be available on the website for at least 45 days.

**Recordings are not a substitute for minutes.

2-18. Electronic and Remote Meetings

Note Electronic and remote meetings are optional.

Board members can participate remotely in in-person meetings.

If a meeting is hybrid, specific rules must be followed.

Agendas must be posted 24 hours before the meeting.

For electronic meetings, a notice with instructions must be posted 48 hours before the meeting.

2-19. Decorum in Online Meetings

Note Participants can be removed if they disrupt the meeting.

Participants do not have to give their name to attend a meeting.

Chat functions do not have to be open for public comment.

2-20. Executive Sessions

Note Executive sessions are closed to the public.

Specific topics can be discussed in executive sessions, including pending claims or litigation, personnel matters, security, sale or lease of property, and records exempt from FOIA.

Personnel matters require notifying the person being discussed, who can request an open session.

Note **Executive sessions are not for discussing uncomfortable policies or concerns about public perception.

**They are specifically for matters defined by statute, such as pending claims or litigation.

**Legal advice can be sought in executive sessions if it involves reviewing records exempt from FOI under attorney-client privilege.

Note ****Reviewing Bids in Executive Sessions****

There is an exemption in the FOI Act that allows bids to be reviewed in private between the time they are received and when the contract is awarded; once the contract is awarded, discussions about the bids must be public.

The exemption is designed to prevent unfair advantages during the bidding process. For example, if bids were public before the contract is awarded, bidders could adjust their proposals based on others' bids. This practice was changed because it allowed bidders to FOI all the bids and adjust their proposals accordingly; a bidder could see the best parts of a competitor's bid and improve their own before the deadline.

A municipality might want to discuss a bid in an executive session to address specific issues confidentially.

****The decision to discuss bids in public or private is optional. Public discussions ensure transparency, but private sessions can prevent manipulation of the bidding process.**

2-21. Agendas and Minutes for Executive Sessions

Note The agenda should list 'executive session' and the specific topic to be discussed.

For personnel matters, the name of the individual does not need to be listed, but the topic should be clear. Pending claims or litigation should be listed with specific details like the docket number.

2-22. Voting in Executive Sessions

Note Executive sessions are only for discussion.

Votes must be taken publicly after the executive session.

Note Using executive sessions allows for confidential discussions, but transparency is maintained through a public vote on the final decision.

2-23. Attendance in Executive Sessions

Note Non-board members should participate actively if they attend.

Non-participating attendees create a second audience, which is not allowed.

****Only those who are actively participating should be allowed in the executive session. Once their input is no longer needed, they should leave.**

****Personnel do not have the right to attend but can object to being discussed in executive session; if they object, the discussion must be public.**

2-24. Notes and Records in Executive Sessions

Note Creating records during an executive session can make them public.

Attorneys often collect and destroy notes to maintain confidentiality.

****To keep discussions confidential, no written notes should be taken. Any created records can be requested as public records.**

2-25. Public Records & Inspection and Copies of Public Records

Note Public records can be in digital or hard copy format.

The device on which the record exists does not matter.

Emails and text messages related to board business are public records.

****Inspection of records must be reasonably accommodated.**

****Copies of records can be provided for a fee, but not for digital copies.**

Note ****Records Request Example****

A request for contractor quotes for a project; the quotes become public records once received.

2-26. FOI Request Acknowledgment and Fulfillment

Note Requests must be made in writing.

Fees: 50 cents per page for paper copies, no charge for electronic copies.

FOI requests are for specific public records, not for research or answering questions.

****No need to create records that do not already exist.**

Note Acknowledge the request within four business days.

Fulfill requests promptly, defined as without undue delay.

Consider factors such as the time required to comply, the requester's deadline, and the agency's other obligations.

2-27. Exemptions and Exceptions to the FOI Act

Note Confidential records as defined by other laws supersede the FOI Act.

****Examples include federal records, FERPA education records, and public-school teacher evaluations.**

Note ****Types of Information Exempt from Disclosure****

Attorney-client privilege.

Trade secrets.

Preliminary drafts not yet finalized or presented to decision-makers; once a draft is finalized and presented, it must be disclosed.

2-28. Digital Library and Documentation Systems

Note Posting information online can reduce FOI requests.

Requesters still have the right to obtain hard copies if they insist.

Concerns with digital systems include the risk of data loss and reliance on a single person to manage the system. Backup systems and multiple points of access can mitigate these risks.

2-29. Charging for Copies of Public Records

Note Agencies can charge up to 50 cents per page for paper copies of public records, but they are not required to charge this amount. They can choose to charge less or provide the copies for free.

3. Adjournment

Note Mr. Schepker thanked Mr. Russell for his contributions and also expressed gratitude to the attendees, both in-person and virtual, and acknowledged the strong showing by the Board of Governors.

Note The BPBCA BOG August 28th, 2024, FOIA Workshop was adjourned at 7:34 p.m.

Note Respectfully Submitted,
Brooke Stevens, Recording Secretary