



Early Learning Division | 775 Summer St NE, Suite 300, Salem, OR 97301

Phone: 503-373-0066 | Fax: 503-947-1955

Public Records and Reports and Public Meetings - Chapter 192 Oregon Revised Statutes

Guidance memo to Hubs on Applicability of Public Meetings Law and Public Records Law to Early Learning Hubs

Oregon has comprehensive statutory provisions governing the manner in which public entities conduct business. Early Learning Division staff sought the advice of the Department of Justice as to the applicability of the public meetings and records laws to the Early Learning Hubs. Based on advice from the Department of Justice, Hubs and their governing boards should follow Oregon's public meetings laws (PML) and public records laws (PRL) when conducting business and in taking official action.

This memo provides a brief description of the applicability of the PML and PRL to Hubs and their governing boards and an overview of state policies, laws and Attorney General's guidance relating to public records and public meetings.

A. Hubs as Public Bodies:

A "public body", as defined in statute, means "the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof". ORS 192.610 (4). Hubs were created and exist through Oregon Revised Statute. ORS 417.827. They also exist by and through an official contract between the Early Learning Council (Council) and the Hub's sponsoring Regional Partner. ORS 417.827(1) (a). Hubs perform a public function and function as a legally separate entity from their Regional Partners. The statute further requires that Hubs operate by and through a governing body or community advisory body. ORS 417.827(4) (g). The statute defines a governing body as a group "of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration". ORS 192.610(3). Hub governing bodies operate in accordance with ORS 417.827, their contracts with the Council, and any applicable rules adopted by the Council.

B. Public Records and Reports:

"It is the policy of the Legislative Assembly to encourage state agencies to inform the public, the Legislative Assembly and the Governor of matters of public interest and concern. It is further the policy of this state to guarantee to its citizens the right to know about the activities of their government, to benefit from the information developed by state agencies at public expense and to enjoy equal access to the information services of state agencies. It is further state policy to encourage agencies to consider whether needed information is most effectively and economically presented by means of printed reports". ORS 192.235(2).

All public bodies, as defined in statute, are subject to public records laws. Because Hubs perform a public function, writings prepared, used, owned or retained by a Hub likely relate to or contain information relating to the conduct of the public's business.

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Writings include any "handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings". ORS 192.410(6).

B.1. Retention and destruction: "Each state agency or political subdivision shall maintain a public record or accurate copy of a public record in accordance with a retention schedule authorized under ORS 192.018 or 192.105..." ORS 192.108. State agencies and political subdivisions must follow the document retention schedule contained within Oregon Administrative Rules (OAR) adopted by the Secretary of State Archivist. The rules lay out retention and destruction schedules for various types of records. Hubs should refer to OAR 166-300-0010 through 166-300-0045 for guidance.

For retention purposes, a "public record" includes, but is not limited to, a document, book, paper, photograph, file, sound recording or machine readable electronic record regardless of physical form or characteristics, made, received, filed or recorded in pursuance of law or in connection with the transaction of public business, whether or not confidential or restricted in use. ORS 192.005.

If federal funds are involved, records retention requirements of the United States Government must be observed.

Retention and destruction statutes define a "public record" differently than the statutes which govern public access and inspection.

B.2. Public Access: For public access purposes, a public record is "any writing containing information relating to the conduct of the public's business, including but not limited to, court records, mortgages and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics". ORS 192.410 (4).

B.3. Exemptions: There are numerous records that are *conditionally* exempt from public disclosure. ORS 192.501 and 192.502 lists the typical records which are conditionally exempt. "Conditionally exempt" means that all types of records listed in ORS 192.501 are exempt from disclosure "unless the public interest requires disclosure in the particular instance". ORS 192.501. The PRL does not define the term "public interest in disclosure", however the Attorney General's Public Records and Meetings Manual (Manual) extensively addresses legal interpretations of the term as it applies to conditional and unconditional disclosure exemptions. The Manual states that the "Public interest means the value to the public at large, not a particular person at a particular time". (Manual, page 30). Briefly stated, public bodies are required to balance confidentiality interests against public disclosure interests. In situations where Hubs may have questions about exemptions contained in the public records disclosure laws, Hubs are encouraged to refer to the Manual or seek guidance from the Early Learning Division staff.

C. Public Meetings Laws:

"The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly". (ORS 192.630)

The PML applies to any meeting at which a quorum of a governing body deliberates towards a decision or decides a matter.

C.1. Applicability to Hubs: Because Hubs are legally discrete entities that perform a public function and exist by statute and official act, Hubs should operate as a public body for the purposes of the Public Meetings

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Laws (PML). In addition, governing bodies are considered public bodies as they possess authority to make decisions for a public body and make recommendations to a public body.

C.2. Public Meetings: Meetings of a governing body must be open to the public as required under ORS 192.630. "All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690". ORS 192.630(1).

C.3. Public notice: Requirements for public notice of meetings are set forth in ORS 192.640(1). The law requires a public body to give public notice of the time and place for holding regular meetings, including a list of the principal subjects anticipated to be considered at the meeting. The law also calls out provisions for "executive sessions", "special meetings" and "emergency meetings". ORS 192.640(3).

C.4. Social Gatherings: Social gatherings of members of a governing body that are purely social in nature are not covered by the PML. In these cases the purposes of the gathering triggers the requirements of the law. Members of a governing body attending a social gathering must avoid discussions of official business during social events. The Manual addresses social gatherings as well as retreats, strategic planning and goal setting meetings. The guidance provided by the Attorney General is that retreats and goal setting meetings are generally always subject to the PML. (Manual, page 140).

C.5. Electronic Communication: Meetings conducted through telephonic conferencing or through other electronic means are subject to the PML. ORS 192.670(1).

C.6. Exceptions to the PML: The statute provides for exceptions to the PML in certain circumstances. Under ORS 192.610, an Executive session is defined as "any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters". Public notice requirements for executive sessions are addressed in ORS 192.640.

C.7. Voting: The Manual addresses voting of members of a governing body. The Manual states that "all official actions by governing bodies must be taken by public vote". Further, the Manual explicitly states that secret ballots are prohibited. (Manual, page 153).

C.8. Minutes and Recordkeeping: Oregon Revised Statutes contain specific provisions regarding meeting minutes and recordkeeping. "The governing body of a public body shall provide for the sound, video or digital recording or the taking of written minutes of all its meetings. All minutes or recordings shall be available to the public within a reasonable time after the meeting, and shall include at least the following information: (a) All members of the governing body present; (b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition; (c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name; (d) The substance of any discussion on any matter; and (e) Subject to ORS 192.410 to 192.505 relating to public records, a reference to any document discussed at the meeting". ORS 192.650(1).

C.10. Reversal of decisions if made in violation of PML: ORS 192.680(1) provides that a decision made in violation of the PML shall be voidable, and authorizes Circuit Courts to void acts by a quorum of a governing body taken in violation of the PML. ORS 192.680(1).

D. Conclusion:

For individuals who are experiencing the public meeting and records process for the first time, the laws governing public entities can seem daunting. Transparency of process and outcomes and engagement of the public in those processes are generally the most desired practices to adopt. There are a variety of resources for practitioners to seek out guidance or to answer questions that may come up regarding public meetings, what constitutes a public record and when and under which circumstances a record or other information is



protected from disclosure. Hubs are strongly encouraged to familiarize themselves with the Public Meetings and Records Laws and locate and identify other reference materials that can help guide operations and management of the Hubs. Early Learning Division staff is also available to provide guidance, answer questions or to seek out the answers from other resources.

E. Resources:

E.1. Oregon Attorney General's [Public Records and Meetings Manual](#)

E.2. Public Meetings Law (PML), [ORS 192.610-192.690](#)

E.3. Public Records Law (PRL), [ORS 192.410-ORS 192.505](#)

E.4. Secretary of State Archives Division, Oregon Administrative Rules, [166-300-0010 – 166-300-0045](#)

