

Foundations and the Open Meeting Law

Initial question from librarian: Do foundations have to comply with the open meeting law?

Response from Tracy Cook – March 30, 2011

For your second question about 501c3 and open meeting I have some information. I've cc'd Darlene, so she can chime in with any corrections, etc. I have to give you my standard disclaimer here. I'm not a lawyer, so you shouldn't consider this legal advice. You might want to talk to your local city or county attorney to see what they think of this issue.

Generally public library foundations don't have to comply with the open meeting law. Their records also don't seem to fall under the public records requirement either. Here's a more developed explanation.

According to MCA 2-3-203 (<http://data.opi.mt.gov/bills/mca/2/3/2-3-203.htm>) "(1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public. "

A library foundation that is a 501c3 is not a public or governmental body. It is a private organization, so it's not required to meet the open meeting law for that reason. Most foundations don't receive public funds (which are funds generally received from taxes either property, state income tax, or fees and licenses), so they aren't required to have an open meeting due to that either. They aren't considered a public body, and they don't receive public funds so they aren't required to have open meetings.

According to MCA 2-6-201 (<http://data.opi.mt.gov/bills/mca/2/6/2-6-101.htm>) " (2) Public writings are:
(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country, except records that are constitutionally protected from disclosure; "

A foundation doesn't seem to fit any of this definition, since it a private entity. Foundation members could possibly argue that their documents are protected, because later on in the public records section it talks about protecting individual privacy. Some of individuals who donate money to the library wish to remain anonymous, so a foundation would have an obligation to protect them. So for these reasons it doesn't look like foundation records have to be public.