

# SUNSHINE ADVISORY

A Bulletin on Iowa Open Meetings and Public Records Laws

By Attorney General Tom Miller – November 2004

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## Are Closed Sessions Confidential? Yes, but tapes and minutes may be released.

Iowa's Open Meetings Law defines limited grounds for government bodies to hold closed sessions of government meetings. (Iowa Code sec. 21.5(1).) The law also requires a government body to maintain sealed tape recordings and minutes of closed sessions for at least one year. Does the public ever have access to these tapes and minutes? What reasons could justify release of sealed tapes and minutes, and what procedures must be followed?

**A court order is needed to release closed session tapes and minutes. The following principles govern the reasons and the process under which such sealed records may be released:**

- *Pending Litigation:* Generally, a person may access closed session tapes and minutes only in a court case brought to enforce the Open Meetings Law. A person who sues alleging violations of the Open Meetings Law may request access to the minutes and tapes as evidence. (Iowa Code sec. 21.5(4).) Courts have also allowed access to litigants involved in contract disputes with government bodies.
- *Court Inspection:* A judge will usually review the records personally to determine whether to allow access at all and, if so, how much of the records to release. The release of the records is to the litigants only -- the records do not become available to the public as open records. (Iowa Code sec. 21.5(4).)
- *Balancing Test:* A court decision to release sealed tapes and minutes is based on weighing the prejudicial effects to the public interest of the disclosure against the probative value of the records as evidence in the pending litigation. (Iowa Code sec. 21.5(4).) Courts do not allow parties in litigation to engage in "fishing expeditions" into sealed records.

**In sum: Sealed tapes and minutes of closed sessions may be released by a court and admitted into evidence to hold government officials accountable. Government officials are not guaranteed confidentiality when they hold closed sessions under the Open Meetings Law.**

Citizens who have inquiries or complaints about public records or open meetings may call the Iowa Citizens' Aide/Ombudsman Office – toll-free at 888-IA-OMBUD (888-426-6283.)

"Sunshine Advisory" bulletins provide information on Iowa's public records and open meetings laws – our "Sunshine Laws." The bulletins are a resource for public officials and citizens. Local officials should obtain legal advice from their counsel, such as the city or county attorney.

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**Iowa Attorney General's Office: Hoover Building, Des Moines, Iowa 50319.**

On the Web: [www.iowaAttorneyGeneral.org](http://www.iowaAttorneyGeneral.org) . (Click on "open government.")