The Future of FOIA is Here: New Requirements under Acts 505 and 922 of 2025

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The Arkansas Freedom of Information Act (FOIA) has long been a cornerstone of transparency, ensuring that the public has access to government records and meetings. Acts 505 and 922 of 2025, which took effect on August 5, 2025, significantly amend FOIA to modernize public meeting rules, clarify definitions, restrict substantive communications among governing body members, and create new procedures and penalties for violations.

The changes summarized here reflect both the evolution of government practices—especially in the wake of virtual meetings and electronic communications—and the public's interest in transparent governance.

Key Changes Under Act 505

- **Remote Attendance and Access**
- Governing bodies—except municipalities, counties, and school districts—may allow remote meeting attendance.
- If remote meeting access is offered to officials, it must also be provided to Arkansas residents.
- Meetings with remote participation must be recorded in the remote format used to conduct the meeting.
- **Meeting Notices**
- Regular meetings: 3 days' notice to anyone who has requested notice, including local media, with the notice, most-current agenda, and remote access link posted online, if the public entity maintains a website or social media accounts.
- Special/emergency meetings: 2 hours' notice to local media and online posting of the meeting notice, most-current agenda, and remote access link.
- Ambiguity remains on whether posting is required on both a website and all social media accounts—the best practice is to post on all maintained online platforms.
- **Agenda Changes**
- Items may be added to the agenda after it is posted online; removal is not addressed.
- **Executive Sessions**
- Executive sessions to discuss a cybersecurity incident response are now exempt from FOIA.
- **Meeting Definitions**
- Public meeting: a formal gathering (in person or remote) of a governing body.
- Informal meeting: a gathering of two or more members outside a public meeting; not subject to notice unless discussing foreseeable official action.

- Settlement discussions: settlement discussions during court-ordered mediation or other alternative dispute resolution proceedings are not public meetings.
- Child Maltreatment Investigations Oversight Committee: meetings of the Child Maltreatment Investigations Oversight Committee are not public meetings.
- **Communication Restrictions**
- Members of a governing body may not discuss foreseeable official actions outside public meetings (in person or electronically). There is no bright-line rule under Arkansas law for what makes official action "foreseeable"—foreseeability depends on the circumstances of each communication and the matter that is the subject of the communication.
- Polling members of a governing body on votes is prohibited.
- The prohibition of polling includes a safe harbor for background and non-decisional communications, as well as written scheduling and ministerial communications.
- **Enforcement**
- Circuit courts may invalidate public acts taken during a meeting that does not comply with FOIA.
- Circuit courts may invalidate public acts that are the direct or indirect result of prohibited polling or other communications that violate FOIA.
- There is no time limit specified by statute for challenges to a public act under FOIA; therefore, the general five-year statute of limitations presumably applies. However, there are special limitations for challenges to debt issuances created by Act 992, as discussed below. It has yet to be determined whether an Arkansas court would apply the five-year statute of limitations or allow debt issuances to be invalidated up until maturity due to a FOIA violation
- There is no requirement for a party to bring a FOIA violation to the attention of the public entity prior to filing a lawsuit to invalidate the challenged public act.

Key Changes Under Act 922 (Debt Issuances)

Act 992 provides important changes to FOIA for issuances of debt, which helps protect an important incentive that public entities may offer to promote economic development in Arkansas. Act 992 reduces risk to long-term debt instruments and protects public entities' ability to offer economic development incentives.

- **30-Day Limit:** a lawsuit to void an action by a governing body related to a debt issuance must be brought and decided by a circuit court within 30 days of the date the action occurred.
- **Cure Procedures**: if a circuit court finds a violation of FOIA more than 30 days after a public act related to a debt issuance, the public entity must, within 30 days of the court's order:
- Provide public notice of the violation.
- Disclose the violation at a public meeting.
- Reauthorize the debt issuance at a public meeting in compliance with FOIA.
- If the circuit court finds a FOIA violation, the circuit court must assess a $1,000 civil penalty against the responsible officials, who must use private funds to pay the civil penalties to the claimant.

Impact

- **Transparency:** Stronger safeguards to ensure deliberations occur in public.
- **Clarity:** Clearer definitions of public meetings and informal meetings.
- **Accountability:** New civil penalties and potential judicial invalidation for FOIA violations.
- **Economic Development:** Special protections for debt issuances to maintain investment appeal in Arkansas.

The passage of Acts 505 and 922 signals a progression in Arkansas' approach to open government. By redefining public meetings, restricting certain types of communications, and providing penalties for FOIA violations, the law sets a new standard for transparency and accountability while balancing the needs of

public entities to fulfill their essential functions. As governing bodies across the state adjust their practices, the ultimate beneficiaries will be the citizens, who can look forward to a more open and responsive government for years to come.