

# OCLS Guidance to Assist Members in Complying with the OML, Consent Decree, and Related House Policy

**Wednesday, September 20, 2023**

**1:30 p.m.**



**OFFICE OF LEGISLATIVE LEGAL SERVICES  
COLORADO GENERAL ASSEMBLY**



# The Colorado Open Meetings Law

**24-6-401. Declaration of policy.** It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.

**24-6-402. Meetings - open to public - legislative declaration - definitions.**

(1) For the purposes of this section:

(b) "Meeting" means any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.

(d) (I) "State public body" means any board, committee, commission, or other advisory, policy-making, rule-making, decision-making, or formally constituted body of ... the general assembly....



# The Colorado Open Meetings Law

## **24-6-402. Meetings - open to public - legislative declaration - definitions.**

(2) (a) All meetings of two or more members of any state public body at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

(c) (I) Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public.

(d) (I) Minutes of any meeting of a state public body shall be taken and promptly recorded, and such records shall be open to public inspection.

(III) If elected officials exchange electronic mail to discuss pending legislation or other public business among themselves, the electronic mail is subject to the requirements of this section....



# Consent Decree

(i) Defendants shall not meet to discuss public business at which a quorum of any State Public Body is expected to be in attendance, or at which formal action may occur, without first providing public notice of that meeting, and thereafter promptly making minutes of said meeting publicly available; and

(ii) Two or more members of the House of Representatives shall not discuss public business through any electronic means (including, without limitation, any instant messaging platform or application), unless written minutes of such meeting are made publicly available upon request. The electronic messages or communications exchanged may constitute the written minutes. Members shall retain such messages or communications and produce them in response to any request under the Colorado Open Records Act.



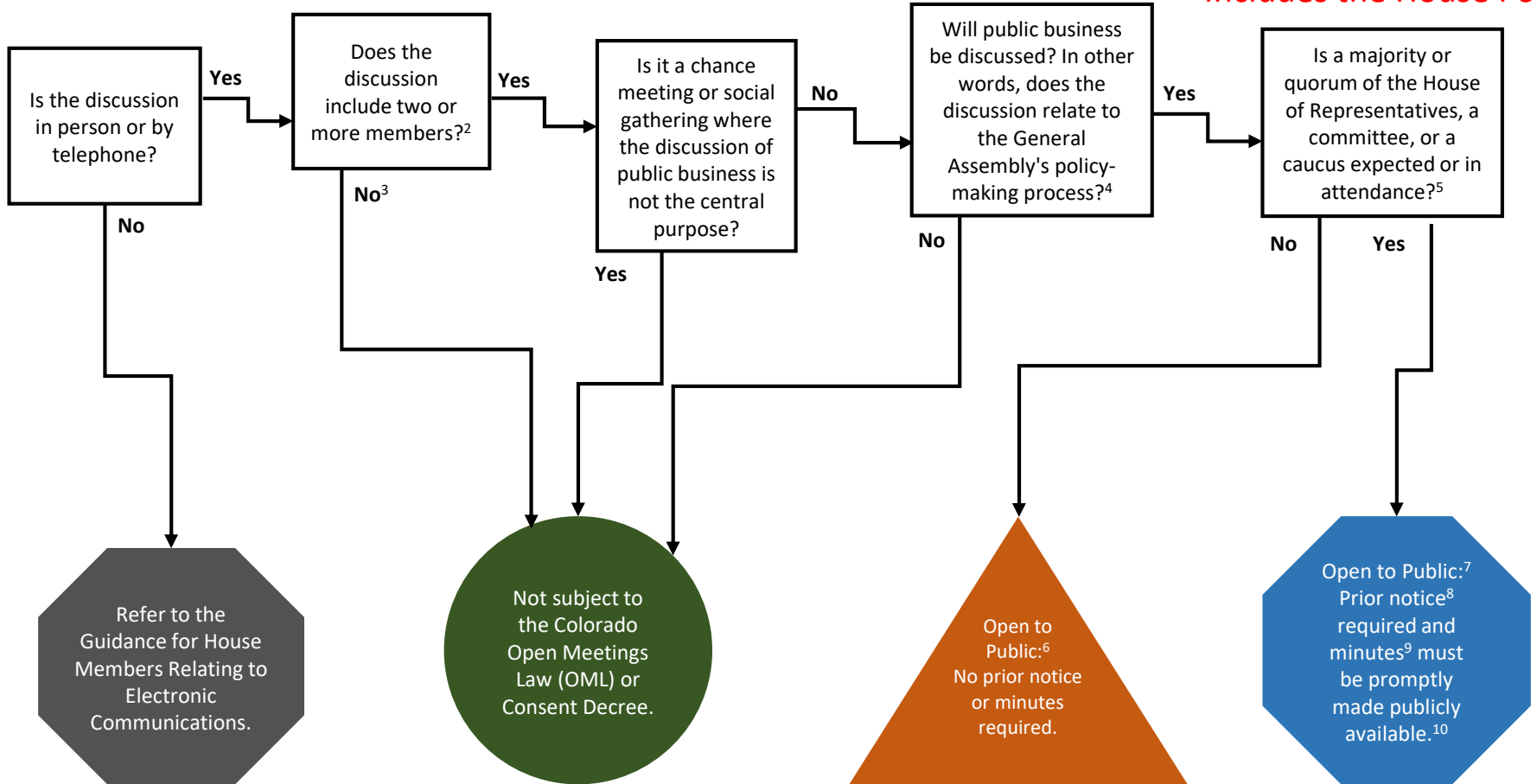
# House Policy

1. As required by §§ 24-6-402(2)(a), (2)(d)(I), and (2)(d)(III), C.R.S., whenever two or more House Members discuss public business through any electronic means of communication (including any instant messaging platform or application), written minutes of such meetings will be made publicly available upon request. The electronic messages or communications exchanged may constitute the written minutes for purposes of this policy. Members shall retain such messages or communications and produce them in response to any request under the Colorado Open Records Act.
2. Members shall not set an automatic delete function on any electronic communications platform or application used to transmit electronic messages between the Members that discuss public business.



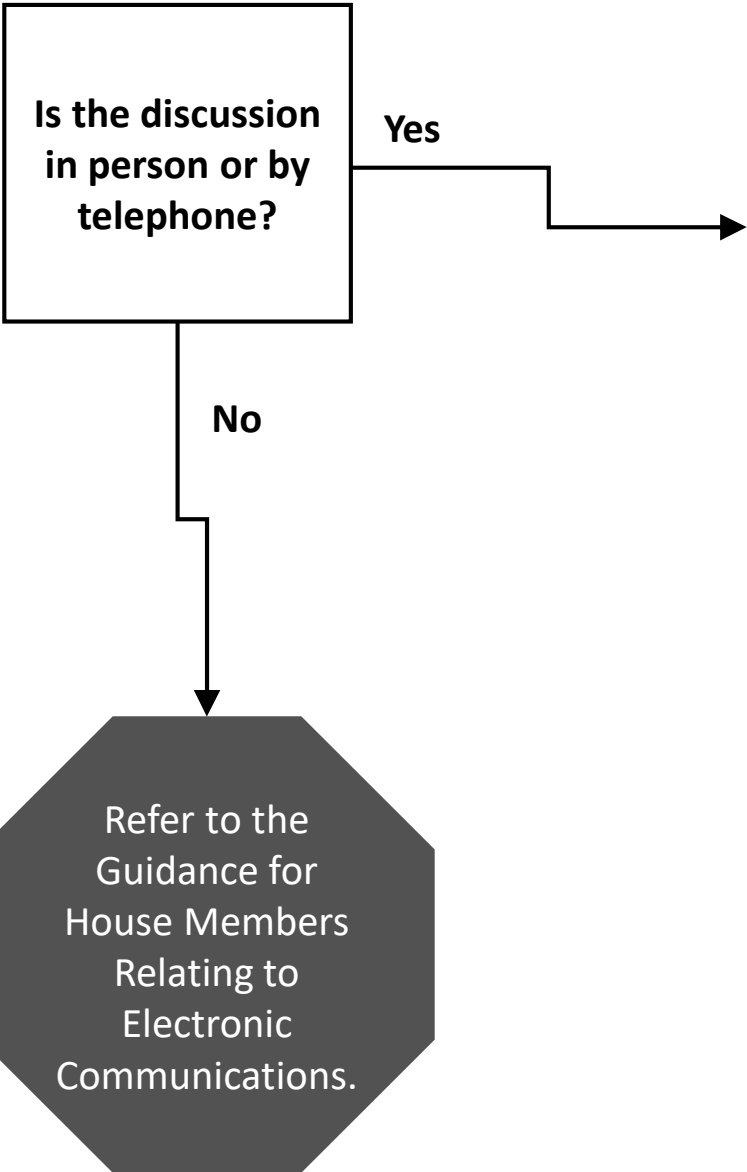
**Guidance for House Members Related to Non-electronic Meetings<sup>1</sup> after the Amended Stipulated Consent Judgment and Decree in *Epps, et al. v. Colo. House of Representatives, et al.* (Consent Decree)**

Includes the House Policy

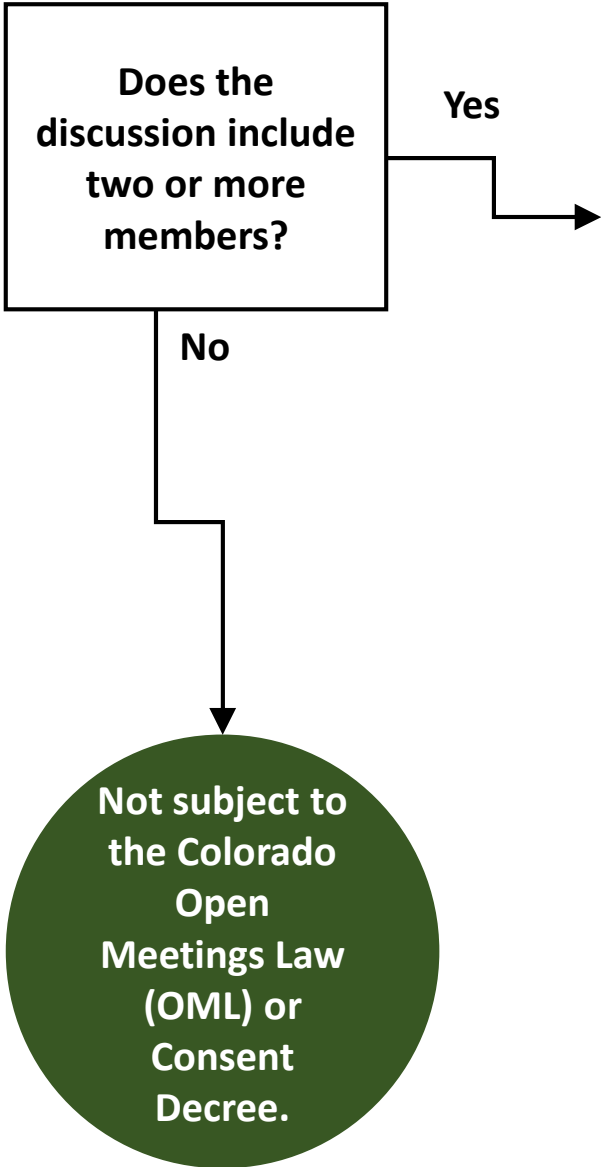


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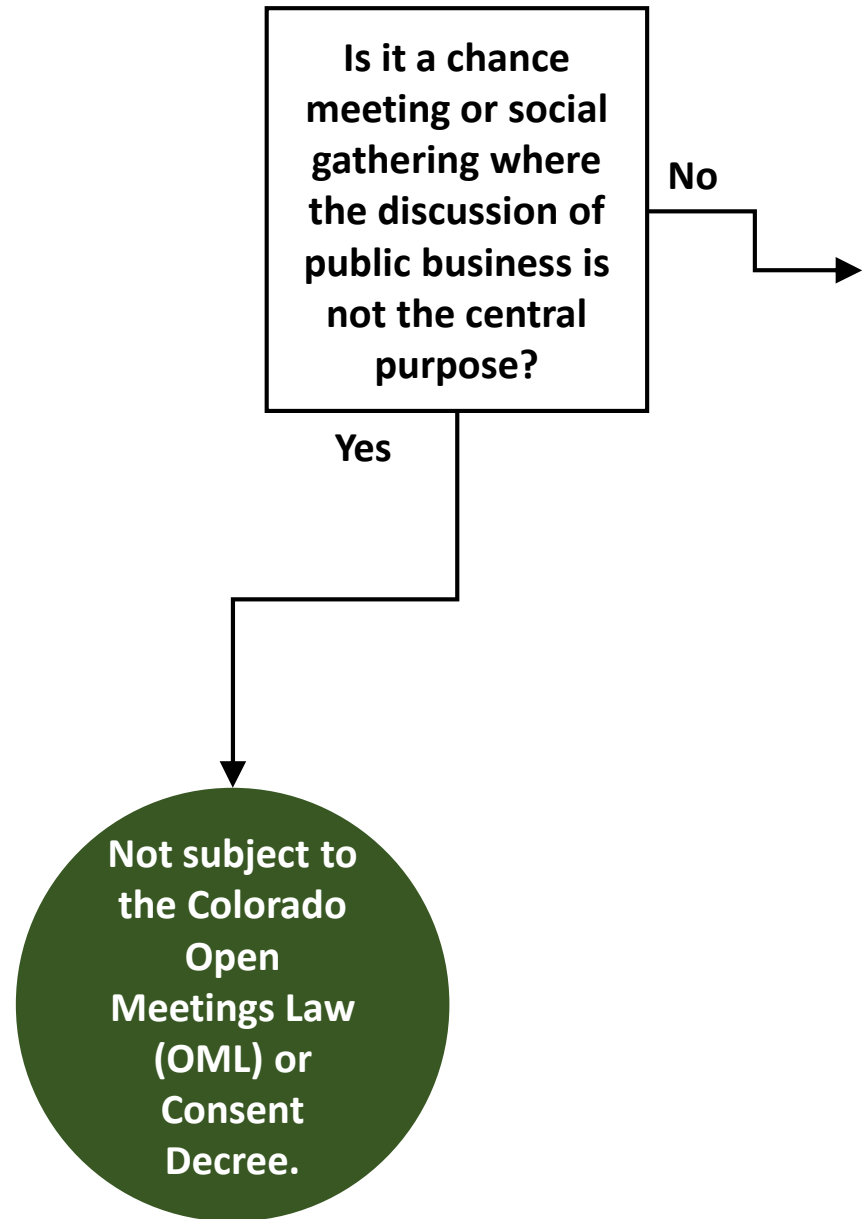


- Does not apply to a member meeting with a lobbyist, a constituent, a drafter, a local government official, someone from the governor's office, etc.
- Meeting can include other people besides 2 members and it doesn't necessarily matter who convened the meeting.





- This is an explicit exception in §24-6-402 (2)(e), C.R.S.
- Discussion of public business is not the central purpose.
- What if 2 members talk public business?
  - Still not the “central purpose”.
  - Those 2 members’ discussion should run through this decision tree.



**Will public business  
be discussed? In  
other words, does  
the discussion relate  
to the General  
Assembly's policy-  
making process?**



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# Public Business

- OML – “Meeting” means any kind of gathering, convened to *discuss public business*....
- Consent Decree and House Policy – Defendants shall not meet to *discuss public business*.... Two or more members shall not *discuss public business*.
- *Bd. of County Cmm'rs v. Costilla County Conservancy Dist.*, 88 P.3d 1188, 1194 (Colo. 2004).
  - A meeting must be part of the policy-making process to be subject to the requirements of the OML.
  - A meeting is part of the policy-making process if there is a meaningful connection between the meeting itself and the policy-making powers of the public body holding or attending the meeting.



# Public Business

- Meaningful connection between the meeting itself and the policy-making powers of the public body holding or attending the meeting.
  - Such a link exists, for example, when the meeting is convened to discuss or undertake ... a rule, regulation, ordinance, or a formal action.
  - Purpose of discussing a pending measure or action, which is subsequently ‘rubber stamped’ by the public body holding or attending the meeting.
- Pending measure or action
  - An introduced bill, resolution, etc.
  - But could discussions prior to a bill’s introduction also have a meaningful connection to the policy-making powers of the House? *Yes*



# Public Business

## Examples of Discussions of Public Business:

- A discussion of pending legislation;
- A sponsor of a bill informally meeting with members of a committee of reference that will consider the bill to discuss the merits of the bill, potential amendments, or political strategy;
- Two members leaving the chamber during 2nd Reading to discuss a bill with lobbyists;
- Two members of an interim committee discussing a bill draft that has been made public and will be considered at the committee's next meeting; and
- Two members of a task force considering a policy recommendation that will be included in a report to the General Assembly.



# Public Business

## Examples of discussions that likely do not involve public business:

- A district event focused on educating members and local government officials about an issue in the community and possible solutions;
- An event hosted by an advocacy organization honoring legislators for the prior session's work;
- Informal discussions by members about issues of interest, but not in the context of legislative changes;
- Fundraisers for political campaigns;
- An email to schedule or announce a schedule for a meeting or event;
- A text message about an upcoming election or a campaign strategy;
- A group chat message wishing a member a happy birthday; and
- Joint prime sponsors working on a bill draft together.



# Public Business

Factor for a meaningful connection, but factors that seem relevant include:

- The form of the bill – Is it just an idea not yet drafted or is it fully finalized and awaiting introduction?
- The nature of the discussion – Is it a general discussion about a topic or is a member soliciting support for the proposal or asking other members to vote in support or against it?
- Who is involved – Is it just the sponsors working on a bill they will introduce together or is it an entire committee or caucus discussing it?



**Will public business be discussed? In other words, does the discussion relate to the General Assembly's policy-making process?**

**Yes**

**No**

**Not subject to the Colorado Open Meetings Law (OML) or Consent Decree.**



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- Caucuses – Political party caucuses and other caucuses too.

**Is a majority or quorum of the House of Representatives, a committee, or a caucus expected or in attendance?**

No

Yes

**Open to Public:  
No prior notice or minutes required.**



## NOTICE

- Members' responsibility if the meeting is hosted by someone else.
- Full and timely notice.
- Can use your own publicly available websites or social media, or the caucuses'.
- Should include date and time, location, expected attendees, agenda or items to be discussed.

**Is a majority or quorum of the House of Representatives, a committee, or a caucus expected or in attendance?**

Yes

**Open to Public:  
Prior notice  
required and  
minutes must be  
promptly made  
publicly  
available.**



## MINUTES

- Official record of the proceedings of a meeting.
- Identify the date, time, and attendees of the meeting, and a summary of the discussion or any action taken.
- Must be *promptly made publicly available*. Can use the same way as you provided the notice.
- Keep indefinitely.

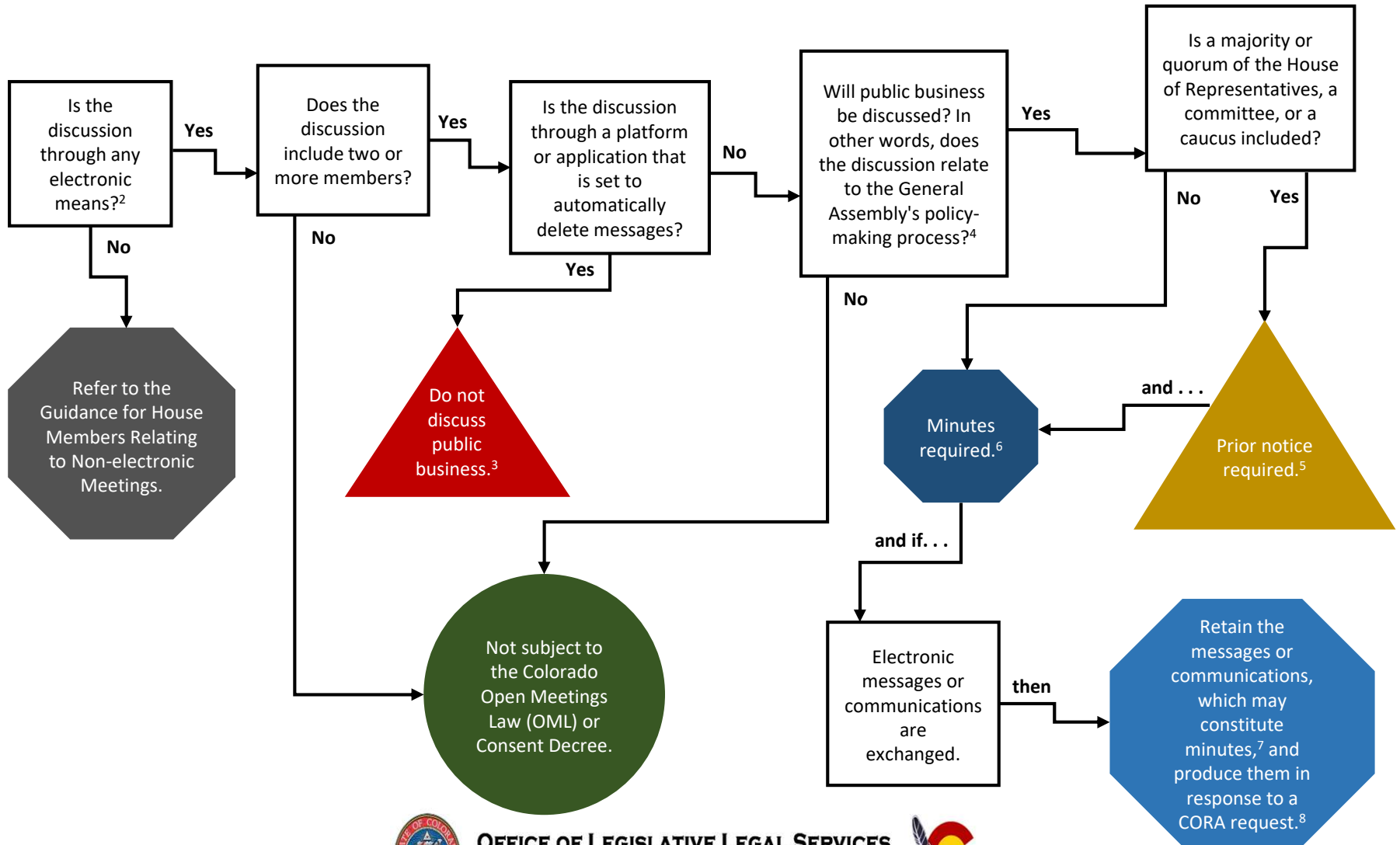
Is a majority or quorum of the House of Representatives, a committee, or a caucus expected or in attendance?

Yes

Open to Public:  
Prior notice required and minutes must be promptly made publicly available.

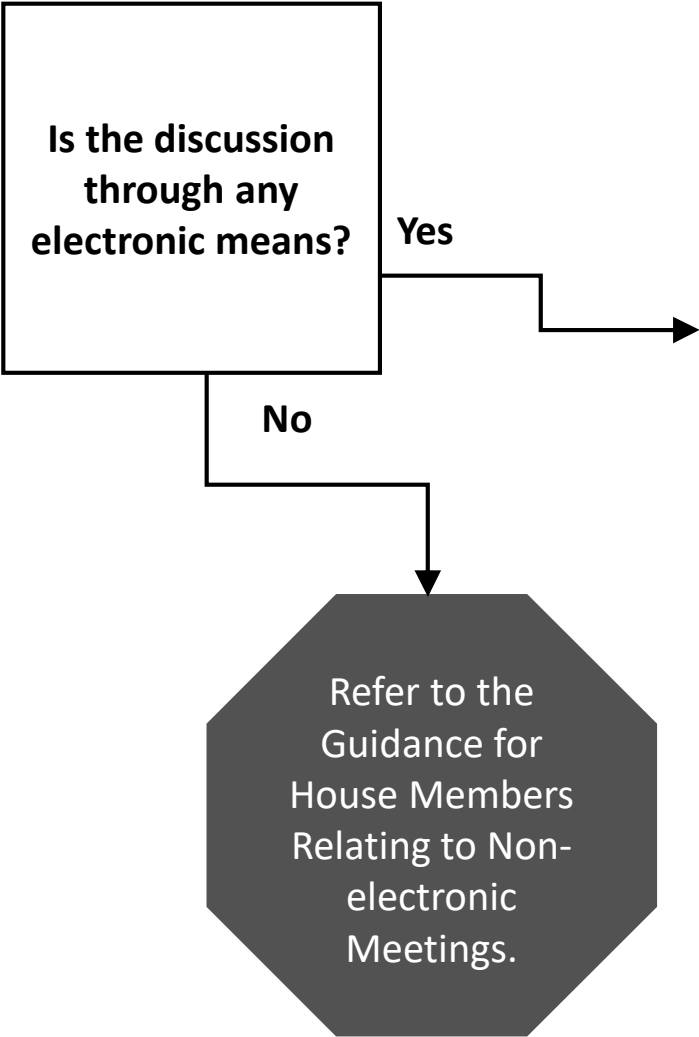


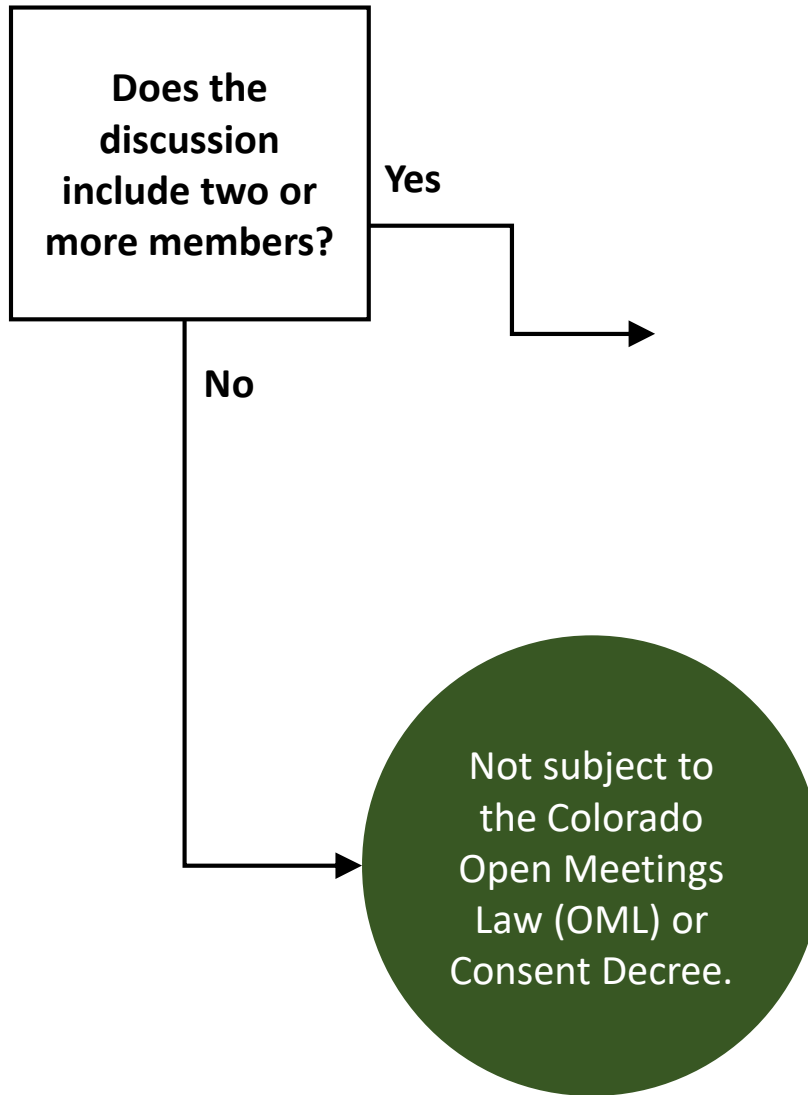
## Guidance for House Members Related to Electronic Meetings<sup>1</sup> after the Amended Stipulated Consent Judgment and Decree in *Epps et al. v. Colo. House of Representatives, et al.* (Consent Decree)



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Is the discussion through a platform or application that is set to automatically delete messages?

No

Yes

Do not discuss public business.

- This is specifically from the House Policy.
- Only applies to discussions between two or more House members.
- Use caution when using this function, as you don't want to inadvertently violate the Consent Decree and House Policy.



**Will public business be discussed? In other words, does the discussion relate to the General Assembly's policy-making process?**

**Yes**

**No**

**Not subject to the Colorado Open Meetings Law (OML) or Consent Decree.**

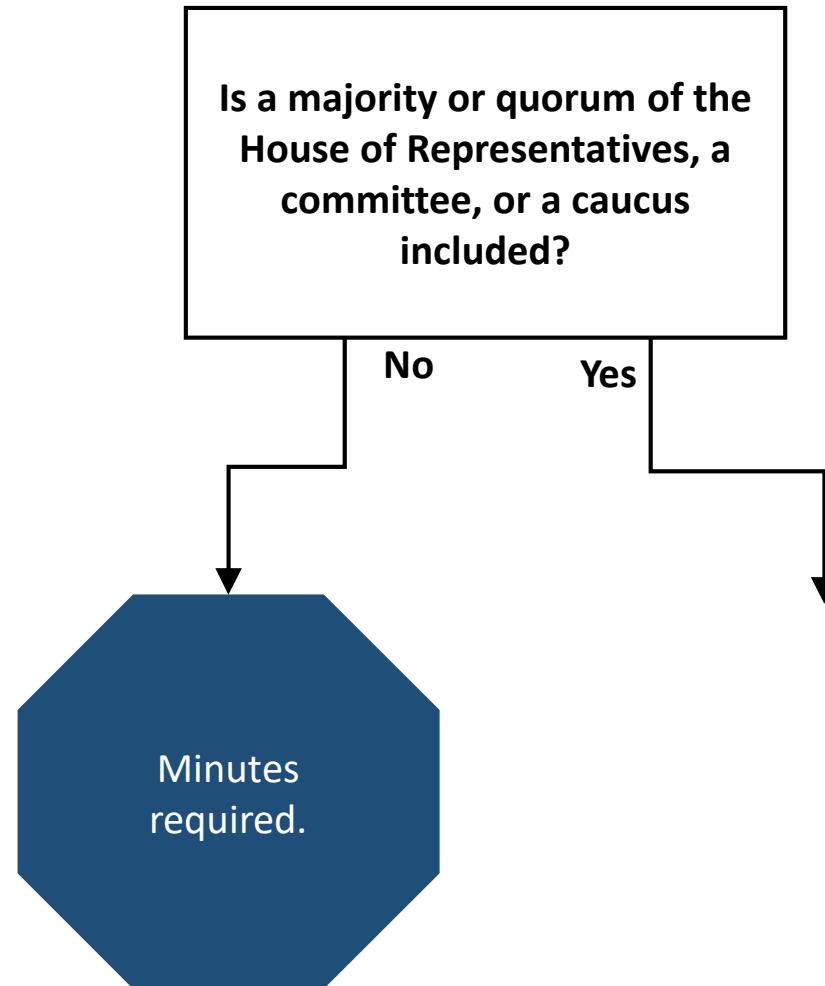


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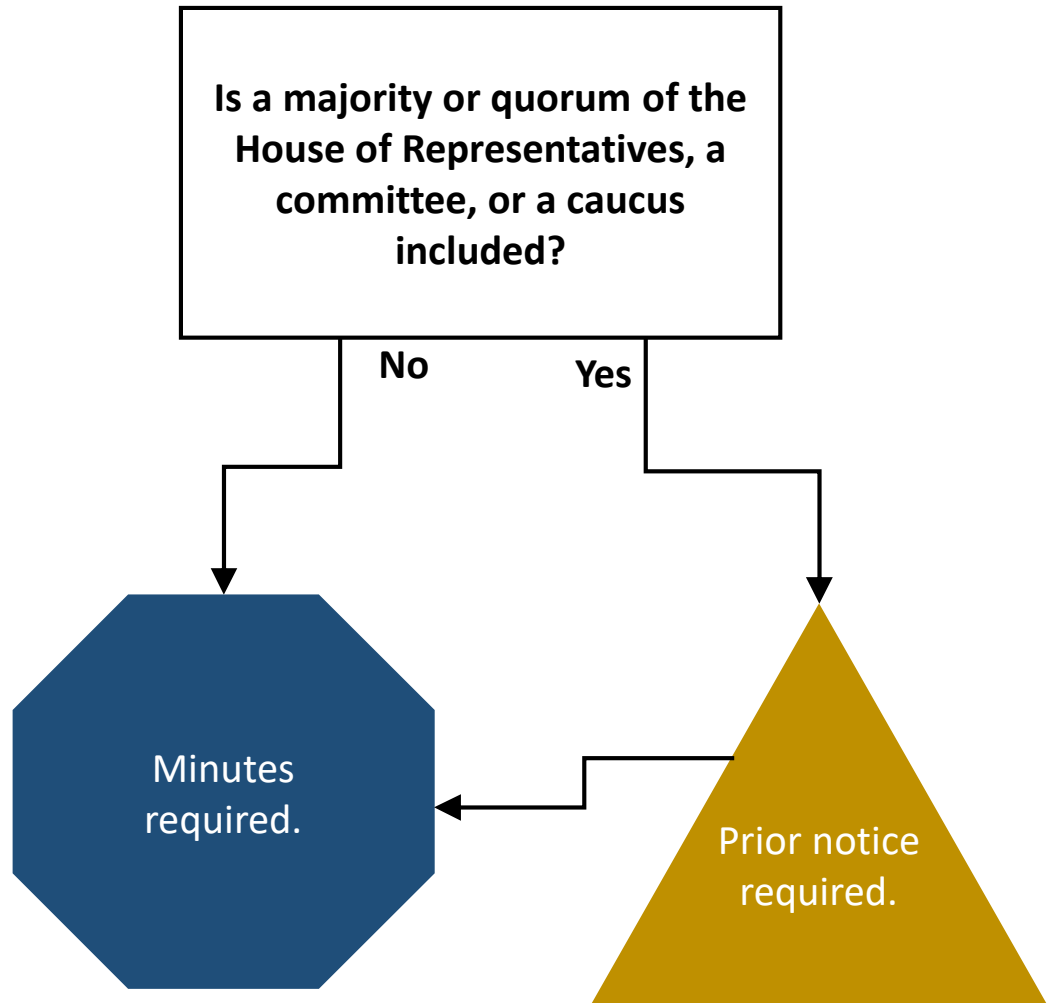


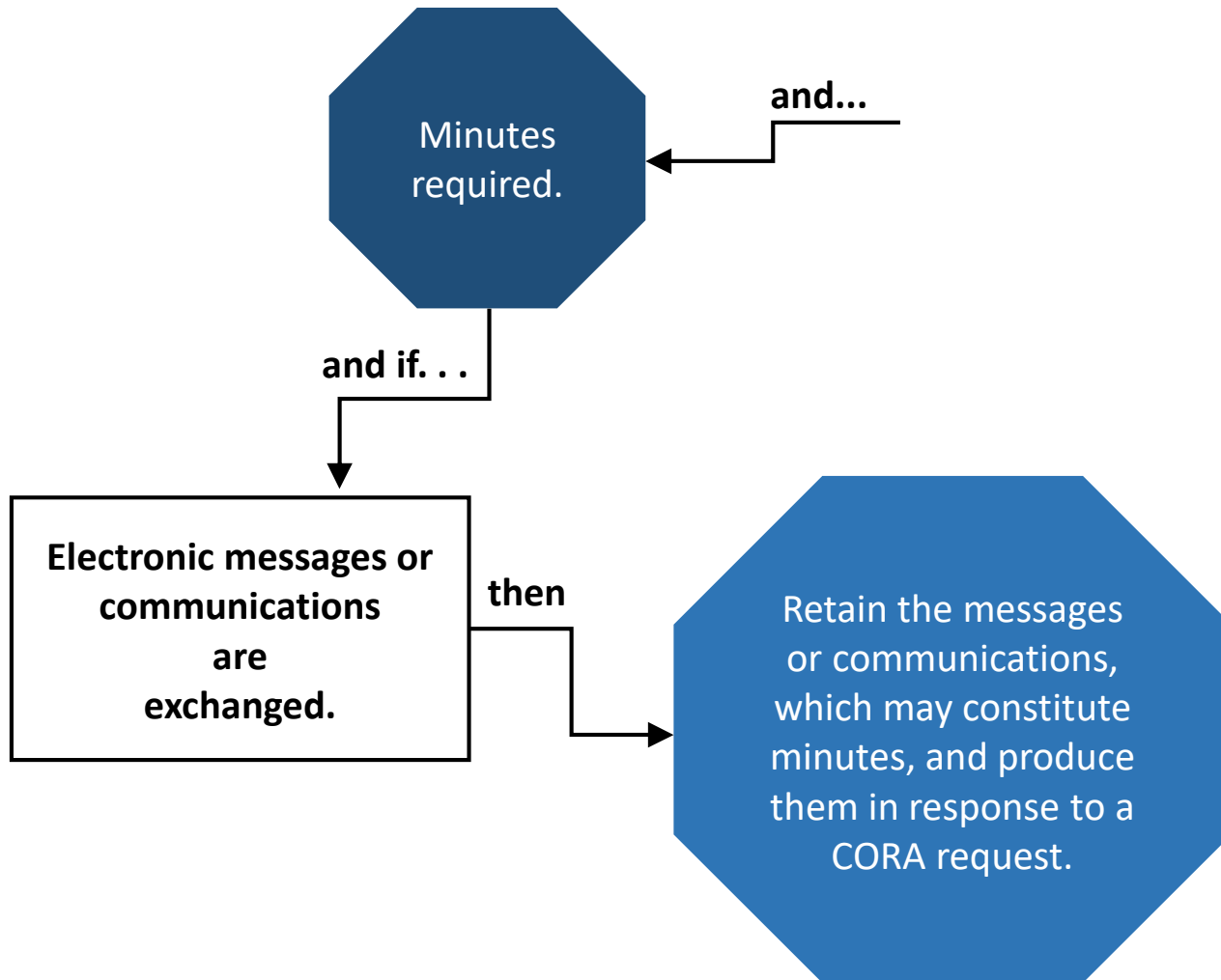


- Unlike an in-person meeting, minutes are required for less than a quorum.
- Keep indefinitely.
- Minutes for an email? Same info as any other meeting.

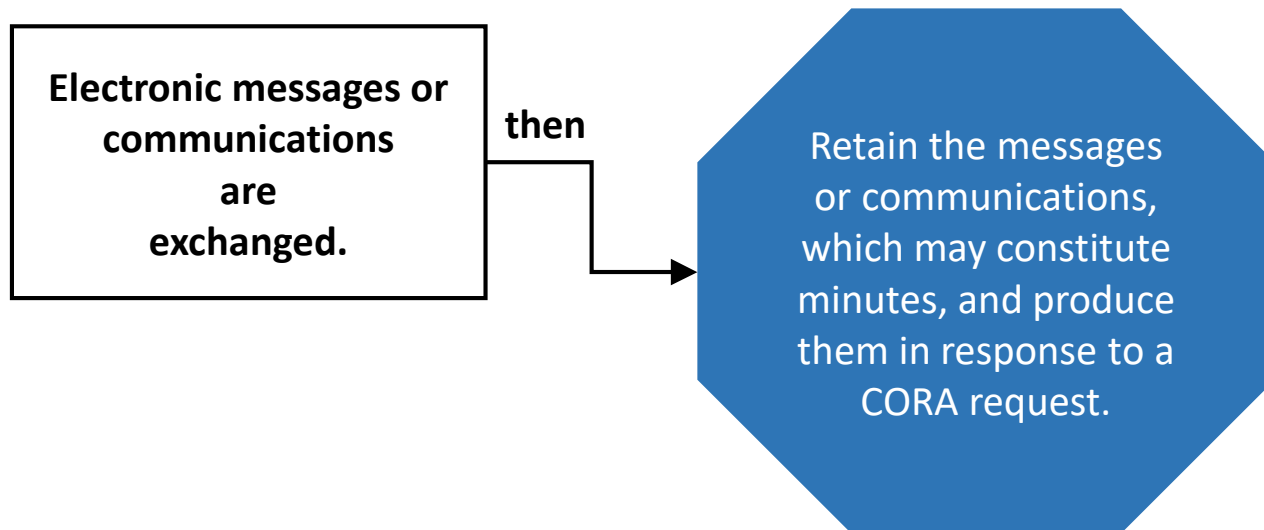


- Same notice as required for in-person meetings.
- For a Zoom meeting, you could provide a link to the meeting to make it open.
- For an email...?





- You must retain the electronic messages or communications.
- Keep them indefinitely.
- They may constitute minutes. If so, a member must produce them in response to any request under CORA.



# Sample Notice

<b>NOTICE OF MEETING</b>	
<b>Date of the meeting</b>	
<b>Time of meeting</b>	
<b>Location of the meeting</b> (including Zoom link if applicable)	
<b>Expected attendees</b>	
<b>Specific agenda or list of items to be discussed</b> (including any formal action to be taken)	

# Sample Minutes

<b>MEETING MINUTES</b>	
<b>Date of the meeting</b>	
<b>Time of the meeting</b> (start time and completion time)	
<b>Attendees at the meeting</b>	
<b>Summary of the discussion</b>	
<b>Action taken</b>	

# Thank you for your time today.

If you have questions in the future, please feel free to contact any of the following OLLS attorneys:

- *Ed DeCecco – [Ed.DeCecco@coleg.gov](mailto:Ed.DeCecco@coleg.gov)*
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