

# Don't Get Burned: Sunshine Law Misconceptions and Solutions

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# Don't Get Burned: Sunshine Law Misconceptions and Solutions



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# Goals for the Presentation

- ▶ Understand the basics of sunshine laws
- ▶ Identify common legal issues and misconceptions
- ▶ Be equipped with best practices for navigating sunshine law issues

# Overview

- ▶ What are sunshine laws?
  - Public records
  - Open meetings
- ▶ Why do sunshine laws exist?
- ▶ Why is this topic important for both public and private sector audience members?

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## **Part 1 – Public Records**

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## II. Public Records – The Basics

- ▶ What is a public record?
  - Generally, documents created (and received) by a public office.
- ▶ What is a public office?
  - Generally, any state agency or political subdivision.

## II. Public Records (cont'd) – The Basics

- ▶ Public Records Requests
  - Who can request a public record?
    - ▶ In Ohio, and in most states, anyone. This includes members of the public, journalists, and business competitors.
  - Is there a required public records request format?
    - ▶ Generally, no.
    - ▶ However, in Ohio the request must be for a particular record (and not just a general question about a record).
  - FOIA versus state public records requests?

## II. Public Records (cont'd) – The Basics

- ▶ Public Records Disputes
  - Duty to produce records in a “reasonable” timeframe
  - Remedies?



## II. Public Records (cont'd) – The Basics

- ▶ Key Public Records Exemptions in the Economic Development Context
  - Trade secrets
    - ▶ Business information or plans
    - ▶ Financial information
  - Infrastructure records
  - Ohio economic development-related exemptions
  - Other potential exemptions that may apply in other states
    - ▶ Pursuit of potential site/deal before a commitment

## II. Public Records (cont'd) - Misconceptions

- ▶ Common public records law misconceptions and pitfalls:
  - Is the entity a “public office”?
  - Public Section NDAs: Are they enforceable? Is the NDA a public record?
  - Email addresses as public records.
  - Simply labeling documents, emails, and other items as “confidential.”
  - Request must be for an existing record, not the creation of a new record.
  - Attorney-client privilege.

## II. Public Records (cont'd) – Best Practices

- ▶ Protecting Sensitive Information from Public Records Status While Building Trust
  - Identifying confidentiality pressure points in advance
  - Non-disclosure and disclosure strategies
  - Identifying and labeling documents and materials that are exempt from disclosure

## II. Public Records (cont'd) – Best Practices

- ▶ Navigating the Public Records Request Process: State Agencies and Large Cities
  - Identifying the appropriate records custodian
  - How to make effective public records requests when governments are dealing with such large volumes of public records requests

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## **Part 2 – Open Meetings**

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# III. Open Meetings – The Basics

- ▶ What are open meetings laws?
  - Require all meetings of a public body to be open to the public.
  - Public bodies include state or local government boards, commissions, committees, councils, and legislative authorities.
  - Meetings are prearranged discussion of public business by a majority of the members of the public body.

# III. Open Meetings (cont'd) – The Basics

- ▶ Common Public Meeting Requirements
  - Notice
  - Openness
  - Minutes
- ▶ Consequences for Violations
  - Invalidation of actions taken at the public meeting

## III. Open Meetings (cont'd) – Executive Session

- ▶ What is executive session?
  - Part of a meeting that is not open to the public
  - In Ohio, can be used to discuss business strategy, production techniques and trade secrets, financial projections, and certain other economic development incentive related topics.
- ▶ What are potential pitfalls for executive session?



## III. Open Meetings (cont'd) – Best Practices

- ▶ Do not assume materials presented in executive session will be automatically confidential.
- ▶ Avoid the unnecessary creation of public records in a public meeting.
- ▶ Communicate confidentiality concerns in advance of the meeting.

**Questions?**



**Thank you!**

