

Attorney General Addresses Who May Attend Closed Session Under the Brown Act

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On May 26, 2022, the California Attorney General (AG) issued Opinion No. 21-1102, addressing certain aspects of “closed session” attendance under the Ralph M. Brown Act. Specifically, the AG opined:

- (1) Legislative support staff of an individual city councilmember generally may not attend closed sessions unless the staff member has an “official or essential role” to play;
- (2) City councilmembers may not share information obtained in closed session with their individual support staff, unless the city council has authorized the disclosure of such information; and
- (3) Two local agencies may hold a joint closed session if each agency is authorized to meet in closed session based on the same exception to the Brown Act and the same set of facts.

Background

The Brown Act requires the legislative body of a local government agency to deliberate and take action in meetings that are open to the public. In limited situations where the need for confidentiality outweighs the interest in open deliberation, the legislative body may meet in closed session to discuss matters such as pending litigation or personnel matters.

Closed session access is permitted only to people who have an “official” or “essential” role to play in the closed meeting. A person has an “official” role if he or she is authorized by statute to attend the closed session. This includes members of the legislative body conducting the closed session as well as other individuals specifically identified in an applicable closed session exception such as a labor negotiator or real estate negotiator. Others may attend only if their presence is “essential” to the agency’s ability to conduct closed session business.

AG Opinion 21-1102

In his Opinion 21-1102, the AG opined that legislative support staff of individual city councilmembers generally do not have an “official or essential role” to play in closed session. In reaching this conclusion, the AG considered the following proposed roles for staff of individual councilmembers in closed session: (1) to administer the meeting, (2) to take notes, or (3) to provide their councilmember with relevant information because staff may have unique knowledge or information about a particular matter. The AG concluded that closed session exceptions must be interpreted narrowly, and these roles are generally not “official” or “essential” and were thus not permitted. The AG went on to note that whether a particular individual may attend closed session will always depend on the specific context, and acknowledged there may be a situation where a councilmember’s staff could be an essential witness with personal knowledge relevant to a particular closed session matter. For example, a city manager or superintendent will likely have an “official or essential role” in the closed session.

The AG further concluded that a councilmember is prohibited from disclosing closed session information to the member’s support staff, citing to Government Code section 54963. If someone is not authorized to attend a closed session, it follows that they are likewise not authorized to obtain information from that closed session. Councilmembers should take care to avoid inadvertently disclosing confidential closed session information to support staff.

Lastly, the AG stated that two legislative bodies may jointly meet in closed session so long as each body qualifies under the same set of facts for the same express exception authorizing a closed session under the Brown Act. For example, the pending litigation exception could be jointly invoked by two agencies that share an attorney and are on the same side of litigation.

Takeaways

This AG opinion can serve as a reminder to carefully assess who attends your legislative body’s closed sessions, and to ensure that the information discussed during closed session is treated carefully and confidentially.

If you have any questions about this Attorney General opinion, or questions regarding the Brown Act or board governance in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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