



CORPORATE COUNSEL MEMORANDUM
(Attorney-Client Privileged, not subject to FOIA)

TO: Stan Stek, Chair
Kent County Board of Commissioners

FROM: Linda Howell, Corporate Counsel
Sangeeta Ghosh, Assistant Corporate Counsel

SUBJECT: ARPA Community Proposals – Applicability of OMA and FOIA

DATE: August 31, 2022

This is a friendly reminder about the applicability of the provisions of the Open Meetings Act (OMA) and the Freedom of Information Act (FOIA) to the review of the ARPA Community Proposals. The Board of Commissioners will apply a presumption of openness and transparency in the review process of the ARPA Community Proposals. The Board will make proactive disclosures of the results from the community ranking survey and the community proposals submitted for consideration for funds. All decisions to award and appropriate ARPA funds to projects will be made publicly.

Applicability of OMA to Meetings to consider and review of ARPA Community Proposals

- All deliberations and decisions regarding ARPA Community Proposals must take place in a meeting open to the public, properly noticed to the public, and where a quorum of the Board is present to deliberate.
- Minutes of each meeting must be available and open to public inspection. Sound recordings of a public meeting must be retained for a period of one year in accordance with FOIA.
- OMA defines “meeting” as “the convening of a public body at which a **quorum is present...**” Caucus meetings that do not constitute a quorum of the Kent County Board of Commissioners are not conducting “meetings” for purposes of the OMA, and are therefore not subject to the open meeting requirements.
- Any person can commence a civil action to challenge the validity of a decision of a public body made in violation of OMA.

Applicability of FOIA to records relating to ARPA Community Proposals

- FOIA entitles the public to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees.
- Any record created by the Commissioners concerning the ARPA Community Proposals can constitute a public record. The public has a right to know and can request a public disclosure of those public records. FOIA is a pro-disclosure statute and there is a presumption of releasability of the records unless an exemption may apply permitting redaction or withholding of the records from the public.
- Only the County issued devices and approved applications are acceptable for use and in conduct of official business of the County. County computing environment has the capability to back up and retain the public records as required by law.
- Do not use personal cell phones, personal email addresses, or personal computing devices to communicate about the ARPA Community Proposals. Public records created on a personal computing device can constitute a 'public record' as defined by FOIA and is releasable in response to a public request. There is no retention system of the County for personal devices.
- Staff has developed a records management and retention plan for the ARPA Community Proposals Review process. Your cooperation will ensure proactive disclosure of public information on County website and timely processing of FOIA requests filed with the County.

For any follow up questions or concerns about this matter, please do not hesitate to contact Linda Howell Corporate Counsel or Sangeeta Ghosh Assistant Corporate Counsel.