



NJLA occasionally receives questions about whether or not library boards can meet and/or conduct business electronically. NJLA believes that it is a violation of the Open Public Meetings Act for library boards to meet electronically. NJLA also reminds boards that all electronic communication related to library business could be subject to the Open Public Records Act. More detailed information is available below.

NJLA STATEMENT

GUIDELINES FOR CONDUCTING LIBRARY BUSINESS VIA ELECTRONIC COMMUNICATION

1. Libraries should NOT disclose customer e-mail addresses, which are protected by the confidentiality statute. That is to say, if a library has e-mail lists or individual e-mail addresses for library customers, the e-mail contact information must NOT be disclosed without a subpoena issued by a court or a court order.
2. Libraries MUST disclose public communications, i.e., business transacted by government officials, including members of a library's board of trustees, per the requirements of the Open Public Records Act (OPRA) and the Open Public Meetings Act (OPMA).
3. OPRA provides that government records must be disclosed UNLESS they are protected by another statute. This means that the library confidentiality statute trumps OPRA. If a library receives an OPRA request for customer e-mail addresses, the library must ask for a subpoena issued by a court or a court order.
4. The OPMA, frequently referred to as the "Sunshine Law," requires meetings of public bodies to be open to the public at all times, except in certain designated instances. Public bodies, including library boards, may be tempted to "meet" via e-mail, but to do so would violate OPMA.
5. If a library board of trustees conducts library business by e-mail, the e-mail messages will have to be disclosed to the public if the library receives an OPRA request. In other words, if the board uses e-mail to take a vote, make a decision, or transact library business, it must disclose the e-mail messages that have been used for the purpose of conducting public business.

6. Library trustees are library customers. If a library has to disclose its board's e-mail communication, it may have to disclose the e-mail addresses of its trustees. It is not necessary to procure a subpoena for the purpose of complying with the Sunshine Law.
7. For clarity, it may be helpful to update bylaws to indicate that library trustees must be physically present, in person, in order to take action on library business.

ANALYSIS

1. Libraries Should Not Disclose Customer E-Mail Addresses.

The e-mail addresses of library customers are confidential under state law. The New Jersey library confidentiality statute, N.J.S.A. 18A:73-43.2 provides that:

Library records which contain the names or other personally identifying details regarding the users of libraries are confidential and shall not be disclosed except in the following circumstances:

- a. The records are necessary for the proper operation of the library;
- b. Disclosure is requested by the user; or
- c. Disclosure is required pursuant to a subpoena issued by a court or court order.

This means that libraries must not disclose the e-mail addresses of their customers.

The library confidentiality statute trumps the Open Public Records Act. OPRA provides that "all government records shall be subject to public access unless exempt from such access by ... **any other statute.**" It also states "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy." [N.J.S.A. 47:1A et seq.](#)

This means that when a government record is protected by another statute -- such as the library confidentiality law -- the record cannot be disclosed under OPRA. A helpful analogy may be the State Department of the Treasury, which must disclose "public" records, but may not disclose tax records, which are protected by statute.

Libraries should not give lists of patron e-mail addresses to the Friends of the Library, or to the Foundation that supports the library financially. For purposes of making this possible in the future, libraries can ask patrons for authorization when they sign up for a library card or library newsletter, authorizing disclosure of the patron's e-mail address for other purposes.

2. Libraries Must Disclose Public Communications.

The purpose of the Open Public Records Act is to ensure transparency and accountability in government. OPRA commands that "government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest."

Public libraries are, of course, governmental agencies and, as such, accountable to taxpayers for their operations. It is not difficult to make a distinction between "public" records that must be disclosed, such as budgets, and personal records that must remain confidential, such as personnel files and customer records (including e-mail addresses), which are protected by statutes that trump OPRA.

3. The Library Confidentiality Statute Trumps OPRA.

If a library receives an OPRA request for customer e-mail addresses, the library must ask for "a subpoena issued by a court or a court order." This is the language of the library confidentiality statute, which, as noted, pre-empts OPRA.

Every library should adopt a policy that all requests for information about library customers must be referred to the library director. Customer e-mail addresses and e-mail lists constitute information about library customers.

The library director will be able to tell the difference between a subpoena and a court order, because the first page will identify the document with the word "subpoena" or "order." A

search warrant is a kind of court order.

The League of Municipalities has called attention to a couple of lawsuits in New Jersey where courts have ordered government agencies to disclose e-mail and home addresses. You can read the League's analysis at <http://www.njslom.org/letters/2012-0320-OPRA.html>, but you should note that the library confidentiality statute would mandate a very different outcome in the case of a public library.

4. Meetings of Public Bodies Must Be Open to the Public

The Open Public Meetings Act (OPMA), also known as the "[Sunshine Law](#)," applies to meetings of the Board of Trustees. The statute, NJLA 10:4-6 et seq., provides specifics about giving notice to the public, taking minutes, and maintaining websites. All formal actions must occur in public. The public must be invited; a board meeting can never operate as a mere "rubber stamp" on decisions made in private. The statute permits public bodies to meet by telephone conference call or by other means of electronic communication, but this is a bad idea for library boards, which should always meet in person.

Closed or "executive" sessions may be held during the course of a public meeting, to discuss certain matters that are enumerated in the statute. Before going into executive session, the body must adopt a resolution stating the nature of the subject to be discussed. It is not sufficient merely to recite the language of the statute. All formal actions must be taken in public.

5. E-Mail Messages of Trustees May Occasionally Be "Public"

A "public meeting" is one convened with the intent to discuss or act as a body on public business. If a quorum of board members communicates by telephone or e-mail to discuss public matters, their telephone and electronic communications must be disclosed to the public.

Committee meetings need not be open to the public under OPMA so long as there are not

enough members of the governing body present to constitute a quorum, and as long as the committee functions only in a research and advisory capacity. If committees are used improperly in an effort to keep out the public, their meetings will be in violation of OPMA. The League of Municipalities provides an OPMA guide at http://www.njslom.org/magart_1208_pg74.html.

6. Library Trustees Are Library Customers.

When library trustees act in their capacity as public servants, as opposed to library customers, their "public" communications may have to be disclosed, revealing their e-mail addresses. In this situation, it is not necessary to get a "subpoena issued by a court, or court order." This kind of situation should be extremely unusual. Library trustees should not conduct public business by e-mail.

7. It May Be Helpful to Update Bylaws

In order to avoid having to disclose electronic communications, meetings of a library Board of Trustees should be conducted in person. Bylaws should indicate whether votes will be taken by telephone or e-mail. If the bylaws are silent, it would be appropriate to adopt a policy and practice of permitting board members to vote only if they are physically present.

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