

Data Practices and Open Meeting Requirements During a State of Emergency

Our office has received several questions about government entities' responsibilities under the [Minnesota Government Data Practices Act](#) and the [Open Meeting Law](#) during the state of emergency declared by the Governor on March 13, 2020.

The Data Practices Office has developed the following guidance for government entities on how to best meet the requirements of the law. Although this is certainly a challenging situation, it presents an opportunity for entities to review procedures for processing data requests and open meeting requirements to identify gaps and areas for improvement. The Data Practices Office is here to assist you as you navigate these challenges and continue to meet your obligations under the law.

Please do not hesitate to contact our office by email at info.dpo@state.mn.us or by phone at 651-296-6733.

Data Practices Requirements During a State of Emergency

Government entities continue to have an obligation to respond to data requests during the emergency. For public data requests, entity responses must be prompt and appropriate, and within a reasonable amount of time. The reasonable and appropriate standards are flexible enough to accommodate changes in circumstances due to the current emergency. However, data request response times for data subjects remain 10 business days.

Entities should make contingency plans. Consider preparing for the possibility that the Responsible Authority and/or designees might not be able to easily receive or quickly respond to data requests. Government entities may need to prepare additional staff to carry out data practices functions.

If you have a central email account or portal to administer your entity's data practices program, make sure staff can access the account remotely and know where to route requests while people are working in different locations. If data requests are emailed directly to one person, confirm that other staff members will have access to this account if the primary recipient is no longer able to respond.

If entities cannot fulfill requests remotely, they can have employees use staggered or off-hours scheduling to go into offices to collect data and make copies as necessary.

When adhering to social distancing requirements, government entities' abilities to receive requests in person and to accommodate in-person inspection may be limited. We encourage you to work with data requesters to ensure you are following the [Minnesota Department of Health](#) and [CDC guidelines](#) to keep employees and members of the public safe. Entities might also consider waiving copy fees at this time when they deem appropriate.

Open Meeting Requirements During a State of Emergency

Public bodies required to comply with the Open Meeting Law must still do so during a state of an emergency. However, the Minnesota Legislature has considered the challenges of such public meetings, and we want to highlight [Minnesota Statutes, section 13D.021](#). Section 13D.021, subdivision 1 permits public bodies to hold meetings via telephone or other electronic means if the conditions of this section are met.

Section 13D.021 requires a public body to make a determination that an in-person meeting is "not practical or prudent because of a health pandemic or an emergency declared under chapter 12." The Governor has declared an emergency under Ch. 12.

Requirements for holding a meeting via telephone or other electronic means include:

1. All participating members can hear one another;
2. Members of the public at the physical meeting location can hear all discussion "unless attendance at the regular meeting location is not feasible due to the health pandemic";
3. At least one member of the public body is present at the meeting location, "unless unfeasible due to the health pandemic"; and
4. All votes are taken by roll call.

To the extent practical, public bodies should allow the public to monitor the meeting remotely, pursuant to subdivision 3 of this section. However, the public body may charge for the costs incurred as a result of those additional monitoring connections.

Public bodies may also hold emergency meetings under [Minnesota Statutes, section 13D.04, subd. 3](#). "Emergency" is not defined within the Open Meeting Law, but emergency meetings can be called when circumstances "require immediate consideration of the public body." For an emergency meeting, the only notice required is a good faith effort to contact media who have requested notification in writing. As a best practice, public bodies could provide additional notification to the public. Public bodies may hold emergency meetings by telephone or other electronic means, so long as the applicable provisions under Section 13D.021 are met.

Public bodies may also close meetings to the public to discuss emergency response procedures under [Minnesota Statutes, section 13D.05, subd. 3\(d\)](#). The authority to close these types of meetings is permissive, meaning that public bodies are not required to close a meeting to discuss these procedures. Public bodies must follow all applicable requirements when closing the meeting, and the bodies must identify the specific emergency procedures to be considered in the statement on the record. The closed meeting must be recorded, and the recording must be maintained for at least four years or possibly longer as required by the public body's retention schedule.