

MTA Board Training

City Attorney's Office

January 23, 2018

Outline

1. Public Records
2. Public Meetings
3. Powers and Duties of MTA Board and its Members

1. Public Records

Public Records Law: Core Legal Premise

- California has a system of open government
- Public's ability to monitor government is the hallmark of a robust democracy
- Public has right to access public records (records of public business)

Recent Case Law: Personal Electronic Devices

City of San Jose v. Superior Court of Santa Clara County

- Public records law is undermined if government employees or officials can shield public records by using personal accounts or personal electronic devices (PEDs)
- When a government employee or official uses a PED to communicate about the conduct of public business, that communication may be subject to disclosure
- Six main points from case

First Point

Government employees and officials cannot avoid disclosure under public records laws through communications made on PEDs

- Communications include:
 - Emails you send or receive
 - Text messages you send or receive
- PEDs include:
 - Private email and telephone accounts
 - Personal computers and cell phones

Second Point

Only communications relating to the conduct of the public's business are public records

- Courts apply scope-of-employment test:
 - Communications serves government purpose and involves a matter included in your work responsibility
 - Does not serve an essentially private function or contain primarily personal information
- Courts look at several factors including context, content, and intended recipients

Third Point

Government employees and officials may be required to search their PEDs and retrieve possible public records

- Responding departments will give you notice and explain how to identify possible public records
- You may need to testify under oath or submit a statement under penalty of perjury describing your search and the types of documents you did not provide

Fourth Point

Existing exemptions from disclosure still apply to communications using PEDs

- Attorney client privilege
- Personnel documents
- Privacy (home phone numbers, addresses)
- Etc.

Fifth Point

Existing records retention policies apply to communications using PEDs

- No different than identical records on government-owned electronic devices
- No requirement to keep public records on PEDs
- You may transfer public records to government-owned devices where they will be retained

Sixth Point

Communications on PEDs may be covered under a public records request even if not specified

- Assume they are covered

2. Public Meetings

What is a Meeting?

- Where a majority of the policy body comes together at the same time or place
- Meetings may include:
 - Retreats
 - Workshops
 - Site tours
 - Meal gatherings before or after a noticed meeting

Public Meetings: Three Basic Rules

1. Policy bodies operate in public meetings
2. Meetings must be formally noticed to public
3. Public comment must be accepted at meetings

Avoid Unlawful Meetings

- Sometimes called “seriatim meetings”
- Where a majority of the Board communicates, but is not physically together at same time or place
- Occur when Board members have separate communications about the same matter
- Unlawful because they are not noticed and deprive the public of access to decision-making process

Examples of Unlawful Meetings

- Can occur through various channels:
 - Simultaneous meetings
 - Phone, email, facsimile, and text messages
 - Communications made through human intermediaries (e.g., staff members)
- Board member communicates MTA business to more than one other Board member using any of these channels
- Simple tip
 - Do not “reply all” to emails
 - May constitute a public meeting that violates the Sunshine Ordinance

Exceptions: When is a Gathering not a Meeting?

- Even with a quorum, no meeting if:
 - Regional, state, or national conference
 - Local gathering open to the public
 - Press conference
 - Ribbon cutting
 - Social, recreational, or ceremonial event not sponsored by or for the Board
- If multiple members of the Board are present do not discuss MTA business

Power of the Agenda

- MTA Board cannot discuss or act on matters not on a meeting's agenda
- No exception for unexpected matters that arise during a meeting
- Discussing or acting on matters that are not on the agenda violates public notice requirements

Exceptions to Agenda Rule

- Very limited exceptions include:
 - Public health or safety emergency
 - Immediate need to avoid serious injury to public interest
 - Commendations and announcements
- Agenda rule does not prohibit:
 - Requests to place items on a future agenda
 - Follow up to on general public comments:
 - Clarification questions
 - Referrals to staff or other resources for factual information
 - Requests for staff to report back at a subsequent meeting

Public Comment: The Basics

- Specific public comment
 - Covers agenda items
 - Heard before conclusion of discussion or before action taken
- General public comment
 - Covers items not on agenda
 - May schedule for any time during meeting
- Public speakers have right to:
 - Anonymity
 - Criticize policy body, its members, and its staff
 - Equal time
 - Translation for non-English speakers
- Avoid interrupting speakers

Public Comment: Limitations

- No more than three minutes on any item
- No right to speak off-topic
- No right to disrupt
- No right to a response from Board or staff members
- No right to discriminate against or harass City employees

3. Powers and Duties of MTA Board and its Members

MTA Charter Powers

Unique powers include exclusive authority to :

- Acquire, construct, use, and control property
- Contract, purchase, and lease
- Accept and spend grant funds
- Set rates and fares
- Regulate parking, stopping, and the flow and direction of traffic

Role of MTA Board

- Provide policy direction to the MTA
- Appoint or remove Director of Transportation and Board Secretary
- Approve settlements recommended by the City Attorney
- Approve MTA rates, fees, and charges
- Approve MTA budget
- Approve MTA contracts and collective bargaining agreements
- Inquire into any matter within the MTA's jurisdiction

Policy Direction

- MTA Board sets policy for the MTA
 - Policy must be consistent with City laws
- MTA Board gives policy direction to MTA staff only through the Director of Transportation
- MTA Board may require that Director of Transportation obtain board approval for specific actions

Director of Transportation and Board Secretary

- Serve at the pleasure of MTA Board
- Directly accountable to MTA Board for
 - MTA management (Director of Transportation)
 - Administration of MTA Board (Board Secretary)

Approving MTA Budget

- Even numbered years
 - MTA submits balanced budget to Mayor and Board of Supervisors by May 1st
- Odd numbered years
 - MTA submits budget amendment only if it seeks increased appropriations, fare increases, or route abandonments

Approving MTA Budget

- Budget approved by operation of law unless rejected by 7/11 vote of Board of Supervisors
- Requested increases in general fund spending over guaranteed base amount requires normal budget approval from Mayor and Board of Supervisors
- With Board of Supervisors approval, MTA may incur debt secured by agency revenues without voter approval

Limitations on MTA Board Powers

Role of Board of Supervisors

- Budget
- Certain contracts, real estate matters
- Legislative matters: Division 1 of the San Francisco Transportation Code
- CEQA appeals

Non-Interference in MTA Administrative Affairs

- A Director's direction, suggestion, or interference in MTA administrative affairs is official misconduct
- Administrative affairs include:
 - Contract negotiations and administration
 - Appointment, promotions, compensation, and discipline of individual employee
- Non-interference covers two areas:
 - Chain of command
 - Action only by body as a whole

Chain of Command

- MTA Board and its members may:
 - Address MTA administrative matters solely through Director of Transportation or his/her designees
 - Seek information about MTA operations solely from Director of Transportation
 - Seek information from subordinate staff only with Director of Transportation's approval
- Chain of command requirements do not affect MTA Board's powers of hearing and inquiry
 - MTA Board may call any MTA officer or employee before the board to answer questions regarding MTA operations

Action Only by Body as a Whole

- MTA Board members must set policy and make decisions as a body
- Members cannot individually exercise MTA Board powers
- MTA Board may act only at a noticed meeting attended by a quorum of members and by means of a vote

The End

Thank you!