

Prohibited Serial Communications

Purpose & Definitions

Governing bodies are required to deliberate and decide matters in open public meetings. The purpose and intent of the Public Meetings Law is that the decisions of governing bodies be arrived at openly and that the public be informed and aware of the deliberations and decisions of governing bodies and the information upon which such decisions are made.

Prohibited serial communications occur when the governing body, outside of a public meeting, uses serial electronic written communications (notes, emails, texts), in-person communications, or an intermediary to communicate among a quorum of the members of the governing body for the purpose of deliberating or deciding on any matter within the governing body's jurisdiction (i.e., a matter for which the governing body has the authority to make a decision or recommendation).

Deliberating includes any discussions or communications that are part of the governing body's decision-making process. A decision-making process may include:

- (a) Identifying or selecting the nature of the decision to be made;
- (b) Gathering information related to the decision to be made;
- (c) Identifying and assessing alternatives;
- (d) Weighing information; and
- (e) Making a decision.

An **intermediary** is a person who is used to facilitate communications among members of a governing body about a matter subject to deliberation or decision by the governing body, by sharing information received from a member or members of the governing body with other members of the governing body. An intermediary may be a member of the governing body, a staff member, or any other person who is used to facilitate communications among members of the governing body.

Frequently Asked Questions

1. When do communications among governing body members become prohibited serial communications?

Answer: It depends on whether the communications involved a quorum of members and on the subject and purpose of the communications. The determinative factors include:

- (A) Do the serial communications involve a quorum of the governing body?
- (B) Do the communications involve a matter within the governing body's jurisdiction (i.e., a matter for which the governing body has the authority to decide or make a recommendation)?
- (C) Did a quorum use the serial communications for the purpose of deliberating or deciding on that matter?

2. Does a quorum of the governing body have to be involved in the same communication at the same time for it to be considered a prohibited serial communication?

Answer: No. Prohibited serial communications may occur through a quorum of members being involved in the same communication or a quorum of members being involved in a series of individual or small group communications. If a member of the governing body individually communicates (in person or by telephone, email, text, etc.) one by one with enough members that a quorum of the governing body is involved, and the matter communicated is within the governing body's jurisdiction, and the communications are for the purpose of deliberating or deciding on the matter, then it is prohibited serial communications.

Using an example of a governing body comprised of seven members and a quorum of four members:

Member A calls Member B on May 1st to discuss lowering the downtown parking fines by 10%. On May 15th, Member B emails Member C to see if Member C would also be supportive of lowering the downtown parking fees by 10%. The next day, Member A sends a text message to Member D to see if Member D would support lowering the downtown parking fees by 10%. In this example, four members - a quorum - have deliberated about whether to lower the downtown parking fees by 10%. In this situation a prohibited serial communication has occurred in violation of the Public Meetings Law.

3. Can a quorum of the governing body engage in serial communications on topics not within their jurisdiction?

Answer: Yes. The prohibitions on serial communications only apply to matters within the governing body's jurisdiction. For example, it is not a prohibited serial communication for the Library Advisory Committee, with authority only to make recommendations about the Library matters, to serially communicate about the Police Department's proposed budget that includes a new K-9. Also, it is not a prohibited serial communication for members of a governing body to communicate about other non-jurisdictional matters, like one member's vacation or another member's favorite sports team.

4. I am on a governing body. If a constituent or member of the public approaches me to discuss a matter within my governing body's jurisdiction, may I speak to them without risk of engaging in a prohibited serial communication? What if that member of the public also approaches other members of the governing body to discuss the same matter?

Answer: Generally, yes. Nothing in the Public Meetings Law prohibits you from speaking to a constituent about their concerns and other topics or matters within the governing body's jurisdiction. The fact that a constituent communicates on their own with a quorum of the governing body does not mean the governing body engaged in prohibited serial communications. But if a member of the governing body asks or directs the constituent to be the go between among governing body members, in order to share information among a quorum of the governing body for the purpose of deliberating or deciding on a matter, that could be a prohibited serial communication.

5. May I speak to a member of the media?

Answer: Yes. Nothing in the Public Meetings Law prohibits a member of a governing body from speaking to the media about topics regarding the public body's business or otherwise. The stated policy and purpose of Oregon's Public Meetings Law is transparency and openness; it is not intended to limit or prohibit interactions between governing bodies and the media.

6. The governing body is scheduled to consider a matter at our next public meeting and I would like to know how other members of the governing body feel about the matter beforehand. May I ask a staff member to ask other members of the governing body and report back to me?

Answer: Generally, no. In this situation, the staff member would be considered an intermediary used to communicate among members of the governing body for the purpose of deliberating or making a decision on a matter within the governing body's authority. If the communications occur with a quorum of the governing body, a prohibited serial communication has occurred. However, it would not be a prohibited serial communication if the communications are either:

- (1) purely factual or educational in nature and that convey no deliberation or decision on any matter that might reasonably come before the governing body;
- (2) Not related to any matter that, at any time, could reasonably be foreseen to come before the governing body for deliberation and decision; or
- (3) Nonsubstantive in nature, such as communication relating to scheduling, leaves of absence and other similar matters.

For example, if the communications with staff was to check with other members of the governing body to determine whether to reschedule the meeting to another time, such communications would not be prohibited.

7. I am a city administrator; may I meet privately with individual members of the governing body on a routine basis to discuss matters subject to deliberation or decision by the governing body?

Answer: Yes. A city administrator or other staff member may meet with individual members of the governing body. However, if the city administrator or staff member is communicating among a quorum of members and sharing the information received from individual members with a quorum of the governing body members, such communications may be prohibited serial communications. The Public Meetings Law requires deliberations and decisions of a governing body to be conducted in a public meeting. So if the purpose of the city administrator's meetings with individual members is to facilitate communications among a quorum of the members and those communications are for the purpose of deliberating or deciding on a matter, those individual meetings may violate the Public Meetings Law.

As an example, assume the city administrator wants the council to consider whether and by how much to adjust the sound permit fee for local music concerts in the park. Consider the following scenarios:

Scenario 1: The city administrator contacts each councilor individually and asks for their thoughts on whether the sound permit fee should be adjusted. The city administrator does not convey information received to other members of the council. The city administrator uses the information gained from the discussions with individual council members to create a staff report.

The city administrator places an item on the agenda for the council to consider whether to adjust the sound permit fee and by how much. The sound permit fee is then considered at a publicly noticed council meeting where the city administrator presents the staff report. At the public meeting, the councilors debate the issue and determine the fee amount.

In Scenario 1, the city administrator is gathering information in order to create a staff report to present the issue for discussion, deliberation, and decision by the council at a public meeting. The council did not engage in deliberations or make a decision, through the city administrator as an intermediary, about whether to adjust the fee and by how much. The council had an open debate about the fee at a public meeting. In Scenario 1, it does not appear to the city council engaged in prohibited serial communications.

Scenario 2: The city administrator contacts each councilor individually and asks for their thoughts on whether the sound permit fee should be adjusted. When speaking with the Mayor, the Mayor proposes a 10% reduction in the permit fee. The city administrator then conveys to the other councilors that the Mayor has proposed a 10% reduction and asks whether they agree with that amount. Councilor A suggests it should instead be a 5% increase. The city administrator then presents the Mayor's and Councilor A's suggestions to the other councilors individually. A majority of the councilors indicate to the city administrator that they agree with the Mayor's suggestion of a 10% reduction. The city administrator then places a 10% reduction on the agenda for the council's vote.

In Scenario 2, the city administrator is acting as an intermediary, sharing information received from individual councilors with a quorum of the city council. Through the city administrator, the city council members are communicating with each other for the purpose of deliberating or deciding on the fee amount, setting the fee reduction at 10% and rejecting the proposal of a 5% increase. The city council's consideration of the competing proposals, their deliberations, and the decision reached on the fee reduction were done outside of a public meeting. In Scenario 2, the council appears to have engaged in prohibited serial communications.

8. May I attend town halls or neighborhood association meetings?

Answer: Generally, yes. Governing body members (individually or in groupings less than a quorum) can attend town halls or neighborhood association meetings where they may talk with their constituents and discuss matters within the governing body's jurisdiction. However, if a quorum of the governing body is present at the town hall or neighborhood association meeting and the topic to be discussed is a matter within the governing body's jurisdiction, then the governing body would need to hold the gathering as a public meeting and satisfy all of the Public Meetings Law requirements (public notice, accessibility and accommodations, minutes or recordings, etc.).

9. May I discuss nonsubstantive matters such as scheduling with other members of the governing body?

Answer: Yes. Communications that are nonsubstantive in nature, such as communications relating to scheduling, leaves of absence and other similar matters, are not subject to the Public Meetings Law.

10. Can prohibited serial communications occur during a public meeting?

Answer: Yes. During a public meeting, if members of the governing body communicate with each other via text message, group chat, email, or even hand-written notes, and those communications involve a matter within the governing body's jurisdiction and are for the purpose of deliberating or deciding on that matter, then prohibited serial communications are likely to have occurred, unless all of these communications were shared publicly during the public meeting.

11. How may the governing body correct a prohibited serial communications violation?

Answer: If members of a governing body realize that they may have engaged in prohibited serial communications, the best practice would be to schedule a public meeting at which the governing body publicly shares its past prohibited serial communications. For example, at the public meeting the governing body could present the emails or texts or repeat the communications and conversations previously held. At the same time, the governing body should consider and communicate how it will prevent similar violations from occurring in the future, such as by obtaining additional training.

Such a corrective action may not prevent someone from filing a grievance and submitting a complaint with the Oregon Government Ethics Commission (OGEC), but it would be a factor considered by OGEC in evaluating the case and in determining the appropriate penalties or sanctions.

12. What are the penalties if prohibited serial communications occur?

Answer: Engaging in prohibited serial communications violates the Public Meetings Law. If someone were to file a complaint with OGEC, after having satisfied the mandatory grievance process in ORS 192.705, and if OGEC were to find a violation, it could impose sanctions against each governing body member found to have participated in the prohibited serial communications. The sanctions for a violation range from a Letter of Education to a civil penalty in an amount up to \$1,000 per violation.

**** OGEC may supplement these FAQs with additional questions and answers. Please contact our office at mail@ogec.oregon.gov or 503-378-5105 with questions.**