

MINUTES OF CLOSED MEETINGS

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<http://www.elimina.com/insights/minutes-closed.htm>

A great deal of confusion exists about closed meetings (also referred to as “in-camera” meetings). Given that such meetings often deal with sensitive issues, people are sometimes not sure whether they should take minutes and – if so – how much they should record in them.

Let’s take a few steps back and clarify the need for closed meetings.

In general, organizations should uphold the principle of transparency and allow easy access to most documents. Keeping something hidden should be the exception and not the norm. Some Boards and Councils keep too much information confidential and conduct too much business behind close doors. This can harm accountability and perpetuate conflict.

Typically, confidentiality is intended to achieve one of two purposes:

- Protect the organization, its operations, economic interests, and delivery of its mandate from harm that could result from the release of certain information.
- Protect individuals when the release of certain information would be an unreasonable invasion of their personal privacy.
- There are certain areas that are often deemed to justify keeping documents confidential, e.g.:
 - The security of the property of the organization
 - Financial (and other) information that – if made public - could be beneficial to the competition or be detrimental to the organization.
 - The disclosure of intimate, personal or financial details in respect to a person.
 - The acquisition or disposition of property.
 - Decisions with respect to negotiations with employees.
 - Litigation affecting the organization.

And now to the minutes of closed sessions.

Should minutes be taken at all in closed sessions? Yes. Minutes are a record of what was done in a duly held meeting. If the closed session is a duly held meeting, then minutes should be taken.

How much should be recorded in the minutes of a closed session? The same standard used for minutes of open meetings should be used for minutes of closed sessions. The minutes should focus primarily on the group’s actions and the decisions made. And, contrary to common beliefs, collective decisions can indeed be made in a closed session, unless your governing statute or bylaws does not allow it.

Should you summarize the discussion that took place in a closed meeting? If you record it in an open meeting, then you should also do it in a closed meeting. However, as you should do in any case, drop references to “who said what”. Just capture the main thoughts and ideas, in a concise point-form summary, without attributing specific comments to specific individuals. This approach will create better minutes, and will also relieve members’ anxiety. They will be able to speak freely, without worrying about how they will be recorded in the minutes.

Who should take minutes of a closed meeting? Since the voting members decide who can attend a closed meeting beside themselves, they can decide to ask a “confidential secretary” to attend and take minutes, or they can designate one of themselves to the task.

Should minutes of closed meetings be kept confidential forever? No. As soon as there is no organizational interest or personal privacy to protect, the group should de-classify the document and make it available for public access.

How can you reduce the likelihood of breaches of confidentiality?

- Talk to the members about the risk encountered when confidential documents are made public: The organization’s interests may be threatened and personal privacy of individuals may be invaded, both of which could place the organization at risk. Then establish a formal commitment to prevent leaks of confidential documents. Some organizations go as far as requiring members and those who attend closed meetings to sign an oath of confidentiality.
- Avoid scheduling items that are not justifiably “in camera” items on the agenda of a closed meeting. Trying to avoid embarrassment is not in itself a legitimate reason to classify something as confidential. Doing this when there is no organizational interest or personal privacy to protect is bound to create resentment, and may be the excuse for some members to challenge the validity of the process and leak the information anyway. Keep in mind also that if your organization is governed by Freedom of Information (FOI) legislation, a citizen can apply for access to a document that she or he believes should be in the public domain.
- Ensure that confidential documents (including minutes of closed meetings) are prominently stamped or marked “Confidential” on every page (just in case a page gets separated). Consider color-coding confidential documents to highlight the fact that they are confidential.
- File minutes of closed meetings separately from minutes of open meetings.
- Minutes of closed meetings should not be approved at an open meeting, but at a subsequent closed meeting.
- As you plan agendas, separate out items of a confidential nature and schedule them on the agenda of a closed meeting (which will have its own set of minutes). It is poor practice to “go in and out of camera”, i.e.: ask the public or non-members to leave and then return when the confidential discussion ends. This is both disruptive and unfair to non-voting members. Just schedule two separate meetings: start with an open meeting, and - after its adjournment - follow by a closed meeting. When the open meeting is adjourned, ask the public to leave and – when they do – convene the closed meeting (possibly after a short break). Keep it simple and clean.
- As an amusing aside, a workshop participant recently told me that when she went to her first “in-camera” meeting, she really dressed up for the occasion and had her hair and makeup done very carefully, because she was fully expecting pictures to be taken... Which raise the question: What does “in-camera” mean? Apparently it is derived from a Latin term which means “in closed chambers”. To avoid the inevitable confusion, it may be better to use the plain language term “closed meeting”.