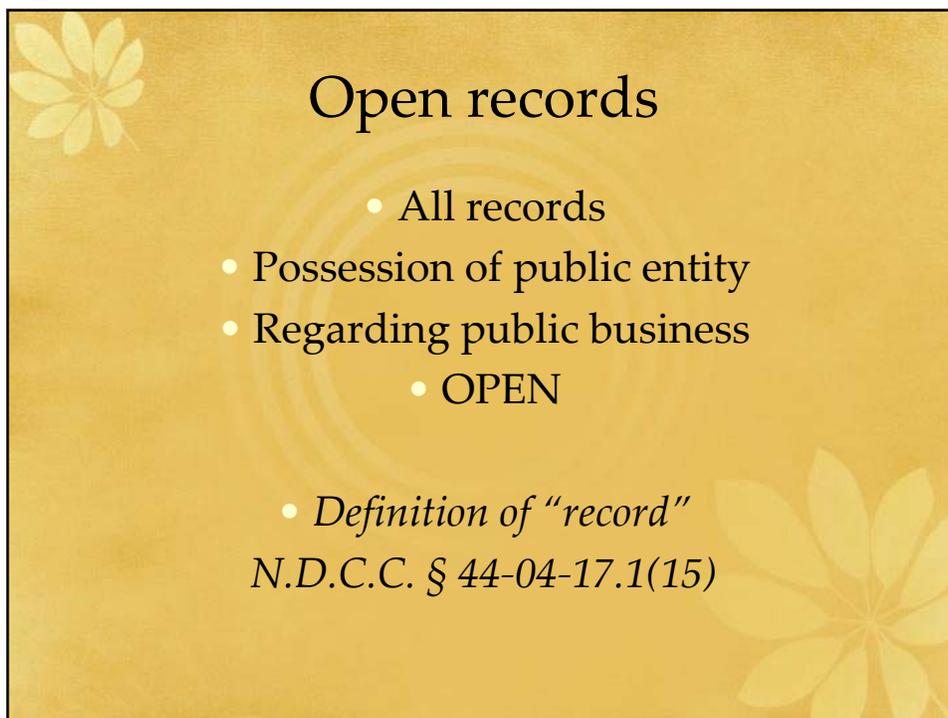


The Basics of Open Records and Meetings

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Open records

- All records
- Possession of public entity
- Regarding public business
 - OPEN
- *Definition of "record"*
N.D.C.C. § 44-04-17.1(15)

Unless specifically provided by law...

- There has to be a law that specifically says the record is protected.
- The law will say the record is “not subject to Article XI of the ND Constitution,” “not an open record,” “exempt,” or “confidential.”
 - *What does this mean?????*

Exempt vs. Confidential

- | | |
|--|--|
| • Exempt records may be released. | • Confidential records cannot be released. |
| • Discretion is with the public entity. | • No discretion. |
| • May be called a “closed” record. | • Can only release pursuant to the statute. |
| • Not against the law to release an exempt record. | • Class C felony to knowingly release.
12.1-13-01 |

Examples

- Exempt
- 44-04-18.1
- Home address
- Home phone number
- Photograph
- Payroll deduction info
- 44-04-26 security system plans
- Confidential
- Social security numbers
- Employee medical records
- Computer passwords
- Employee use of EAP records

Generally Open:

- Personnel file
 - Job performance
 - Evaluations
- Business related records
- E-mails that are business related
- Computer records



The basic rules:

- The request DOES NOT have to be in writing.
 - The requester DOES NOT have to give their name or reason for the request.
 - You must provide records – not opinions or explanations.
 - You only have to provide records you have.
- 



The basics continued...

- Give a legal reason for any denial of records.
 - Provide records within a reasonable time.
 - Review and redact for confidential information.
 - Communicate with requester – give estimate of time, costs, etc.
- 

Basics of charging:

- 25 ¢ per copy for 8x11 or 8 x 14 page.
- Locating records – first hour free, thereafter \$25/hour.
- Redacting confidential information – first hour free, thereafter \$25/hour.
- Actual cost of postage, maps, color photos.
- Can ask for money up front.
- Access is free!!!

Basics of Open Meetings

- **Quorum** of
- **Governing body**
- **Of a public entity**
- **Discussing public business**
- **Is a meeting**

*N.D.C.C. § 44-04-17.1(8) definition of
"meeting"*

Exceptions:

- Meetings of national, regional, or state associations.
- Chance or social gatherings.
- Delegation to one person – one person is not a committee.
- New: gatherings during declared emergency.

N.D.C.C. § 44-04-17.1(8)(b)

There are no exceptions for:

- **Committees**: two or more people acting collectively pursuant to authority delegated to that group by the governing body.
- Did the governing body delegate any sort of authority?
- Is the committee doing something the governing body could do itself?



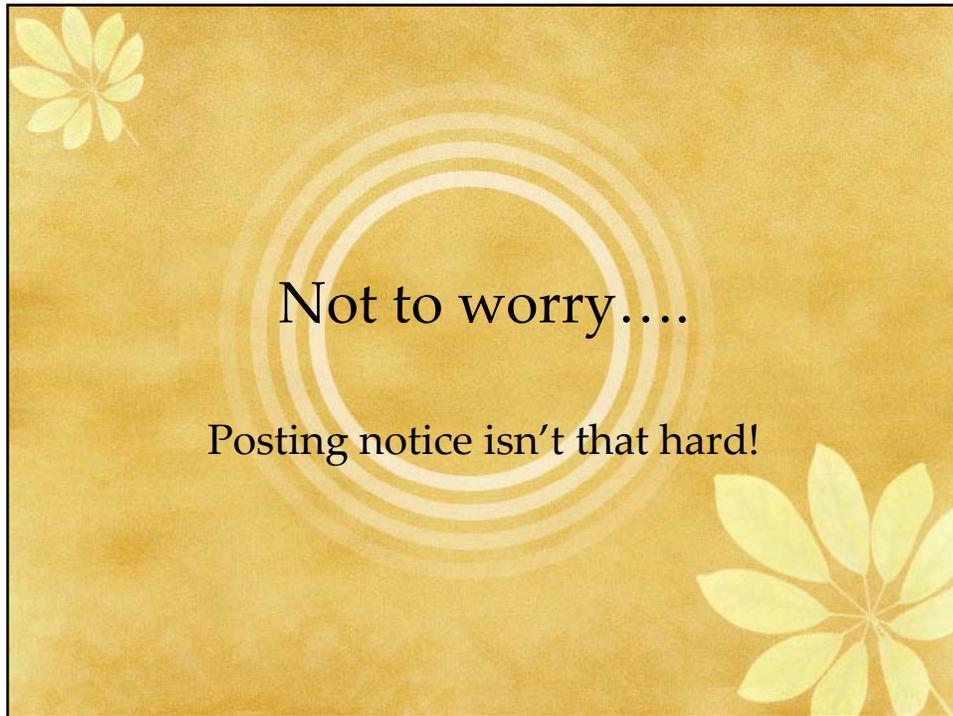
It doesn't matter.....

- If the committee doesn't have final authority;
 - If the committee is just "brainstorming" or "factfinding;"
 - If the committee is only going to recommend something to the governing body.
- 



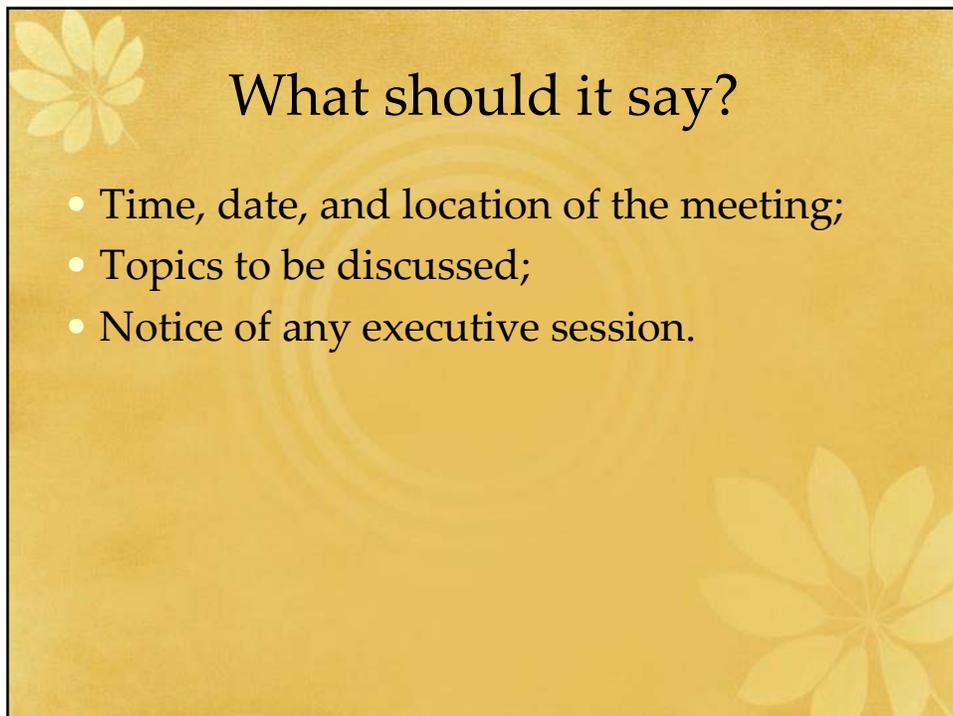
A meeting can happen...

- By conference call;
 - At a restaurant;
 - On very short notice;
 - Over video conference;
 - By e-mail.
- 



Not to worry....

Posting notice isn't that hard!



What should it say?

- Time, date, and location of the meeting;
- Topics to be discussed;
- Notice of any executive session.

Where do you put it?

- At the main office;
 - Appropriate central location: city auditor, county auditor, secretary of state;
 - Location of the meeting;
 - Give to anyone who has requested it.
- *Myth: publishing of notice*

Two kinds of meetings:

- | | |
|--|---|
| <ul style="list-style-type: none">• <u>Regular</u> | <ul style="list-style-type: none">• <u>Special</u> |
| <ul style="list-style-type: none">• Agenda should contain all topics known at the time of drafting the notice• May discuss items not on the agenda at the meeting | <ul style="list-style-type: none">• Can only discuss the items on the notice• Provide notice to the official newspaper |



Executive sessions

- To discuss confidential information – no motion necessary.
- To discuss exempt information – need motion.
- Most common: Attorney consultation and negotiation.
- Most common violation: closing meeting to discuss personnel matters!



Executive session procedure:

- Convene in open meeting;
- Announce in open meeting the topics to be discussed and legal authority;
- Record the session (keep for 6 months);
- Note time of executive session and who attended in minutes;
- Only discuss topics in announcement;
- Final action in open meeting.