

Public Meetings Law and Executive Sessions

Bill Monahan, City Attorneys Office

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News Media may Attend Executive Sessions

- The city has received two recent requests for admission to council executive sessions.
- News media are permitted to attend executive sessions under ORS 192.660, with some exceptions.
- Governing bodies may require that these attendees not disclose specific information discussed at the sessions.
- The city council must decide who qualifies as a representative of the news media.

Who is a representative of the news media?

- A representative of the media is a “news gatherer” with a formal affiliation with an institutional news medium – an entity formally organized for the purpose of gathering and disseminating news.
- This has included newspapers, radio, television – including specialty publications that cover specific subject areas for a special audience.
- The news media is not limited to traditional print and broadcast media but can include internet media.
- A governing body can adopt a comprehensive policy regarding access to executive sessions – as long as it complies with statutory requirements.

Sources of Authority

- ORS 192.660 – Oregon Public Meetings Law
- Attorney General’s Public Records and Meetings Manual – 2019
- Attorney General Opinion No. 8291, April 18, 2016

Clarification of the Meaning of Representative of the News Media”

- The Attorney General’s Opinion attempted to clarify the meaning of “representatives of the news media.” It states that :
 - “news media” is “broad and flexible enough to encompass subsequent technologies for delivering the news.”
 - news media includes the institutional news media – like newspapers, radio, television – but also other types of news gatherers and disseminators if they regularly disseminate news such as the “activities of a governing body”.
 - in certain instances even bloggers may fall within the definition of a “representative of the news media”.

The Opinion gives the impression that as technologies for delivering the news expand and the ways local events are “reported” to the public change over time, the definition of “news media” can expand.

Making the Decision of Who is a Representative of the News Media

- The decision of who qualifies as a representative of the news media is left to local governments.
- The Oregon Government Ethics Commission (OGEC) has authority to enforce the executive session provisions [ORS 192.60(4)], but it “may not adopt rules that establish what entities are considered representatives of the news media that are entitled to attend executive sessions” [ORS 192.660(11)].
- The statute places responsibility on local governments to determine who qualifies to be admitted to executive sessions. If a decision is made to exclude someone, an individual has the right to file a complaint of an executive session violation with OGEC against city council members.
- Our advice is that the council make any decision on who qualifies as a representative of the news media on a case-by-case basis.

Executive Session News Media Attendance Policy

- The council has an agenda item on its regular meeting agenda to consider a resolution to create an executive session news media attendance policy.
- If adopted, the policy will be helpful to both the city and individuals by setting forth a consistent process to notify the city of an individual's request to be deemed a representative of the news media and the forms of documents and/or information to be submitted for council consideration and determination.
- The policy does not restrict participation in executive sessions to one representative of the media, although the council may make such a request of the news medium .

Issue of Potential Disclosure of Confidential Information

- Traditional news media have historically been bound by journalistic standards and ethics.
- The city is reminded that it must take great care to follow executive session requirements which include reading a statement reminding representatives of the news media that they must not disclose specific information discussed in an executive session.
- The Opinion states that a local government does not have authority to exclude a member of the news media for failure to agree to non-disclosure of matters discussed in executive session or for disclosing confidential information from a prior executive session. That is, if a person admitted into an executive session fails to follow a governing body's expectation that confidential information will not be disclosed, there is no method to bar that person from attending a later executive session or to create any sanction.
- The OGEC routinely receives and processes complaints against local governments alleging executive session violations.

Good Faith Cooperation

- A governing body “can only request nondisclosure and rely on the good faith cooperation of the media.” In order to prevent disclosure of sensitive confidential information, the OGEC opined that a local government may need to “drastically limit its own use of confidential information” to avoid potential misuse.

Questions