

# **Open Meeting Policy**

*Approved 7/9/08*

It is the policy of the Great Falls Development Authority (GFDA) that meetings of official GFDA committees and boards shall be open to the public. GFDA recognizes that opportunity for the public to observe the actions and deliberations of public agencies is important to a free society. GFDA, likewise, recognizes that the right of privacy, constitutionally guaranteed to the citizens of Montana, is fundamental to the well-being of both the individual and society.

## **Statement of Policy**

All meetings of official GFDA committees and boards 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.

The presumption in favor of openness shall be overcome whenever the closure of a meeting is necessary to preserve the privacy interest of any person who is the subject of such meeting or of any other person whose privacy interests will be infringed by public conduct of the meeting, and the demands of individual privacy clearly exceed the merit of public disclosure.

Prior to closing a meeting, which would otherwise be open to the public under this policy, the presiding officer shall first determine 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 to which the privacy interest relates may waive his or her right of privacy and, upon doing so, the meeting shall thereupon be open. However, if more than one individual's privacy interests will be infringed by a public meeting, the presiding officer shall consider each such individual 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 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 that individual whose privacy interest would be infringed) unless that individual whose privacy interest is involved expressly waives his or her right to privacy.

## **Notice of Meetings**

All meetings must be noticed at least 48 hours prior to the meeting.

## **Minutes of Meetings - Public Inspection**

Appropriate minutes of all meetings required to be open by GFDA Open Meetings Policy shall be kept and shall, subject to the obligation to protect the right of individual privacy, be available for inspection by the public. Such minutes should include:

- 1) Date, time, and place of meeting;
- 2) A list of the members in attendance;
- 3) The substance of all matters proposed, discussed, or decided; and
- 4) At the request of any member, a record by individual members of any votes taken.

## **Public Participation**

Section 2-3-103 M.C.A provides that the agenda for Board meetings must include an item allowing public comment on any public matter that may or may not be on the agenda and that is within the jurisdiction of GFDA. The Board may not take any substantive action on any matter discussed unless specific notice of that matter is included on an agenda and the public is provided an opportunity to comment on that matter.

## **Guidelines to Assist Presiding Officers in Determining Whether to Open or Close a Meeting under the Open Meeting Policy of GFDA**

### **Introduction**

The GFDA Open Meeting Policy makes it the duty of the chair or presiding officer of any meeting of any official GFDA board, committee or sub-committee (see Section 2-3-203(4) M.C.A.) thereof to balance the public interest in observing official public boards and committees with the interest of protecting individual privacy.

Prior to closing a meeting subject to GFDA's Open Meeting Policy, the presiding officer shall first determine 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. It should be kept in mind, however, that if an individual whose privacy may be violated during an open meeting nonetheless affirmatively requests the meeting to be open (thereby waiving his or her right of privacy), the presiding officer must open the meeting unless some other individual's privacy interest requires the meeting to be closed (see Section 2-3-203(2) M.C.A.). That is, the presiding officer must be sensitive to the possibility that more than one individual's privacy may be violated by a specific discussion; and that possibility must be taken into account in determining whether or not to close a particular meeting.

### **Guidelines**

Proper determination of whether a particular discussion will relate to a matter of individual privacy requires identification of all individuals whose privacy interest may be affected, as well as the nature of these particular individual privacy interests. To assist in making this identification, it is recommended that the presiding officer 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 high status position may increase the public's interest in, and therefore "right to know" concerning a matter. Likewise, a low

status position 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 status position may, in fact, require greater privacy protection from disclosure in order to garner candid discussions and evaluations from subordinates and others regarding this high status individual.

**(3) What is the nature of each individual's privacy interest?** Is it a private, non-GFDA-related matter of interest; or, does it bear upon an official matter of public importance? The less related to GFDA 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.

**(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) What is the forum for the meeting?** Is the proceeding a formal, adversarial setting in which there may be, generally, little expectation of privacy? Or, is this a proceeding in which conciliation is the goal and candid discussion requiring privacy is, therefore, paramount? To express this another way: would premature publicity impede the highly desirable goal of conciliating disputes?

Is this a fact-finding, investigatory proceeding in which candor is essential and in which unsubstantiated allegations may be made? Will the proceeding make provision for protecting an individual's privacy while permitting an appropriate inquiry?

**(10) 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? GFDA 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's 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 judgement, 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 time during which the discussion relates to this privacy interest. If the merits of public disclosure are paramount, then the meeting should remain open to the public.

Once a decision is made whether to close the meeting, the presiding officer should make a written record of the reasons for his or her decision. Although all the factors discussed above will not necessarily be relevant to every case, memorializing the presiding officer's decision, and the reasons therefore, on as many of these factors as possible will assist review of the decision.

If the chair or presiding officer is unable to determine whether a meeting should be closed or open, the meeting should be continued, or the matters on the agenda which give rise to the privacy concern should be postponed until such time as the matter can be resolved and the interests of individual privacy and the public's right to know properly balanced.

*This policy has been adapted from one developed by Montana State University.*