

# Sunshine Laws a Little Cloudy?

## Shedding Light on Common Open Meetings/Open Records Misconceptions

by Laura Ross, Legal Services Counsel, Kentucky League of Cities

The purpose of the Open Records and Open Meetings acts, sometimes referred to as the “Sunshine Laws,” is to allow members of the public to know and understand what their government is doing on their behalf. However, the statutes designed to provide transparency in government can sometimes be anything but transparent to city officials attempting to comply with their provisions.

The KLC Member Legal Services Department hears a lot of ideas about what the Open Records and Open Meetings acts require. See if you can tell whether the following statements are **FACT** or **FICTION**, and then check the answers below. (No cheating!)

1. A person requesting city records must use the request form provided by the city clerk.
  2. When a city decides to comply with a request, the city must always provide the records within three business days.
  3. City officials are not allowed to have retreats unless they are advertised as open meetings.
  4. Cities do not have to take minutes in a closed session.
  5. A city can never charge for staff time when calculating copying costs for records requests.
  6. The personnel exemption to the Open Meetings Act would not apply to a discussion of removal of a legislative body member.
  7. Citizens have a right to speak at public meetings.
  8. A city does not have to honor a records request sent via e-mail.
  9. A city must always mail copies of records if a person requests the city to do so.
  10. A city is not required to publish special meeting notices and agendas.
1. **FICTION!** A city cannot require use of a particular form for records requests. However, it can require requests to be in writing. Also, KLC recommends providing a form for convenience to both the requester and the city and to help maintain records of requests. Just remember the form cannot be mandatory, and this should be made clear to the public.
  2. **FICTION!** Although a city should make every effort to provide records for inspection within three business days, there will be times when this is not possible, and the Open Records Act recognizes that. A city is required to *respond* to the request in writing within the three-day period to inform the person that the city will (a) comply with the request, (b) comply but needs additional time to provide the records or (c) deny the request. If there is a reasonable cause for delay, the clerk must provide a detailed explanation (for example, the records are in storage or active use) and the place, the time and the earliest date the records will be available.
  3. **FACT!** Remember, as elected city officials, you cannot “retreat” from the public. Any time a quorum will be present, and public business will be discussed or action will be taken, the gathering must be treated as an open meeting. Furthermore, a city should hold all meetings within its jurisdictional limits unless it is unavoidably necessary to do otherwise.
  4. **FACT!** Although minutes are required for open meetings, they do not have to be taken while in closed session, although the legislative body can do so if it chooses.
  5. **FICTION!** Generally, a city can only recover the actual cost of copies, including postage. However, when a person requests a nonstandardized or tailored format, the city may, at its discretion, provide the requested format and recover staff costs as well as actual costs.
  6. **FICTION!** The exemption applies if the discussion involves the appointment, discipline or dismissal of an individual employee or “member.” A discussion of removal of a legislative body member, therefore, would be an appropriate matter for closed session.
  7. **FICTION!** Citizens have a right to attend meetings, and cities must not impose conditions on attendance other than those necessary for maintaining order. However, a right to attend does not include a right to speak. The city can impose time limits on citizen comments or disallow them altogether if necessary.
  8. **FACT!** Unless the city records policies allow e-mailed requests, or the city otherwise consents to conduct open records transactions via e-mail by express agreement or a clear course of conduct, a city does not have to honor an e-mailed request. Keep in mind, however, that once you begin communicating with a requester via e-mail, you may be opening the door to accepting the e-mailed submission. To assist the clerk and the public, a city’s policies should clearly state the accepted methods for submitting a request.
  9. **FICTION!** There is no requirement to mail copies of records unless the person’s residence or principal place of business is outside of the county, the person precisely describes the records, the records are readily available, and the person makes advance payment of the fee and postage if requested by the city. However, nothing prohibits a city from mailing copies in other circumstances if it chooses.
  10. **FACT!** Surprised? This is sort of a trick question. I used the word “publish.” While a city is not required to publish notice and agendas for special meetings, it does have to post the date, the time, the place and the agenda at city hall and the place where the meeting is being held and provide them to all legislative body members, as well as any members of the media who have filed a request to receive notification of special meetings. The notice and agenda must be posted and provided at least 24 hours in advance. **KYC**

*For more information about open records and open meetings requirements, contact the KLC Member Legal Services Department at 800.876.4552.*