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Correspondence Memorandum

Date: January 10, 2020
To: Group Insurance Board
From: David Nispel, General Counsel
Office of Legal Services
Subject: Open Meetings Law Training

This memo is for informational purposes only. No Board action is necessary.

This presentation provides an overview of the provisions of the Open Meetings Law.

Staff will be available at the meeting to answer any questions.

Attachment: Wisconsin Open Meetings Law PowerPoint

Reviewed and approved by Robert J. Conlin, Secretary

Electronically Signed 1/10/20

Board	Mtg Date	Item #
GIB	2.5.20	4.3

Wisconsin Open Meetings Law

Wis. Stat. §§ 19.81-19.98

David Nispel, General Counsel
Office of Legal Services



Overview

- Policy of the Open Meetings Law.
- Important definitions.
- Requirements of Open Meetings Law.
- Procedures.

This PowerPoint contains information from the “Wisconsin Open Meetings Law Compliance Guide” prepared by the Department of Justice in May 2019.



Policy of the Open Meetings Law



Policy of the Open Meetings Law

Policy

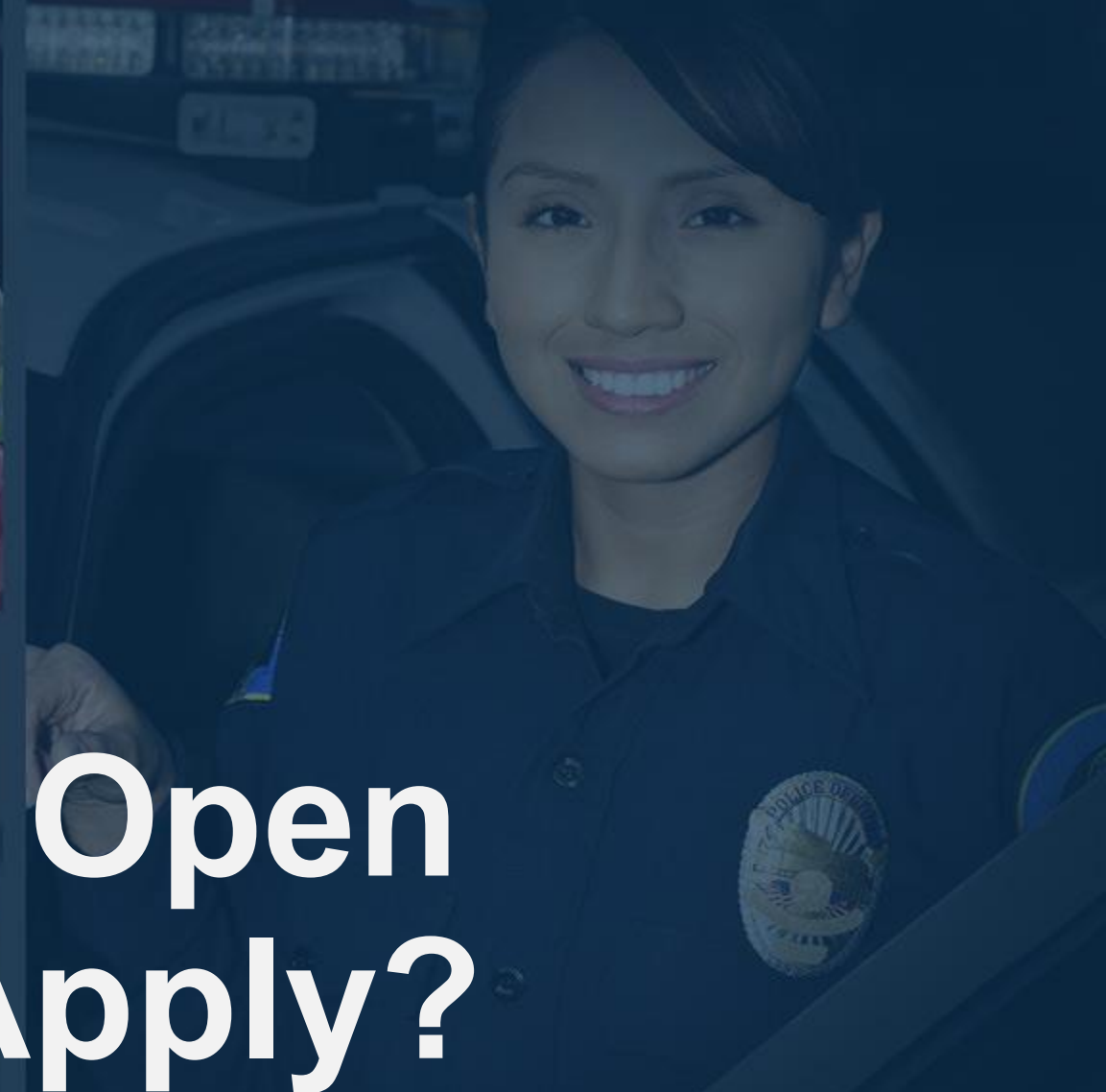
- It is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.

Meetings Held in Open Session

In order to advance this policy, the open meetings law requires that:

- “all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.”

- There is thus a presumption that meetings of governmental bodies must be held in open session.



When Does the Open Meetings Law Apply?

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The open meetings law applies to:

Every “meeting” of a “governmental body.”

Governmental Body

A “governmental body” is defined as:

- [A] state or local agency, board, commission, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley Center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a long-term care district under s. 46.2895; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. I, IV, V, or VI of ch. 111.

Meeting

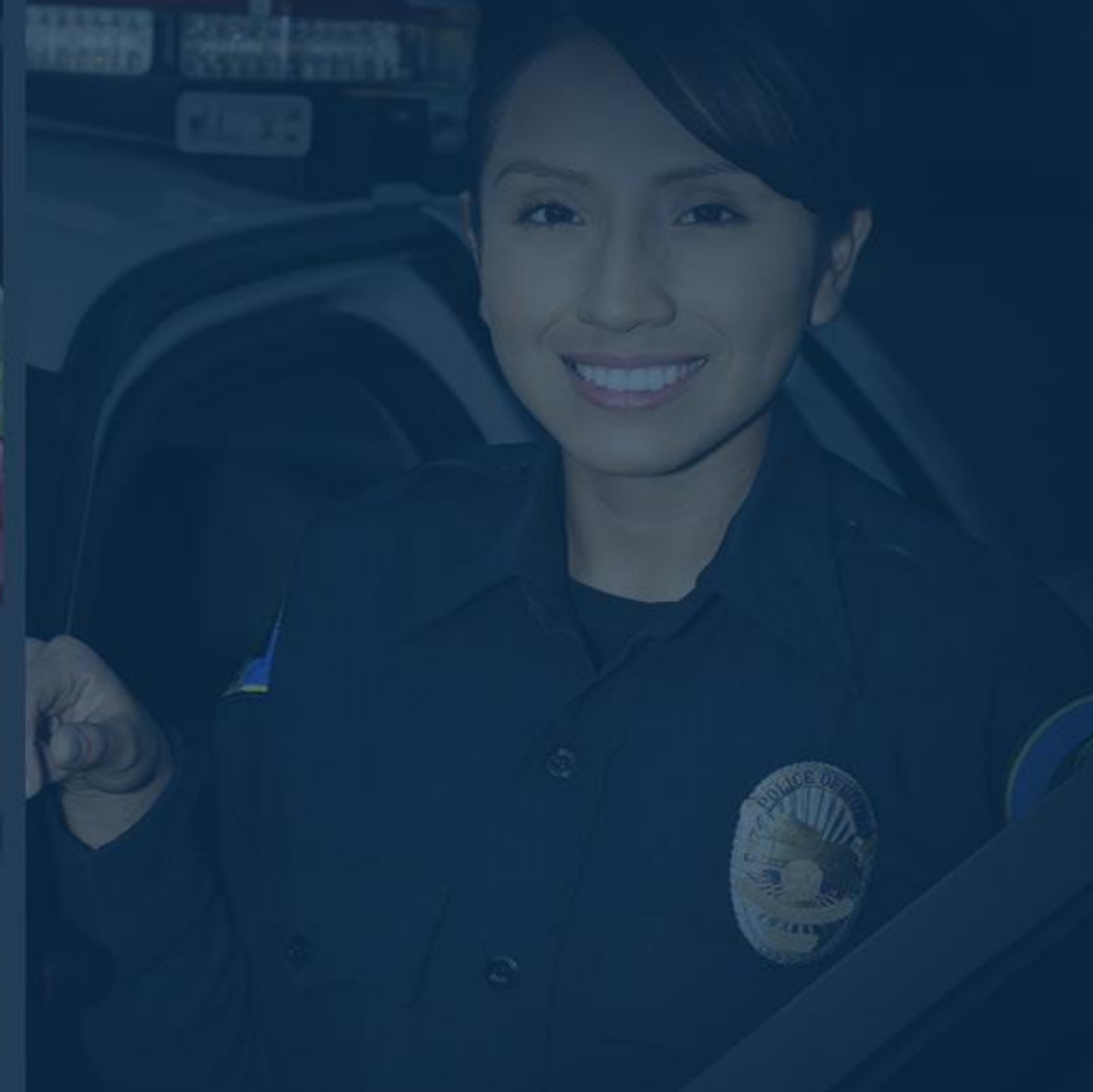
A “meeting” is defined as:

- [T]he convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body.

State of Wisconsin Example Rel. Newspaper Inc. v. Showers

- The Wisconsin Supreme Court has held that the statutory definition of a “meeting” applies whenever a convening of members of a governmental body satisfies two requirements:

- 1 {
 - there is a purpose to engage in governmental business and
- 2 {
 - the number of members present is sufficient to determine the governmental body’s course of action.



Requirements

The Showers Test: The Purpose Requirement

Showers stressed that “governmental business” refers to any formal or informal action, including:

- discussion,
- decision,
- or information gathering,
- on matters within the governmental body’s realm of authority.

The Numbers Requirement

The number of members present must be sufficient to determine the governmental body's course of action on the business being considered.

- People often assume that this means that the open meetings law applies only to gatherings of a majority of the members of a governmental body.
- A gathering of one-half of the members of a body, or even fewer, may be enough to control a course of action if it is enough to block a proposal.
- This is called a “negative quorum.”

Walking Quorums

- The requirements of the open meetings law also extend to walking quorums.

A “walking quorum” is:

- a series of gatherings among separate groups of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum.

2 Most Basic Open Meetings Law Requirements

- The two most basic requirements of the open meetings law are that a governmental body:

- 1 {
 - give advance public notice of each of its meetings, and
- 2 {
 - conduct all of its business in open session, unless an exemption to the open session requirement applies.

Contents of Notice

Every public notice of a meeting must give the:

- “time,
- date,
- place
- and subject matter of the meeting,
 - including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media.”

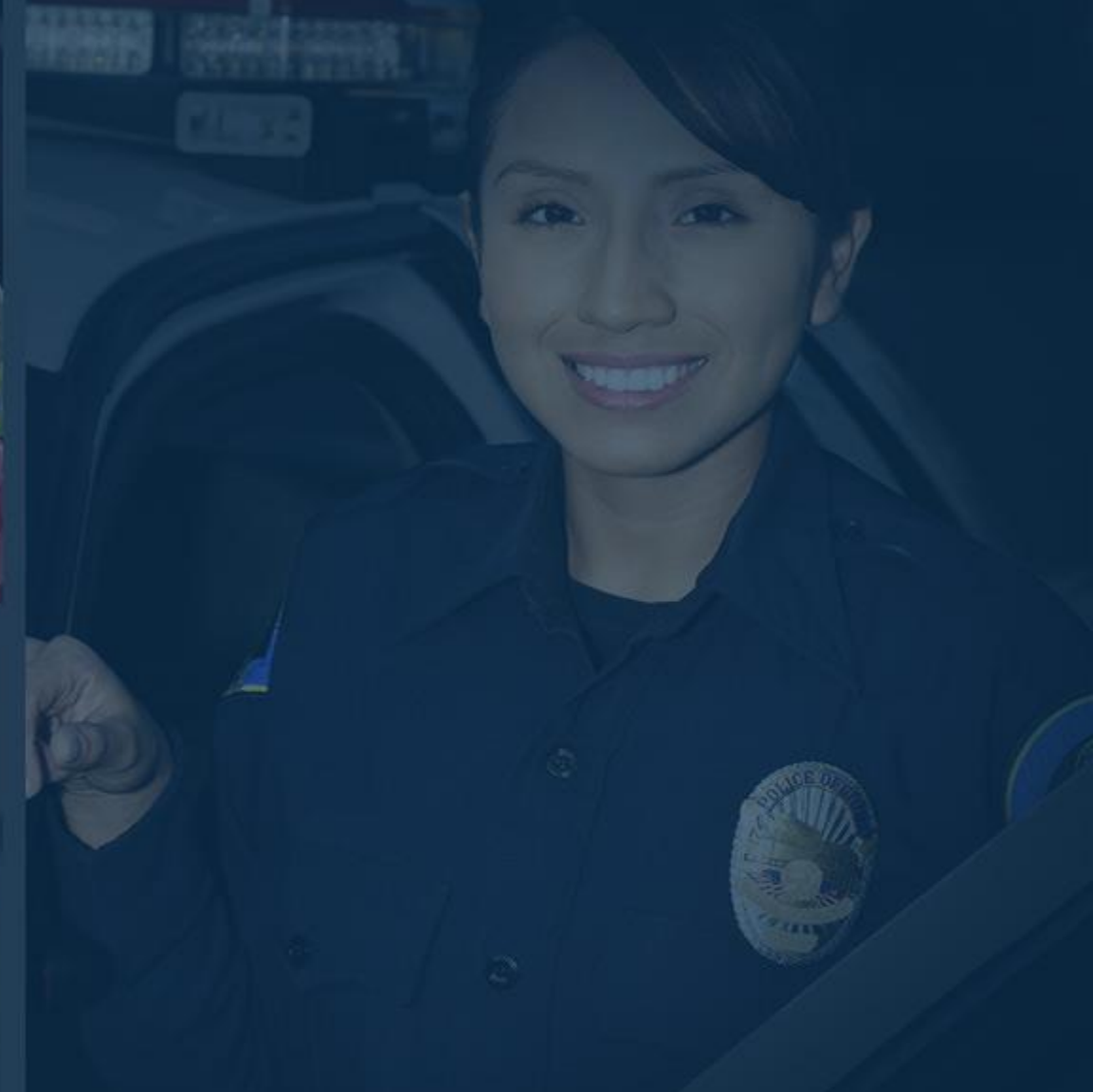
Notice of Closed Sessions

Such notice “must contain enough information for the public to discern whether the subject matter is authorized for closed session under Wis. Stat. § 19.85(1).”

The Attorney General has advised that notice of closed sessions must contain:

- the specific nature of the business,

- as well as the exemption(s) under which the chief presiding officer believes a closed session is authorized.



Procedures

Procedure for Convening in Closed Session

Every meeting of a governmental body must initially be convened in open session.

- Before convening in closed session, the governmental body must follow the procedure set forth in Wis. Stat. § 19.85(1) which requires that the governmental body pass a motion.
- Before the governmental body votes on the motion, the chief presiding officer must announce and record in open session the nature of the business to be discussed and the specific statutory exemption which is claimed to authorize the closed session.

Authorized Closed Sessions

- Wis. Stat. § 19.85(1) contains eleven exemptions to the open session requirement which permit, but do not require, a governmental body to convene in closed session.

Judicial or Quasi-Judicial Hearing

Wis. Stat. § 19.85(1)(a) authorizes a closed session for:

- “[d]eliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.”
- In order for this exemption to apply, there must be a “case” that is the subject of a quasi-judicial proceeding.

Conducting Public Business with Competitive or Bargaining Implications

A closed session is authorized in Wis. Stat. § 19.85(1)(e) for:

- “[d]eliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.”

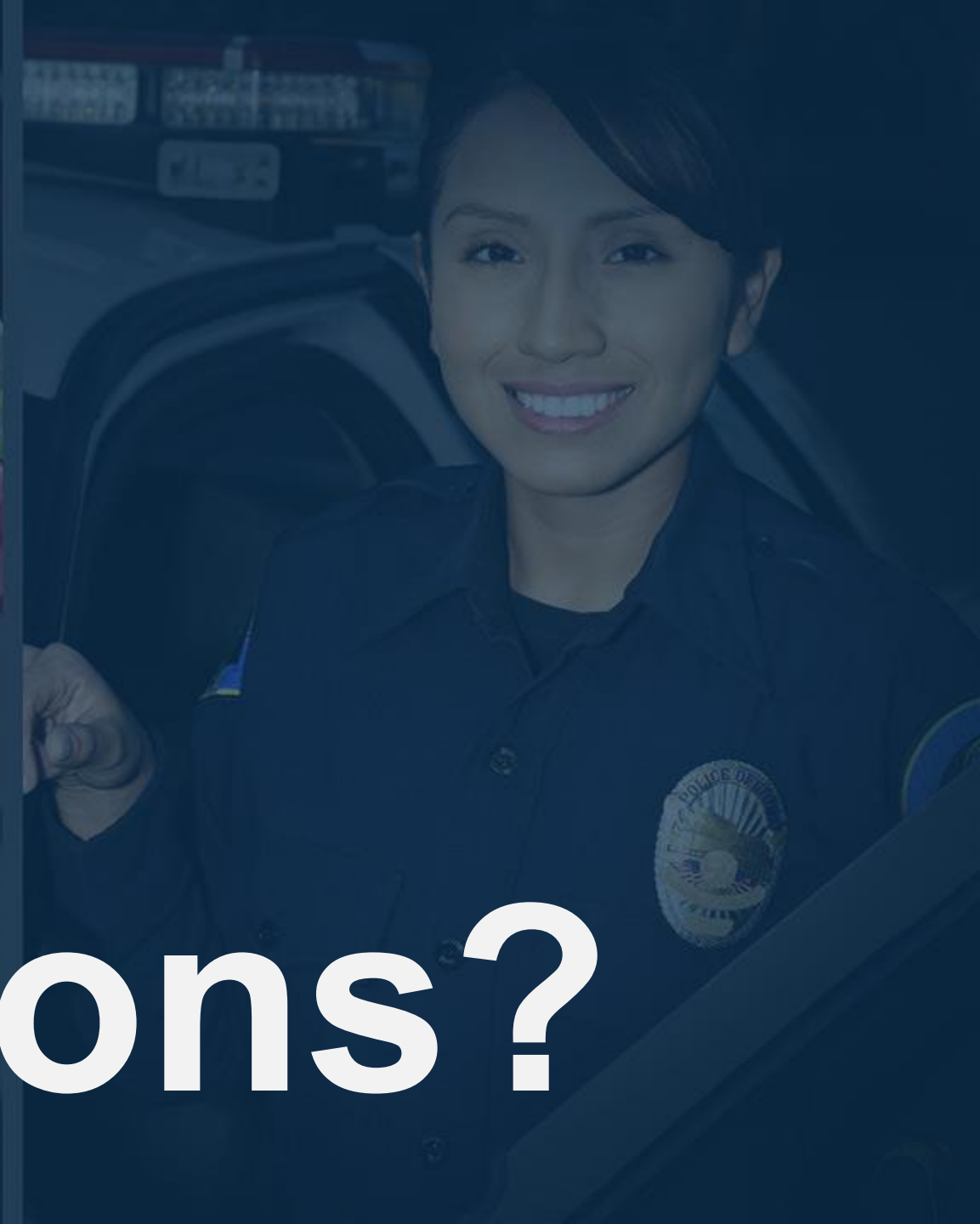
Conferring with Legal Counsel with Respect to Litigation

The exemption in Wis. Stat. § 19.85(1)(g) authorizes a closed session for:

- “[c]onferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.”

Voting in an Authorized Closed Session

- The Attorney General advises that a governmental body vote in open session, unless the vote is clearly an integral part of deliberations authorized to be conducted in closed session under Wis. Stat. § 19.85(1).
- Stated another way, a governmental body should vote in open session, unless doing so would compromise the need for the closed session.



Questions?

Thank you



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