



**PART 3:**

# PERSONNEL DATA AND THE OPEN MEETING LAW



## PRESENTED BY:

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## MINNESOTA OPEN MEETING LAW



- Minnesota Statutes Chapter 13D
- Promotes transparency in government

SLIDE 3



## INTERPRETING THE LAW

- Minnesota Supreme Court and Court of Appeals opinions
- Advisory opinions from the Minnesota Department of Administration



SLIDE 4

# PERSONNEL DATA

## Personnel Data and the Open Meeting Law



### PERSONNEL DATA



- Defined by Minn. Stat. § 13.43
- Government data on individuals maintained because individual:
  - Was/is an employee or an applicant for employment;
  - Performs services on a voluntary basis; or
  - Acts as an independent contractor
  - With a government entity
- Presumed to be private unless otherwise classified as public
  - Exception for undercover law enforcement

SLIDE 6



## PUBLIC DATA ON EMPLOYEES

SLIDE 7

- Name
- ID number (cannot be Social Security Number)
- Actual gross salary
- Salary range
- Terms and conditions of employment relationship
- Contract fees
- Actual gross pension
- Value/nature fringe benefits
- Basis for/amount added remuneration (expense reimbursement)
- Job title/description
- Bargaining unit
- Education and training background
- Previous work experience
- First and last date of employment
- Existence/status of complaints (regardless of disciplinary action)
- Work location
- Work telephone number
- Badge number
- Work-related continuing education
- Honors and awards received
- Payroll sheets (except where release would show reasons for use of sick or medical leave or other not public data)



## PUBLIC DATA ON EMPLOYEES

SLIDE 8

- Terms of any agreement settling any dispute arising out of an employment relationship
  - Includes a buyout (§ 123B.143, subd. 2 (a))
  - Must include specific reasons if involve the payment of more than \$10,000 of public money
- Final disposition of any disciplinary actions
  - Specific reasons for the action
  - Data documenting the basis of the action
  - Does not include data that would identify confidential sources who are employees of the public body



## PUBLIC DATA ON APPLICANTS

SLIDE 9

- Veteran status
- Relevant test scores
- Rank on eligibility list
- Job history
- Education and training
- Work availability
- Name of “certified applicants” and “finalists”
  - “Certified applicant”: Certified for appointment to vacancy in government
  - “Finalist”: Selected to be interviewed by appointing authority prior to selection

# CLOSED MEETINGS AND PERSONNEL DATA

Personnel Data and the Open Meeting Law



## GENERAL OML PRESUMPTION

SLIDE 11



Presumes all meetings of a public entity's governing body are open to public unless governing body has statutory authority to close meeting



## DISCUSSION OF CERTAIN LAW ENFORCEMENT DATA

SLIDE 12



A meeting must be closed if discussing:

- Active criminal investigation data as defined in Minnesota Statutes, Section 13.82, Subd. 7
- Internal affairs data relating to allegations of law enforcement personnel misconduct



## CERTAIN MEDICAL RECORDS

A meeting must be closed if discussing an individual's medical records governed by Minnesota Statutes, Sections 144.291 to 144.298



SLIDE 13

# PRELIMINARY CONSIDERATION OF ALLEGATIONS OR CHARGES

Personnel Data and the Open Meeting Law



## PRELIMINARY CONSIDERATION OF ALLEGATIONS OR CHARGES

SLIDE 15



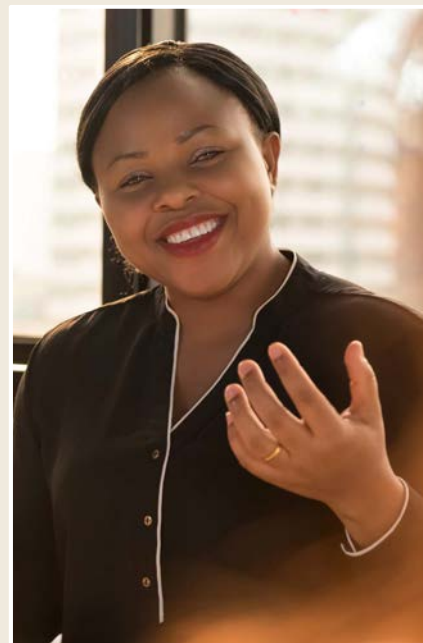
Meetings must be closed to discuss preliminary consideration of allegations or charges against an individual subject to the board's authority



## ADDITIONAL REQUIREMENTS

SLIDE 16

- Consult with legal counsel prior to the meeting
- Meeting must be open if individual who is subject of allegations/charges requests it to be
- If body concludes that discipline may be warranted as a result, further meetings relating to the specific allegations/charges held after that conclusion is reached must be open





## CLOSING REQUIREMENT



SLIDE 17

**CLOSED**

**Q:** Is the board required to close a meeting for preliminary consideration of allegations or charges against an employee?



## CLOSING REQUIREMENT



SLIDE 18

**CLOSED**

**Q:** Is the board required to close a meeting for preliminary consideration of allegations or charges against an employee?

**A:** Yes, the meeting must be closed, unless the employee requests that the meeting remain open



## NOTIFYING EMPLOYEE



SLIDE 19

**Q:** Does the board have to notify the employee when the board closes a meeting for preliminary consideration of allegations or charges?



## NOTIFYING EMPLOYEE



SLIDE 20

**Q:** Does the board have to notify the employee when the board closes a meeting for preliminary consideration of allegations or charges?



**A:** Yes



## PRIOR TO CLOSING THE MEETING



SLIDE 21



**Q:** How much information should the board chair give prior to closing a meeting for preliminary consideration of allegations or charges?



## PRIOR TO CLOSING THE MEETING



SLIDE 22



**Q:** How much information should the board chair give prior to closing a meeting for preliminary consideration of allegations or charges?

**A:** Care must be taken *not* to identify *both* the employee and the basis or substance of the complaint. Consult with legal counsel.



## CONCLUDING THAT DISCIPLINE MAY BE WARRANTED



SLIDE 23

**Q:** If body concludes that discipline may be warranted as a result, further meetings relating to the specific allegations/charges held after that conclusion is reached must be open.

When does this occur?



## CONCLUDING THAT DISCIPLINE MAY BE WARRANTED



SLIDE 24

**Q:** If body concludes that discipline may be warranted as a result, further meetings relating to the specific allegations/charges held after that conclusion is reached must be open.

When does this occur?

**A:** Consult with legal counsel. This may occur prior to the final decision to impose discipline.





## ATTENDING CLOSED MEETING



SLIDE 25



**Q:** Does an employee have the right to attend a closed meeting at which the board is preliminarily considering allegations or charges?



## ATTENDING CLOSED MEETING



SLIDE 26



**Q:** Does an employee have the right to attend a closed meeting at which the board is preliminarily considering allegations or charges?

**A:** Likely not, but is not addressed in the Open Meeting Law. Consult with legal counsel.



## EMERGENCY MEETING



SLIDE 27



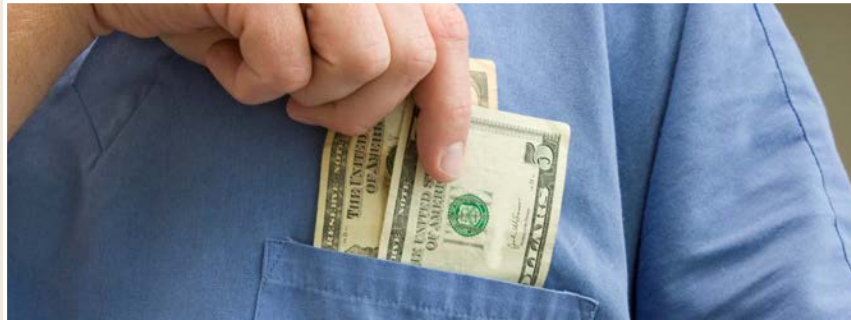
**Q:** Can an emergency meeting be called to discuss a complaint of misconduct against an employee?



## EMERGENCY MEETING



SLIDE 28



**Q:** Can an emergency meeting be called to discuss a complaint of misconduct against an employee?

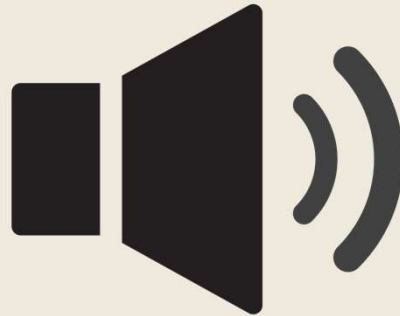
**A:** It depends, but not likely. Consult with legal counsel.



## RECORDING CLOSED MEETINGS



SLIDE 29



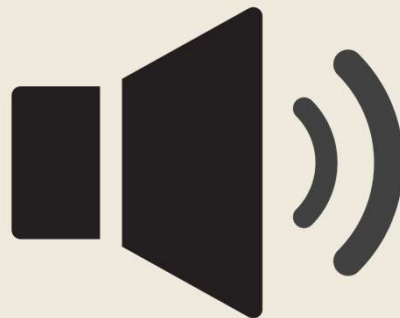
**Q:** Must the board electronically record a meeting closed for preliminary consideration of allegations against an employee?



## RECORDING CLOSED MEETINGS



SLIDE 30



**Q:** Must the board electronically record a meeting closed for preliminary consideration of allegations against an employee?

**A:** Yes, with the exception of meetings closed under the attorney-client privilege, all closed meetings must be recorded



## ACCESS TO RECORDING OF CLOSED MEETING



SLIDE 31



**Q:** An employee has requested a copy of audio recording from closed meeting to consider allegations of misconduct made against him.

Is the board required to give employee access to the recording?



## ACCESS TO RECORDING OF CLOSED MEETING



SLIDE 32



**Q:** An employee has requested a copy of audio recording from closed meeting to consider allegations of misconduct made against him.

Is the board required to give employee access to the recording?

**A:** It depends on the current data classification, but likely yes in some form. Consult with legal counsel.

# PERFORMANCE EVALUATIONS

Personnel Data and the Open Meeting Law



PERFORMANCE EVALUATIONS



A public body may close a meeting to evaluate the performance of an individual subject to the board's authority

SLIDE 34



## ADDITIONAL REQUIREMENTS

SLIDE 35

- Must identify individual prior to closing meeting
- Meeting must be open if individual who is subject of performance evaluation requests it to be
- Closed meetings must be recorded
- At next open meeting need to summarize performance evaluation



## CLOSING MEETING



SLIDE 36



**Q:** Is the board required to close a meeting to conduct a performance evaluation?



## CLOSING MEETING



SLIDC 37



**Q:** Is the board required to close a meeting to conduct a performance evaluation?

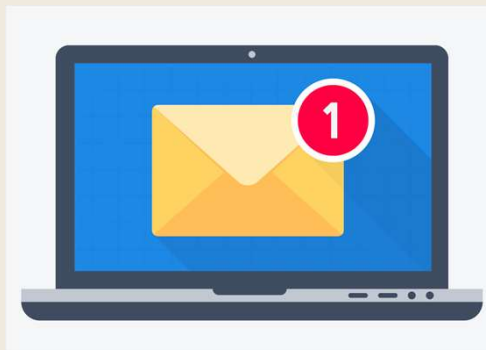
**A:** Board may, but is not required to close meeting to conduct personnel evaluation. Consult with legal counsel if there are other considerations or restrictions.



## INFORMING EMPLOYEE



SLIDC 38



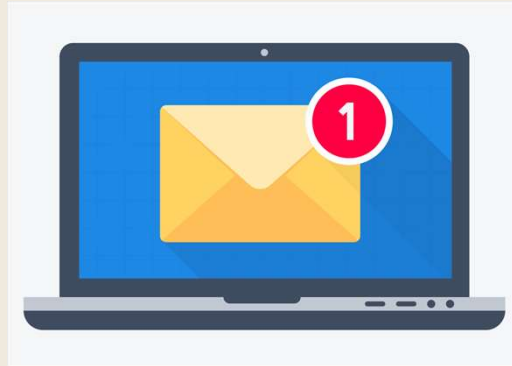
**Q:** Does board have to let individual being evaluated know about performance evaluation prior to closing board meeting?



## INFORMING EMPLOYEE



SLIDE 39



**Q:** Does board have to let individual being evaluated know about performance evaluation prior to closing board meeting?

**A:** Yes



## IDENTIFYING EMPLOYEE



SLIDE 40

**Q:** Is board required to give name of individual being evaluated prior to closing meeting for a performance evaluation?





## IDENTIFYING EMPLOYEE



SLIDE 41

**Q:** Is board required to give name of individual being evaluated prior to closing meeting for a performance evaluation?

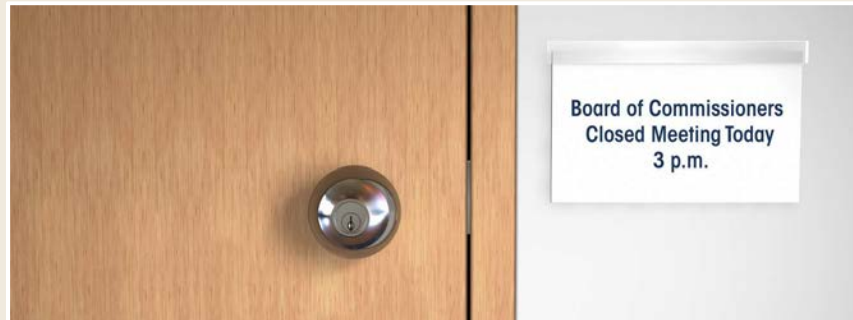
**A:** Yes



## EMPLOYEE ATTENDANCE



SLIDE 42



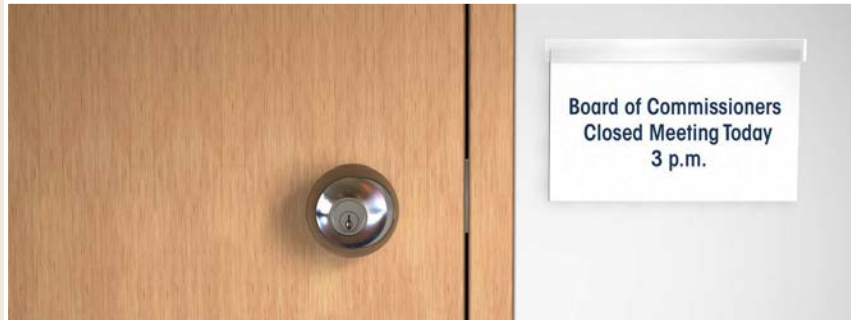
**Q:** Does employee have right to attend closed meeting at which board is conducting his or her performance evaluation?



## EMPLOYEE ATTENDANCE



SLIDE 43



**Q:** Does employee have right to attend closed meeting at which the board is conducting his or her performance evaluation?

**A:** Consult with legal counsel as opinions differ



## SUMMARIZING CONCLUSIONS



SLIDE 44

**Q:** What guidance is available for summarizing board's conclusions regarding evaluation at next open meeting?





## SUMMARIZING CONCLUSIONS



SLIDE 45

**Q:** What guidance is available for summarizing board's conclusions regarding evaluation at next open meeting?

**A:** Generalized statements may not be adequate. Consider how evaluation was structured and summarize salient points.



## REQUEST FOR RECORDING



SLIDE 46



**Q:** An employee has requested a copy of audio recording from the closed meeting evaluating his performance. Is the board required to give employee access to the recording?



## REQUEST FOR RECORDING



SLIDE 47



**Q:** An employee has requested a copy of audio recording from the closed meeting evaluating his performance. Is the board required to give employee access to the recording?

**A:** Most likely yes. Consult with legal counsel.

# HIRING AND COMPENSATION

Personnel Data and the Open Meeting Law



## REVIEWING APPLICATIONS AND INTERVIEWS



SLIDE 49



**Q:** Can board close meeting to review employment applications and résumés, or to interview job applicants for employment?



## REVIEWING APPLICATIONS AND INTERVIEWS



SLIDE 50



**Q:** Can board close meeting to review employment applications and résumés, or to interview job applicants for employment?

**A:** No.



## DISCUSSING NOT PUBLIC DATA AT OPEN MEETING

SLIDE 51



- Unless required to be closed, not public data may be discussed at open meeting if disclosure:
  - Relates to matter within scope of public body's authority
  - Is reasonably necessary to conduct business or agenda item before public body
- Any data discussed retains its original classification
- A record of the meeting, regardless of form, is public



## SERIAL INTERVIEWS



SLIDE 52



**Q:** Can each board member individually interview candidates or in groups of less than a quorum?



## SERIAL INTERVIEWS



SLIDE 53



**Q:** Can each board member individually interview candidates or in groups of less than a quorum?

**A:** No. This would likely constitute a serial meeting.



## EMPLOYMENT OFFERS



SLIDE 54



**Q:** Can board close a meeting to discuss and choose which candidate will be offered employment?



## EMPLOYMENT OFFERS



SLIDE 55



**Q:** Can board close a meeting to discuss and choose which candidate will be offered employment?

**A:** No



## SECOND CANDIDATE



SLIDE 56

**Q:** At its last meeting, board authorized hiring top candidate for open position. Candidate declined the offer.

Can the administrator contact each board member for permission to offer job to next candidate, rather than waiting until next board meeting?





## SECOND CANDIDATE



SLIDC 57

**Q:** At its last meeting, board authorized hiring top candidate for open position. Candidate declined the offer.

Can the administrator contact each board member for permission to offer job to next candidate, rather than waiting until next board meeting?

**A:** No. This could constitute impermissible vote by telephone.



## CONTRACT WITH INDIVIDUAL



SLIDC 58



**Q:** Can board close meeting to discuss negotiating contract with candidate for employment or an individual employee?



# CONTRACT WITH INDIVIDUAL



SLIDE 59



**Q:** Can board close meeting to discuss negotiating contract with candidate for employment or an individual employee?

**A:** No



# SALARIES AND SALARY STRUCTURE



SLIDE 60



**Q:** Can board close meeting to discuss employee salaries and salary structure?



## SALARIES AND SALARY STRUCTURE



SLIDE 61



**Q:** Can board close meeting to discuss employee salaries and salary structure?

**A:** Likely not, unless directly related to collective bargaining/labor negotiations strategy.

# OTHER QUESTIONS

Personnel Data and the Open Meeting Law



## PERSONNEL COMMITTEE



SLIDE 63

**Q:** Board has established a personnel committee.  
Is the committee subject to the Open Meeting Law?



## PERSONNEL COMMITTEE



SLIDE 64

**Q:** Board has established a personnel committee.  
Is the committee subject to the Open Meeting Law?

**A:** It depends:

- Is there a quorum of board members on committee?
- Has board delegated its power to the committee?
- Has board informally delegated power to committee?





## EMPLOYEE TERMINATION



SLIDE 65



**Q:** Board has decided to terminate employee for poor performance. Prior to doing so, board wants to consult with its attorney in a closed session.

Is this permissible under the Open Meeting Law?



## EMPLOYEE TERMINATION



SLIDE 66



**Q:** Board has decided to terminate employee for poor performance. Prior to doing so, board wants to consult with its attorney in a closed session.

Is this permissible under the Open Meeting Law?

**A:** It depends on the facts of the situation.



## OPEN MEETING RECORDING CLASSIFICATION STATUS



SLIDE 67

**Q:** During public comment period of open meeting, citizens make comments relating to allegations of misconduct against county employee.

Board routinely records its open meetings.

Does recording of open meeting become private data?



## OPEN MEETING RECORDING CLASSIFICATION STATUS



SLIDE 68

**Q:** During public comment period of open meeting, citizens make comments about allegations of misconduct against county employee.

Board routinely records its open meetings.

Does recording of open meeting become private data?

**A:** Generally no. Recording of open meeting is public data unless recording was specifically made for purposes of becoming personnel data.



# SEEK ASSISTANCE

Personnel Data and the Open Meeting Law



IF  
QUESTIONS  
ARISE



- Consult with legal counsel
- Review MCIT Open Meeting Law resources
  - [MCIT.org/resources](https://www.mcit.org/resources)
- Check with Minnesota Department of Administration, Data Practices Office:
  - [MN.gov/admin/data-practices](https://www.mn.gov/admin/data-practices)

SLIDE 70

# DISCUSSION

Submit Questions Now



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