

CLOSED MEETINGS OF COUNCIL (IN-CAMERA)

What is a closed meeting?

The *Municipal Government Act (MGA)* says that a meeting or part of a meeting is considered to be closed to the public when

- (a) any members of the public are not permitted to attend the entire meeting or part of the meeting,
- (b) the council, committee or other body holding the meeting instructs any member of the public to leave the meeting or part of the meeting, other than for improper conduct, or
- (c) the council, committee or other body holding the meeting holds any discussions separate from the public during the meeting or part of the meeting.

Under what authority can a council close a meeting?

Section 197 of the MGA states that councils and council committees must conduct their meetings in public unless the matter to be discussed is within one of the exceptions to disclosure in Division 2 of Part 1 of the *Freedom of Information and Protection of Privacy (FOIP)* (s. 16 to 29). This section also indicates that a council or council committee must pass a resolution stating the reason and the section of FOIP that applies before closing all or any part of a meeting to the public.

MOVED by Councillor Smith that council close the meeting to the public for Agenda item 2b Legal - Arena Project as per Section 27, FOIP at 7:00 pm.

NOTE: Section 197(2.1) is the exception to the rule, allowing municipal planning commissions, subdivision authorities, development authorities and subdivision and development appeal boards to deliberate and make decisions in meetings closed to the public.

How to prepare for closed meeting discussions?

Discussions that will be closed during the meeting should be listed on the agenda for the meeting in which they are held. The agenda should contain a 'Confidential' heading and then provide a brief description of the topic and state the section of FOIP that allows closure for that topic. For example, "Personnel – Evaluation - CAO - FOIP Section 17" would be used to describe conducting the performance appraisal of a chief administrative officer or "Legal – Arena Project - FOIP Section 27" could describe discussions regarding a pending court case. Further information is not required.

Any background information on the confidential items should be circulated when attendees are in the closed meeting and collected prior to returning to the open meeting.

How to record discussions from a closed meeting?

It is strongly recommended that a closed session discussion not be recorded as any notes or minutes taken during the discussion may become part of a FOIP request. The council meeting minutes should reflect that a motion was made to move into a closed session (as outlined above) and then another to return to the open meeting.

Council members, the CAO and any others included in the closed session are required to keep in confidence what was discussed until the item is discussed at a meeting held in public.

Section 197(3) of the *MGA* prohibits the passing of a resolution or bylaw during in a closed meeting, with the exception of the motion to revert to the public meeting, which must be recorded in the minutes. If direction is given or a decision reached, then a resolution must be made in the open meeting so that council's direction(s) are recorded and acted on.

Who can attend a closed session?

All members of Council, guests (at the discretion of council), and most times, the chief administrative officer may attend a closed session. The minutes of the meeting must show the names of additional people attending and the reason each attended.

Mr. John Doe – Engineer, XYZ Co.

Mr. Sam Smith – Lawyer, Lawfirm LLP

The media and general public cannot attend the closed discussion, but are welcome to return to the council meeting following the closed session.

What can be discussed in a closed session?

FOIP outlines the items that would allow a council to close a council meeting, which include matters where a public disclosure could be harmful to:

- Third party business interests; (s. 16)
- Third party personal privacy; (s. 17)
- Individual or public safety; (s. 18 and 19)
- Law enforcement; (s. 20)
- Intergovernmental relations; (s. 21, 22, 23 and 24) and
- Economic or other interests (s. 25, 26, 27, 28 and 29).

Public bodies should not:

- Reveal confidential employee evaluations;
- Disclose local public body confidences, or advice from officials; or
- Disclose information that is subject to any kind of legal privilege.

For example, a discussion regarding the employment of an individual should be held in-camera to protect the privacy of that individual. Also, preliminary meetings with developers (at their request/or councils discretion) describing a new land use development should be held in a closed session (s. 16 of FOIP).

What should not be discussed in a closed session?

Difficult topics, such as:

- Budget deliberations
 - Tax i.e. assessments/mill rates, penalties
 - Capital expenditures
- Any contentious issues
 - Sensitive local issues
 - Bylaw amendments i.e. Land use
 - Subdivision proposals
- Tax recovery i.e. reserve bids for auction
- Discussions regarding budget requirements for hiring additional municipal staff and for the setting of salary ranges

are not be discussed behind closed doors.

The MGA sets out clear requirements for municipal councils to conduct their business openly. The powers of a municipal council are balanced by councils' accountability to the citizens who elect them. It is therefore essential that citizens are allowed to take an active interest in the development and direction of our local governments and express their views to their locally elected representatives.

For more information on how the FOIP affects municipalities, please visit the Service Alberta website at www.servicealberta.ca/FOIP/documents/FAQ_Municipal.pdf.

This is an information summary only and has no legislative or legal sanction. For certainty, refer to the *Municipal Government Act* and the *Freedom of Information and Protection of Privacy Act*. Copies are available for purchase from Alberta Queen's Printer Bookstore or electronically at the website link below.

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