

Bagley- Keene Open Meeting Act

Sarah E. Belton

Supervising Deputy Attorney General
Civil Rights Enforcement Section
Office of the Attorney General
California Department of Justice





Overview

- ▶ Purpose and Application to State Bodies
- ▶ What is a Meeting?
- ▶ What is Not a Meeting?
- ▶ Scheduling and Conducting a Public Meeting
- ▶ Closed Sessions
- ▶ Summary and Key Points

Purpose of Open Meeting Act

- ▶ Promotes an open consensus building model of decision making
- ▶ Ensures the public a seat at the table



**What is a
meeting?**





What is a meeting?

- Gathering OR communication
- Between majority of members
- To hear, discuss, or deliberate on Task Force issues
- Includes all phases of decisionmaking



Discussions That Should Not Happen Outside of a Public Meeting

- ▶ Clarifying Task Force's jurisdiction
- ▶ Conversations to facilitate agreement or compromise
- ▶ Conversations that advance resolution of issue
- ▶ Any aspect of deliberative process

Types of Prohibited Meetings: Serial Communications

- Prohibition applies to ALL FORMS of communication





Examples of Serial Communications

A chain of communications, either through direct communication, personal intermediaries, or technological devices, by a majority of members to discuss, deliberate, or take action on any item of business

- ▶ Even if communications do not take place at same time and place and each communication involves less than a majority of members, if this series of communications, when taken as a whole, involves majority, may violate Act.



Communications with Fellow Task Force Members

Do not talk with other members about informational memoranda or agenda items outside of properly noticed public meeting.

- ▶ Members **may** engage in purely social conversations with other members.
- ▶ Majority **may** attend conferences or similar events that are open to public and of general interest, purely social or ceremonial events, local public meetings, and open and public meetings of another state body, as long as members do not discuss Task Force matters amongst themselves.



Communications with Public Outside of Meeting

- Members **may** communicate individually with members of the public to share the work of the Task Force, indicate whether the views expressed are those of Task Force or their own, and listen to comments from the public.
- Members **must not** indicate to public how they intend to vote on a matter pending before Task Force.



Staff Briefing Exception

- ▶ Staff **may** brief or respond to questions from individual Task Force members.
- ▶ Staff **may not** share communications from a Task Force member with any other Task Force member.
- ▶ **Do not “reply all.”**

What is “not” a meeting?





What is “not” a meeting?

- Communication between Task Force member and any other person, as long as not used to circumvent serial meeting requirement.



What is “not” a meeting?

- ◀ Conferences open to the public.
- ◀ Open meetings of other public bodies.
 - ◀ Open subcommittee meeting of a state body.
- ◀ Social events.

Scheduling and Conducting a Public Meeting





Requirements for Notice & Agenda

- ▶ At least 10 calendar days written notice of meeting (Gov. Code, § 11125(a).)
- ▶ Agenda must be made public with 10 days notice
- ▶ Both will be posted to the Task Force website

Rights of the Public

- ▶ Right to Participate at Public Meetings
 - ▶ *No identification required.*
 - ▶ *Reasonable time limits.*
- ▶ Right to Access Public Meeting Records
 - ▶ *Some records may be exempt from disclosure.*
- ▶ Right to Monitor Votes of Each Member
 - ▶ *Voting by roll call.*





Conducting Meeting Remotely

- ◀ Pre-Pandemic
 - ◀ Physical access required
- ◀ COVID-19 Pandemic
 - ◀ Executive Order allowing Task Force to conduct meeting remotely

Closed Session





Matters That May be Discussed in Closed Session

- ▶ Personnel matters
- ▶ Matters affecting individual privacy
- ▶ Administrative disciplinary matters
- ▶ Pending litigation
- ▶ Response to a confidential final draft audit record
- ▶ Threat of criminal or terrorist activity

Summary and Takeaways

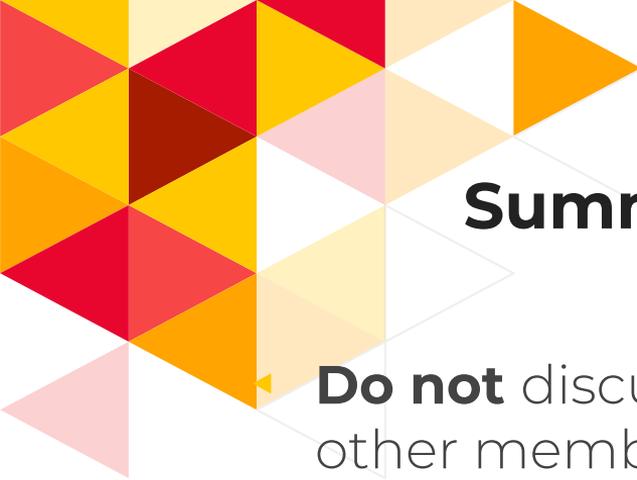


Summary and Takeaways

- ▶ When the Task Force meets to gather information, deliberate, or make a decision, the Bagley-Keene Act requires that the public have a seat at the table in most instances.
- ▶ Serial meetings conducted outside of a noticed public meeting that ultimately involve a majority of the Task Force frustrate the Act's goals of transparency and violate the law.
- ▶ The Act's requirement for a ten-day notice and agenda, public testimony, and the conduct of open meetings ensure the public's right of participation in the Task Force's consensus-building process.

Summary and Takeaways

- ▶ A member **may** individually contact DOJ staff to ask questions or gather information about an upcoming item, so long as the member and staff do not share these conversations with other members outside of a properly noticed board meeting.
- ▶ When a member receives information from staff, **do not** communicate with other members about this information.
- ▶ If information is sent by email to all members, **do not reply all.**
- ▶ A member **may** communicate individually with members of the public to share the work of the board, indicate whether the views expressed are those of the board or their own, and listen to comments from the public.



Summary and Takeaways

- ▶ **Do not** discuss Task Force business with more than one other member outside of a public meeting, to avoid creating an inadvertent advisory body.
- ▶ A majority of the Task Force may be present at social events, meeting of other public bodies, and public conferences, but may not discuss Task Force business outside of a properly notice board meeting.



Questions?