

INSIDE:

PUBLIC SPEECH/  
WRITTEN STATE-  
MENTS AT PUBLIC  
MEETINGS

AUDIT: BOARD OF  
PHARMACY FAILED  
TO PROVIDE PUB-  
LIC INFORMATION

LEGISLATION -  
54TH LEGISLATURE,  
2ND SESSION

MESSAGE FROM THE  
OMBUDSMAN

SIDEBAR:

- The Ombudsman for Public Access is Staff Attorney Danee Garone.
- Open meeting law and public records law materials and updates are [available on our website](#).
- [Click here](#) to view our open meeting law booklet.
- [Click here](#) to view our public records law booklet.
- Review past [Public Access Newsletters](#).
- [Upcoming Training/Outreach](#).
- In-person trainings suspended.
- Contact Danee Garone for more information.

From the Office of the Arizona Ombudsman — Citizens' Aide

# The Public Record

State Ombudsman Dennis Wells

SEPTEMBER  
2020

## Public Speech and Written Statements at Public Meetings

Generally, the public has no right to speak or have submitted, written statements read aloud at a public meeting.

Our office has received several complaints regarding a recent public meeting held by a particular municipal governing council and several complaints/inquiries about similar matters. The council met through remote, electronic means due to the ongoing coronavirus pandemic. The council provided the public with a way to view and listen to the meeting remotely in real time, as required by A.R.S. §38-431.01(A); however, the council did not provide the public with the opportunity to speak in real time to the council and those attending remotely.

Instead, the council indicated, through its meeting agenda, that

members of the public could submit written statements, which would be provided to the council. The agenda did *not* indicate that the submitted statements would be read aloud during the council meeting.

At the meeting, the Mayor indicated how many submissions were received, generally what the submissions were about, and that they were provided to the council members. Neither the Mayor nor anyone else read any aloud. Several people felt that this violated the open meeting law and/or the First Amendment. This is likely incorrect.

First, it is helpful to recap the main function of the open meeting law. It is intended to allow the public to see what decisions are made by public bodies and how. It is not intended to allow

the public to *directly* participate in the discussions and decision-making.

Second, the open meeting law does not require a public body to allow the public to speak or have statements read aloud at a meeting. The open meeting only discusses optional calls to the public. So, unless a different statute or local ordinance says otherwise, neither is required.

Third, the First Amendment does not entitle someone to speak wherever and whenever one wants. Unless someone could show evidence that their speech was stifled because of their viewpoint, which is unlikely here because no statements were read nor promised to be read, it is unlikely they could show a First Amendment violation.

## Audit: Board of Pharmacy Failed to Provide Public Information

In September, the Auditor General released a [Performance Audit and Sunset Review](#) for the Arizona State Board of Pharmacy, in which the agency found, in part, that the “Board did not provide required complaint information on its website and provided inaccurate and incomplete complaint information over the phone.”

According to the report, the Board is required by statute to provide certain licensee and permit holder information to the public. The Auditor General found that for 6 of the 30 random complaints to the Board it reviewed, the Board’s website “lacked information about nondisciplinary actions the Board issued.” Additionally, “the Board’s website does not include the statutorily required statement that a person may obtain public records related to any licensee or permit holder, including dismissed complaints, by contacting the Board directly.” Lastly, in response to two anonymous phone calls made by Auditor General Staff to the Board, Board staff directed them to the Board’s website, which lacked relevant information, and provided incomplete or incorrect complaint information about a licensed pharmacist and pharmacy.

The Auditor General made three recommendations related to these issues, including that the Board provide required licensee/permit holder information and post “a statement informing the public that they can contact the Board for more information as required by statute” on its website.

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## Legislation - 54th Legislature, 2nd Session

The Legislature adjourned on Monday March 23, 2020 after passing a budget and then adjourned Sine Die on May 26, 2020. None of the public access legislation, detailed below, passed into law.

- **HB 2048 and SB 1012** would have each amended A.R.S. 38-431.03. HB 2048 and SB 1012 seem to be the same bill. They would have essentially added an eighth type of permissible executive session, in which a public body could discuss or consider matters related to school safety operations, plans, or programs. SB 1012 was passed by the Senate 29-0 on 2/13 and received a due pass recommendation from the House Government Committee on 3/12.
- **HB 2053 and SB 1042** would have each amended A.R.S. section 38-431.03. HB 2053 and SB 1042 are identical bills. They would have essentially added an eighth type of permissible executive session in which a public body can discuss or consult with designated representatives to "DISCUSS SECURITY PLANS, PROCEDURES, ASSESSMENTS, MEASURES OR SYSTEMS RELATING TO, OR HAVING AN IMPACT ON, THE SECURITY OR SAFETY OF BUILDINGS OR FACILITIES AND INFORMATION TECHNOLOGY MAINTAINED BY THE PUBLIC BODY." The bill would have made the "RECORDS, DOCUMENTATION, NOTES, OR OTHER MATERIALS MADE BY, OR PROVIDED TO, THE REPRESENTATIVES" confidential and exempt from disclosure under the public records law. HB 2053 received due pass recommendations from House Government Committee on 1/30 and from House Technology Committee on 1/22. SB 1042 passed the Senate with a minor amendment on 2/13 and received a due pass recommendation from the House Government Committee on 3/12.
- **SB 1030** would have added A.R.S. section 15-189.07 and amended A.R.S. section 15-341. The bill would have allowed the governing boards of charter schools and school districts to "DISCUSS OR CONSIDER AN EMERGENCY RESPONSE PLAN DEVELOPED PURSUANT TO THIS PARAGRAPH IN EXECUTIVE SESSION. AN EMERGENCY RESPONSE PLAN IS NOT SUBJECT TO INSPECTION PURSUANT TO TITLE 39, CHAPTER 1, ARTICLE 2." The bill was passed by the Senate 30-0 on 2/13.
- **SB 1089** would have amended A.R.S. section 39-121.01 so that a public record cannot be disclosed unless the requester "HAS FURNISHED THE PERSON'S NAME, ADDRESS, TELEPHONE NUMBER AND EMAIL ADDRESS, IF ANY, TO THE PUBLIC BODY." The bill was passed by the Senate 18-12 on 2/13 and narrowly received a due pass recommendation from the House Government Committee on 3/12 by a vote of 6-5.

## Arizona Ombudsman – Citizens' Aide

Greetings!



In this issue, we address public speech during remote public meetings and the Auditor General's audit findings regarding the Board of Pharmacy's handling of public information. We also take a look at public access legislation considered during the most recent legislative session.

As always, our goal is to provide you with timely and informative information related to Arizona's Public Record and Open Meeting Laws. If you have suggestions and ideas for an upcoming newsletter, or questions you want answered, please feel free to contact our office. In-person public records law and open meeting law training is suspended until further notice.

Sincerely,  
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**Making government more responsive to the people of Arizona**