

Frequently asked questions about the Open Meeting Law: deliberation and electronic communication

May a public body member communicate with other public body members over email?

Yes, but only in limited circumstances. A member of a public body may email other public body members on matters within jurisdiction of a public body so long as the email does not reach a quorum of the public body.

Communications between and among a quorum of a public body on matters within the jurisdiction of the public body must occur during a noticed meeting. G.L. c. 30A, §§ 18, 20. A public body member may lawfully email a quorum of the public body only to discuss scheduling a meeting, distribute a meeting agenda, or to distribute reports or documents to be discussed at a meeting, provided that no opinion of a member of the public body is expressed. See G.L. c. 30A, § 18.

May members of a public body communicate with the public through social media platforms such as Facebook, Twitter, and webpages?

Yes, members of public bodies may communicate with members of the public through any social media platform. However, members of public bodies must be careful not to engage in deliberation with the other members of the public body through such communications. If a member of a public body communicates directly with a quorum of the public body over social media platforms such as Facebook or Twitter, that communication may violate the Open Meeting Law. Public body members should proceed with caution when communicating via these platforms.

May a members of a public body participate in a listserv?

It depends. A listserv is an electronic mailing list. A member of a public body may subscribe to a listserv. However, where a quorum of the members of a public body subscribe to a listserv, the public body risks unlawful deliberation. Where a quorum of the members of a public body belong to a listserv, public body members cannot participate in discussions which involve subject matter within the jurisdiction of the public body without engaging in unlawful deliberation. Therefore, we recommend that public body members use caution when joining or participating in listservs in which subject matters within the jurisdiction of their public body may be discussed.

May members of public bodies who are physically present at a meeting use electronic messaging, such as text messaging or email, to communicate with members of the public during that meeting?

The Open Meeting Law does not address this issue. The Open Meeting Law encourages government transparency; however, the best practice is for public body members to avoid the use of electronic devices during meetings to discuss matters within the jurisdiction of the public body if those electronic communications are not shared with members of the public attending the meeting.

May members of public bodies who are physically present at a meeting use electronic messaging, such as text messaging or email, to communicate with other public body members during that meeting?

With a few exceptions, any use of electronic messaging by public body members to communicate with a quorum of public body members, during or outside of a meeting, may constitute private deliberation, which is prohibited by the Open Meeting Law. Electronic messaging during a meeting by less than a quorum of the public body's members, while not directly prohibited by the Open Meeting Law, is discouraged if those electronic communications are not shared at the meeting with the members of the public who are present. Note that members of public bodies may not use electronic messaging, such as email or text messaging, to participate remotely in meetings at which they are not physically present. Such remote participation must occur in accordance with the Attorney General's regulations found at 940 CMR 29.10.