Open Meeting Policy

Subject	Governance and Organization
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100.00 Introduction and Purpose

This policy implements the statutory requirements for open meetings and the constitutional provisions granting the public the "right to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure." Art. II, Part II, Section 9, Montana Constitution and Title 2, Part 3, Ch. 2, MCA. This policy should be interpreted in a manner consistent with Montana law, including case law.

200.00 Meetings of Official Councils, Committees and Boards

All meetings of official Montana State University-Bozeman councils, committees and boards, whether conducted in person or by means of electronic equipment shall be open to the public, except when the discussions or deliberations of these committees or bodies relate to a matter of individual privacy and the demands of individual privacy clearly exceed the merits of public disclosure. Art. II, Part II, Section 10, Montana Constitution.

Not all meetings held on campus are subject to the requirements under the Open Meeting laws. In general, meetings of groups that are not official councils, committees, or boards, are not required to be open to the public, such as routine staff meetings or ad hoc working groups. Regardless of what the group that is meeting is called, the factors which will be considered in determining whether a meeting is required to be an open meeting under state law are:

(1) whether the committee's members are public employee's acting in their official capacity;

(2) whether the meetings are paid for with public funds;

(3) the frequency of the meetings;

(4) whether the committee deliberates rather than simply gathers facts and reports;

(5) whether the deliberations concern matters of policy rather than merely ministerial or administrative functions;

(6) whether the committee's members have executive authority and experience; and

(7) the result of the meetings.

Any questions regarding the application of this policy to any meeting shall be referred to The Office of Legal Counsel who will make a determination as to applicability.

300.00 Role of Presiding Officer

The Presiding Officer, for purposes of this policy, is the university employee or person appointed by the university who is responsible for convening and guiding the discussions and deliberations of the council, committee or board.

A meeting which would otherwise be open to the public under this policy may be closed to the public if the presiding officer, after consultation with university legal counsel, determines that (1) the discussion relates to a matter of individual privacy, and (2) the demands of individual privacy clearly exceed the merits of public disclosure.

The individual(s) may waive their right of privacy. If more than one individual's privacy interests may be infringed by a public meeting, the presiding officer shall consider each such individual's privacy interest separately before reaching a decision whether or not to close the meeting. If any individual's privacy interest would be infringed by conduct of an open meeting and has not been waived, and the protection of such interest clearly exceeds the merits of public disclosure, the presiding officer shall close the meeting (or, whenever practical, that portion of the meeting which relates to the individuals whose privacy interest would be infringed Meetings may be postponed and rescheduled to allow the presiding officer sufficient time to make these determinations.

400.00 Notice and Minutes

If a meeting is subject to the requirements for open meetings, notice of the meeting must be given sufficiently in advance of the meeting to permit the public to attend.

Appropriate minutes shall be kept and, subject to the obligation to protect the right of individual privacy, be available for inspection by the public.

500.00 Guidelines

To determine whether deliberations of the committee include matters of individual privacy and in determining whether the right to privacy exceeds the public's right to know, the presiding officer should consider the following factors:

(1) Who are the individuals directly involved, or whose privacy interests may otherwise be infringed, by disclosures or discussion at the meeting? That is, determine the identity of those individuals who may be discussed evaluated, identified, or compared during the particular meeting. In this regard, consider the individual who is: (1)filing a claim, asserting a grievance, or being evaluated; (2) responding to a claim, a grievance, or

evaluating another individual; or, (3) providing evidence regarding a claim, a grievance, or an evaluation. Consideration should also be given to whether any discussion or other presentation would disclose an individual's personal affairs even though the individual is not the subject of the discussion; responding to a claim, a grievance or evaluation; or providing evidence regarding a claim, grievance or evaluation. Keep in mind that an individual's privacy interest may be violated even though that individual is not the subject or focus of, or even present at, the meeting.

(2) What is the status of the person invoking the privacy interest? A leadership position with substantial responsibility or a person in a position of public trust may increase the public's interest in, and therefore "right to know" concerning a matter. Likewise, a lower-level position without substantial responsibility may diminish the public's "right to know" and, therefore, its interest in disclosure of personal matters when balanced against an assertion of a right of privacy. Notwithstanding the foregoing, a high-level position may, in fact, require greater privacy protection from disclosure in order to garner candid discussions and evaluations from subordinates and others.

(3) What is the nature of each individual's privacy interest? Is it a private, non-university-related matter of interest; or does it bear upon an official matter of public importance? The less related to the university business, the greater the privacy interest may be, and vice versa.

(4) Has there been a waiver of the privacy interest? Is it a knowing waiver? That is, did the individual waiving the right to privacy understand that he or she could request the meeting be closed in order to protect his or her right of privacy? It is recommended that the waiver be written and specific regarding which matters the individual making the waiver no longer has an expectation of privacy.

(5) Does the person whose privacy interests are at issue have a reasonable expectation of privacy? Is the expectation of privacy generally recognized as reasonable by society under the circumstances? Upon what basis is the expectation premised (e.g., a contract, written policy, fundamental fairness)? Was the information which might be disclosed received, or given, pursuant to a promise of confidentiality?

(6) What public purposes would disclosure benefit? Would those purposes necessarily be defeated by closing a portion or all of the meeting?

(7) What personally identifiable records, if any, might be disclosed? Personnel records utilized during a meeting might inadvertently disclose private information. The following types of records may disclose such personal information:

- applications and resumes;
- personal financial information, such as direct deposit and optional retirement contributions
- educational and training records; hiring, promotion, tenure, transfer, and training selection records;
- supporting documentation for licenses and certifications;
- disciplinary records;
- performance records;
- employee requests for assistance with personal problems; and,
- termination documents and records

The following information has been recognized as information protected by an individual's right of privacy:

- performance ratings;
- family and health conditions;
- employer criticisms of employees;
- employee criticisms of employers;
- subjective comments regarding performance of self and others, and an individual's ability to work with others;
- interpersonal relationships;
- military service records
- IQ and other test or performance scores;
- prison records; and
- any other information which a reasonable person would expect to be able to choose the time and place, if any, and the manner of disclosure regarding personal attitudes, beliefs, behavior and opinions.

(8) Does the information which might be disclosed reveal personal attitudes, beliefs, behavior, or other personal aspects of an individual's life? If so, the privacy interest of the individual is generally considered to be of the highest order; and, a request to close a meeting which might disclose this type of information should be honored unless the

presiding officer reasonably believes that there is a compelling public interest justifying disclosure.

(9) Is there a risk of statements being made in the meeting which would injure the reputation, or otherwise defame, any individual? If so, are there any safeguard which would protect against this possibility? University committees are not judicial bodies and, therefore, do not have the authority to restrain utterances or writings of individuals in a proceeding. Consequently, in determining whether a meeting should be open or closed, the presiding officer should be sensitive to the possibility that invasions of privacy or defamation of character, in both written complaints and oral testimony, may occur.

After considering the foregoing factors, the presiding officer must determine whether, in his or her judgment, the privacy interest of any individual clearly exceeds the merits of public disclosure. If the privacy interest is paramount, then the meeting must be closed for the discussion which relates to this privacy interest. If the merits of public disclosure are paramount, then the meeting should be open to the public and should be subject to the notice requirements for public meetings.

Once a decision is made, the presiding officer should make a written record of the reasons for the decision.