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### OML FAQ: Evaluations

#### Evaluations

##### May a public body perform an evaluation of an employee in executive session?

No. Deliberations conducted for the explicit purpose of evaluating the professional competency of an individual may not occur during an executive session. See G.L. c. 30A, §21(a)(1). While conclusions drawn from deliberations about professional competency may be part of a deliberation for another executive session purpose, the evaluation of professional competency, itself, must occur during an open session. For example, as part of the discussion in preparation for renegotiating a superintendent's contract, a school committee may wish to consider the results of an annual professional competency evaluation. The evaluation results may be considered as part of deliberations about strategy held in executive session, however only after deliberations about professional competency were held during a previously convened open session.

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##### Are individual evaluations completed by members of public bodies public records?

Yes. The Open Meeting Law carves out an exception from the personnel records exemption from the Public Records Law for "materials used in a performance evaluation of an individual bearing on his professional competence," that were created by members of a public body and used during a meeting. See G.L. c. 30A, §22(e). Individual evaluations created and used by members of a public body for the purpose of evaluating an employee are public records. Comprehensive evaluations that aggregate the individual public body members' evaluations are also public records if they are used during the course of a meeting. However, evaluations conducted by individuals who are *not* members of public bodies are *not* public records. For example, the individual evaluations created by municipal employees in response to a request for feedback on the town administrator are not public records, provided the employees completing the evaluations are not also members of the public body tasked with evaluating the town administrator's professional competency.

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##### May the individual evaluations of an employee be aggregated into a comprehensive evaluation?

Yes. Members of a public body may individually create evaluations, and then submit them to an individual to aggregate into a master evaluation document to be discussed at an open meeting. Ideally, members of the public body should submit their evaluations for compilation to someone who is not a member of the public body, for example, an administrative assistant. If this is not a practical option, then the chair or other designated public body member may compile the evaluations. However, once the individual evaluations are submitted for aggregation there should be no deliberation among members of the public body regarding the content of the evaluations outside of an open meeting, whether in person or over email.

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##### May a public body discuss issues relative to the salary of a public employee in executive session?

It depends. Discussions of salary issues may only occur in executive session as part of a contract negotiation. See G.L. c. 30A, § 21(a)(2), (3). Other discussions related to salary, such as a discussion about whether an employee's job performance merits a bonus or salary increase, must be conducted in open session.

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# Public Body Checklist for Posting a Meeting Notice

Issued by the Attorney General's Division of Open Government – March 12, 2013

## Notice Contents

- The notice contains the date, time, and location of the meeting. G.L. c. 30A, § 20(b).
- If the meeting is a joint meeting of several public bodies, the names of all bodies meeting are listed.
- The notice contains all of the topics that the chair reasonably anticipates will be discussed at the meeting. G.L. c. 30A, § 20(b). The topics are sufficiently specific to reasonably advise the public of the issues to be discussed at the meeting, including executive session topics. See G.L. c. 30A, § 20(b); 940 CMR 29.03(1)(b).
- The notice is printed in a legible, easily understandable format. G.L. c. 30A, § 20(b).
- The date and time that the notice is posted is conspicuously recorded on the notice. 940 CMR 29.03(1)(b).

## Notice Publication

- The notice is published at least 48 hours before the meeting, not including Saturdays, Sundays and legal holidays. G.L. c. 30A, § 20(b).
- The notice is posted with the proper authority. G.L. c. 30A, § 20(c); 940 CMR 29.03(2)-(6).
  - Local public bodies - Filed with the municipal clerk, who must post it either:
    - In a location conspicuously visible to the public at all hours in or on the municipal building where the clerk's office is located; or
    - If an alternative posting method, such as a website, has been adopted, at the alternative location, with a description of the alternative method posted in a manner conspicuously visible to the public at all hours on or adjacent to the main and handicapped accessible entrances to the building in which the clerk's office is located. Meeting notice must also be available in or around the clerk's office so that members of the public may view the notices during normal business hours.
  - State public bodies – Posted to a website, and a copy sent to the Secretary of State's Regulations Division.
  - Regional public bodies – Posted in every municipality within the region, unless the public body has adopted an alternative notice posting method.
  - County public bodies - Filed with the office of the county commissioners and a copy of the notice is publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose, unless the public body has adopted an alternative notice posting method.

**Note that this checklist is intended as an educational guide, and does not constitute proof of compliance with the Open Meeting Law. Checklists are updated periodically, so please confirm that you are using the most current version. For questions, please contact the Attorney General's Division of Open Government at 617-963-2540 or via email at [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us). For more information on the Open Meeting Law, please visit [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting).**

# Public Body Checklist for Creating and Approving Meeting Minutes

Issued by the Attorney General's Division of Open Government – March 12, 2013

- Minutes must accurately set forth the date, time, place of the meeting, and a list of the members present or absent. G.L. c. 30A, § 22(a).
- Minutes must include an accurate summary of the discussion of each subject. See G.L. c. 30A, § 22(a). The summary does not need to be a transcript, but should provide enough detail so that a member of the public who did not attend the meeting could read the minutes and understand what occurred and how the public body arrived at its decisions.
- The minutes must include a record of all the decisions made and the actions taken at each meeting, including a record of all votes. G.L. c. 30A, § 22(a).
- The minutes must include a list of all of the documents and other exhibits used by the public body during the meeting. G.L. c. 30A, § 22(a). Documents and exhibits used at the meeting are part of the official record of the session, but do not need to be physically attached to the minutes. See G.L. c. 30A, §§ 22(d), (e).
- If one or more public body members participated remotely in the meeting, the minutes must include the name(s) of the individual(s) participating remotely, and their reason(s) under 940 CMR 29.10(5) for remote participation. 940 CMR 29.10(7)(b).
- If one or more public body members participated remotely in the meeting, the minutes must record all votes as roll call votes. 940 CMR 29.10(7)(c).
- Executive session minutes must record all votes as roll call votes. G.L. c. 30A, § 22(b).
- The minutes must be approved in a timely manner. G.L. c. 30A, § 22(c). Generally, this should occur at the next meeting of the public body.

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