

## Arkansas Conservation Districts Training Program



# Freedom of Information Act Open Meetings/Open Records



Power Point 7





# Arkansas Freedom of Information Act

Conservation Districts are subject to the requirements of the Freedom of Information Act (FOIA)

FOIA has two major sections:

**Open records.** Who may request written records, what records they may request, timeframes for your response, etc.

**Open meetings.** How the district conducts meetings, who should receive notice, timeframes for notice, etc.



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# Open Records



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# What To Do When You Get A Request

Call your Land Resource Specialist or ANRC

Make the call immediately as FOIA

ANRC will help you determine what, if any, records are exempt

Some personnel material

Some district records are covered by statutory nutrient management exemptions

Determining what is and is not exempt is tricky so always check with your LRS before disclosing information in response to a FOIA request



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# Records Subject To FOIA

“Record” = Writings, recorded sounds, films, tapes, electronic or computer-based information, or data compilations in any medium.

Whose records = “public official or employee” and a “governmental agency”

What records = records which provide information about the performance or lack of performance of official functions

Where = District records, whether physically present at the district office or in a board member’s home



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# Records Subject To FOIA

Examples of district records subject to FOIA include:

incoming and outgoing email and correspondence

meeting agendas and minutes

district financial records

Personal email received and sent from district office computers may demonstrate a record of performance or lack of performance

Cell phone records of district-owned cell phones

FOIA applies only to existing records.

A Conservation District “is not required to compile information or create a record” in response to a request.



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# Requests

Any citizen of the State of Arkansas, including businesses, can make a request

You can ask the requester for clarification if the request is too vague or overly broad.

The district may encourage the requester to put the request in writing if it is complicated or unclear.

Districts cannot specify the form of the request

Valid requests may be made by telephone, in person, by mail, by fax, by email or other electronic means.

Requests in person or by telephone must be made during regular business hours



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# Requests

Requester may request a certain format

District must provide the information in the requested format only if:

- The requester asks for the records in a specific format and

- The record is readily accessible in the requested format

The district is not required to maintain records in a certain medium or format

Districts may charge fees that do not exceed the actual cost of reproducing and transmitting the record

Districts may not charge for staff time to search and duplicate the requested record

Districts are required to provide an itemized invoice for the requested records

Districts may waive fees when it serves the public interest



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# When A Request is Received

Districts should take action immediately when a request is received.

In consultation with the LRS, the district may:

- Grant the request in full and release records

- Grant the request in part and release some records or disclose records with exempt portions deleted

- Deny the request entirely

- State that the records do not exist or that the records are not in the district's possession, or

- Within three working days notify the requester that how long the search and compilation process will take. Give the requester a specific date by when the documents will be provided



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# Open Meetings



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# Questions

Ask your Land Resource Specialist



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# Open Meetings

Anyone can attend

All meetings are open to anyone – formal, informal, special or regular meetings

No one is required to be notified in advance unless requested.

Open meeting requirements do not require that a notice be posted or that an advertisement be purchased

Anyone can request notice.

Anyone who requests notice must be furnished with advance notice of time and place

Organizations as well as individuals may request advance notice

Requests may be made verbally or in writing



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# Open Meeting Laws Apply To ...

Regularly scheduled and special meetings

Whether official action taken or not

Includes committee meetings, workgroup sessions, discussion of proposals

Informal information gathering or fact finding sessions

Social gatherings are not open meetings if discussion of business is "incidental and intermittent"

Telephone polls cannot be used to circumvent open meeting requirements. There is no substitute for a meeting.

Conference calls are meetings subject to open meeting requirements.

Quorum rules do not apply. Two members talking about Conservation District business can be a meeting. It depends on what is discussed. For example, if two directors discuss a matter on which the board may take action in the foreseeable future that is a meeting under the Act.

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# What Constitutes Notice

All meetings are convened as open meetings so advance notice is required for all meetings.

Written notice (e.g., a USPS letter, fax, email) provides a reliable record that advance notice was given

Actual advance notice is required.

Providing the requester with a list of regularly scheduled meetings for the year with date, time and location is sufficient.

At least six days advance notice should be sufficient.



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# Notice for Regular Meetings

An agenda or listing of subjects to be considered does not have to be included in the notice.

Commission policy is to send an agenda to requesting parties one week in advance.

If the time or location of the meeting has changed since notice was given, a second notice containing the correct information is required.

Meetings must not be set at a time that would effectively avoid the public meeting requirements of the Act.



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# Notice For Special Meetings

Actual notice is required for special or emergency meetings as well as regular meetings.

Must notify news media that have requested notice actual notice

Notification shall be made at least 2 hours before the meeting takes place.

There must be a reasonable expectation that the notification will be received (e.g., you can't email a notice at 2:00 a.m. for a 7:00 a.m. special meeting)

Other notice requirements are the same as for regular meetings.

Action taken at the meeting may be invalidated if proper notice is not given.



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# Citizens Rights At Open Meetings

Citizens are entitled to learn of action taken as well as reasons for taking such action, including deliberations, discussions and information gathering

Citizens must be given reasonable access to meetings.

Citizens do not have the right to participate in open meetings. Rather, they have the right to be informed of government actions.

Secret votes are not allowed. Citizens have a right to find out how each member of the board voted on a particular question, no matter what method of voting is used.



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# Citizens Rights At Open Meetings

A citizen may request to provide information at an open meeting but the board is under no requirement to allow public participation.

The board may establish a process for citizens make requests to speak at an open meeting (e.g., request in advance, sign up before the meeting starts). However, there is no requirement.

A governing body may request that a citizen or organization provide information at an open meeting.

If minutes or similar records or tape recordings of the meeting are kept, they must be open to the public. However, minutes do not have to be posted for the public.



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# Executive Sessions

Also called closed meetings

The only time a Conservation District board can meet in executive session is to take action on a personnel matter affecting a particular employee or officer to protect the privacy rights and reputation of the individual or officer



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# Topics Are Limited In Closed Meeting

In an executive session or closed meeting, the board may discuss “*employment, appointment, promotion, demotion, disciplining or resignation*” of any specific employee or officer. Examples of when the board can close a meeting include:

- To consider demotion or discipline of an employee

- To screen and review job applications for an individual position

- To consider proposed employee pay raise

- To review performance of a particular employee and take a nonbinding “vote of confidence” (to consider an individual’s continued employment, promotion, demotion or changed compensation)



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# Who Can Participate In Closed Meeting

Only certain people can be allowed to participate in a closed or executive session.

Board members

Employee whose performance will be discussed

Immediate supervisor of employee

NOT employee's attorney or attorney for board

NOT independent contractor's or consultants



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# Procedures for Closed Meetings

A board must follow specified procedures to call an executive session and after it completes an executive session.

Must convene an open meeting in public to announce the purpose of the closed meeting or executive session before retiring

A motion must be made, seconded and voted on to go into executive session.

The motion does not need to include the name or position of the individual or the action to be considered so that the individual's privacy may be protected.



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# Procedures for Closed Meetings

Must re-convene an open meeting after the executive session to publicly present and adopt any board decision considered during an executive session

Must disclose the person an/or position discussed when the board reconvenes

Proper notice (as described above) must be given even if all or part of a board meeting will be held in executive session.



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