

PROJECT SUNLIGHT FAQ

OVERVIEW

Q: What is Project Sunlight?

A: Project Sunlight, an important component of the Public Integrity Reform Act of 2011, is an online database that provides the public with an opportunity to see what entities and individuals are interacting with government decision-makers. For the text of the law, see Chapter 399 Part A, § 4 of the Laws of 2011.

Q: What is the Guidance FAQ?

A: This document is intended for use by state agencies and authorities as guidance on what needs to be reported in the database. Information on how to input data into the Project Sunlight database will be located on the Statewide Learning Management System.

This guidance document cannot contemplate every novel situation. Accordingly, state agencies and authorities should abide by the spirit of the law, and err on the side of broad disclosure.

Q: What is covered by Project Sunlight?

A: In order for an interaction to be covered by Project Sunlight it must:

1. Be an appearance,
2. Between covered individuals, and
3. Concern one of the five subject areas covered by Project Sunlight (procurement, rate making, regulatory matters, judicial or quasi-judicial proceedings, adoption or repeal of a rule or regulation).

More detail on each of these categories can be found below.

APPEARANCES

Q: What is an appearance?

A: An appearance must be a substantive interaction that is meant to have an impact on the decision making process of a state entity. In order to constitute an appearance, the interaction must be an in person meeting, a telephonic conversation, or a video conference.

Q: Can there be multiple appearances related to one matter or issue?

A: Yes. Each appearance must be reported separately. There can be numerous appearances related to a single matter.

Q: Are written communications considered appearances?

A: No. Written communications such as letters, faxes, or emails are not considered appearances.

Q: Must I record an appearance that occurs outside my office?

A: Yes. The location of the interaction is irrelevant as to whether it constitutes an appearance.

Q: Must I record an appearance that the state agency or authority initiates?

A: Yes. It is irrelevant who initiates the interaction. If a state agency or authority calls for a meeting, and that meeting otherwise is covered by Project Sunlight, that meeting must be reported.

Q: What if the appearance is informal?

A: The level of formality of an appearance is irrelevant; an informal conversation could very well constitute an appearance if the goal or substance of the communication is part of an effort to influence the decision making process of a state entity.

Q: If an individual calls to schedule a meeting, must it be reported? What about requests for information?

A: No. Merely ministerial interactions, such as the scheduling of meetings, need not be reported. Additionally, interactions where the state entity is only imparting information or facts to an individual shall not be considered an appearance.

Q: Are public meetings covered?

A: Participation in meetings which are open to the public, such as conferences or meetings subject to the Open Meetings Law or where a record of the meeting is otherwise available, does not constitute an appearance. However, communications outside of such public meetings but with respect to the same matter may be covered.

For example, following a public meeting, a regulated party and a decision-maker at the state entity may have a conversation during which the regulated party advocates for the repeal of a regulation discussed during the public meeting; this conversation would constitute an appearance.

Q: What about proceedings that are confidential?

A: Confidentiality requirements imposed by federal or state statute, rule or regulation always take precedence over the requirements of Project Sunlight. Any interaction that an agency or authority treats as confidential pursuant to any law, rule or regulation does not need to be reported.

Q: What about appearances related to legislation and the budget?

A: Appearances regarding legislation and the budget are not covered under Project Sunlight.

COVERED INDIVIDUALS

Q: Who at the state entity is covered by Project Sunlight?

A: Appearances should be reported if they are conducted before an individual at the state entity who has the power to exercise agency discretion in one of the five covered categories, or advises someone who has such discretion.

What this means practically is that only a communication with someone who is involved in exercising the agency's discretion to set a rate, adopt or amend or repeal a regulation, or award a contract, or

someone who advises that person, is covered by Project Sunlight. Similarly, only a communication with someone who has the ability to make a decision in a judicial or quasi-judicial proceeding is covered.

Q: Are temporary workers or independent contractors of a state entity covered?

A: If an appearance is before a temporary worker or independent contractor who has decision-making authority and is otherwise covered by Project Sunlight, then that appearance must be reported.

Q: Who outside the state agency or authority is covered by Project Sunlight?

A: Appearances by both “outside” (e.g., a lobbyist) and “inside” (e.g., a general counsel) representatives of an entity must be reported. It does not matter whether or not the representative has been formally retained.

Q: If an individual appears without a representative, must that appearance be reported?

A: Yes. Appearances by an individual appearing on behalf of him/herself must also be reported.

Q: Must appearances by advocacy organizations be reported?

A: Yes.

Q: Are agents of a state agency or authority, such as retained outside counsel, covered by Project Sunlight?

A: No. Agents of a state agency or authority, such as retained outside counsel, are not covered individuals at the state agency or authority.

Q: Are there types of individuals and entities that are excluded from Project Sunlight’s reporting requirements?

A: Yes. There are certain types of individuals and entities that are categorically excluded from Project Sunlight’s reporting requirements. They are:

- Appearances by other state and local agencies and authorities, as well as tribal governments and federal government representatives.
- Appearances by elected officials, executive or legislative employees or judges or employees of the judiciary.
- Appearances by individual inmates and parolees and their representatives before criminal justice state entities regarding their supervision and/or conditions of confinement.
- Representatives of the media.
- Persons under the age of 18.

TYPES OF APPEARANCES

Procurement

Q: What kinds of appearances regarding procurement are covered under Project Sunlight?

A: Project Sunlight’s reporting requirement for procurement appearances applies to those appearances that are for the purpose of procuring a State contract, irrespective of whether there is a governmental

procurement planned. Thus, reporting is required for appearances relating to State contracts for which a Restricted Period under the Procurement Lobbying Law has not been established and without regard to whether a governmental procurement is anticipated.

Q: What if a vendor calls a state agency or authority, unsolicited, and attempts to persuade a decision-maker to purchase the vendor's product?

A: Yes. If a vendor calls a state agency and attempts to influence a decision-maker that the vendor's product should be purchased, that appearance must be reported, even if it is unsolicited and not associated with a specified procurement.

Q: If a state agency is conducting market research or looking to inform a policy decision, and reaches out to vendors to request information, must that be reported?

A: If an appearance is purely informational and occurs at the request of the state entity—e.g., a state agency is conducting market research or seeking information of its own accord to inform a policy decision—then those appearances need not be reported. However, if that appearance becomes one in which the vendor or company advocates for its product and/or the possibility of a State contract, that appearance must be reported.

If an agency or authority is reaching out to an M/WBE firm to determine interest in and availability to provide services or goods, that communication need not be reported.

Q: Do appearances during the Restricted Period under the Procurement Lobbying Law need to be reported?

A: Appearances during the Restricted Period—whether they are bid clarification meetings or bid interviews or any other permissible contact under the State Finance Law—do not need to be reported.

Q: Do appearances following the award of a contract need to be reported?

A: Appearances following the award of a State contract do not need to be reported.

Q: What about appearances regarding discretionary contracts?

A: Appearances for the purpose of advocating for the receipt of discretionary state funds that have already been appropriated must also be reported. A meeting to finalize a contract for any discretionary award need not be reported.

Q: Do appearances related to emergency procurements need to be reported in Project Sunlight?

A: No, these do not need to be reported.

Q: Do individuals and entities that appear at public auctions need to be reported in Project Sunlight?

A: No.

Q: Do appearances related to procurements below my agency's discretionary purchasing threshold need to be reported?

A: Appearances related to procurements under \$25,000 do not need to be reported.

Rate Making

Q: What kinds of appearances regarding rate making are covered under Project Sunlight?

A: Agencies that conduct ratemaking should record all applicable appearances that lead up to the setting of the rate. For example, if a utility company is requesting an increase in a rate from a rate-making agency, all appearances made by external or internal representatives of that utility company before those that will play a role in the decision-making process at the agency should be reported.

Q: Are appearances that are outside the formal rate making process required to be reported?

A: Yes. Appearances to influence rates outside of any formal rate making proceeding must also be reported; that is, any appearance that is an effort to influence a rate, formal or informal, should be reported.

Q: Once a rate has been set, what appearances are required to be reported?

A: Once a rate has been set the agency or authority need not record appearances, unless they are appearances to attempt to influence the application of a particular rate to a particular client or entity or are part of advocacy for future rate changes.

Q: Do factual inquiries about rates need to be reported?

A: No. Factual inquiries about rates, following reports by state agencies or authorities or otherwise, do not need to be reported. These inquiries are informational. If an inquiry about a particular rate transitions from purely informational to advocacy, however, the appearance must be reported.

Regulatory Matters

Q: What kinds of appearances regarding regulatory matters are covered under Project Sunlight?

A: A regulatory matter is one related to agency enforcement of regulations and existing law. An appearance regarding a regulatory matter need only be reported if it is one before an individual at a state agency or authority who has the capacity to make or influence decisions about regulatory policy, as well as the application or interpretation of a regulation.

The key is the level of discretion used when enforcing or interpreting an agency's regulations. For example, meetings to discuss and advocate for how an entity executes its regulatory processes are covered. If an individual or entity is advocating for the opportunity to be exempted from a particular regulation, and does so before a state official who will be a part of the decision-making process, that appearance must be reported.

Q: Are agency inspections of regulated entities covered?

A: The inspection itself – which is for information gathering purposes—is not covered by Project Sunlight. Ancillary or subsequent communications related to the inspection, such as contesting a finding, are covered by Project Sunlight.

Q: What if an individual calls to file a complaint about a regulated party or entity, such as an employee calling to inform an agency that his company is violating a regulation? Is that communication covered? What about the ensuing investigation?

A: Complaints, and subsequent investigations into those complaints, are not covered under Project Sunlight. Often tipsters or informants will already be protected by an agency's confidentiality rules and regulation, and are therefore not covered by Project Sunlight, but this FAQ makes clear that these kinds of communications, and the investigations that follow, do not need to be reported.

Each agency shall maintain a list of the types of regulatory matters or proceedings that are not covered by Project Sunlight, and shall make such list publicly available.

Judicial or Quasi-Judicial Proceedings

Q: What kinds of appearances regarding judicial or quasi-judicial proceedings are covered under Project Sunlight?

A: Judicial or quasi-judicial proceedings are proceedings that take place before a neutral arbiter at a state entity. In order to be covered by Project Sunlight, the proceeding must include a state entity as a party to the matter.

For example, a challenge to a fine assessed by a state entity that takes place before an administrative law judge would be counted. Similarly, an enforcement action undertaken by a state entity that requires the involvement of an administrative law judge would also be counted. However, a party bringing an action against another party, where the state entity only serves as a neutral arbiter or as a forum for the resolution of disputes between private parties, would not be covered.

Each agency shall maintain a list of the types of regulatory matters or proceedings that are not covered by Project Sunlight, and shall make such list publicly available.

Q: Are employee disciplinary matters, contractual grievances and challenges to performance reviews covered by Project Sunlight?

A: No. Employee disciplinary matters, the contractual grievance process, and challenges to employee performance reviews are not to be reported.

Q: Are confidential judicial or quasi-judicial matters covered by Project Sunlight?

A: No. Any judicial or quasi-judicial proceedings that are confidential pursuant to law, rule, or regulation are not to be reported.

Q: Do appearances related to litigation need to be reported under Project Sunlight?

A: Litigation in the courts is not encompassed by Project Sunlight as that is not an appearance before a state entity. Settlement negotiations related to litigation in the courts is therefore also not covered by Project Sunlight.

Q: Are settlement negotiations related to otherwise covered judicial or quasi-judicial proceedings covered by Project Sunlight?

A: Yes.

Each agency shall maintain a list of the types of proceedings that are not covered by Project Sunlight, and shall make such list publicly available.

Q: Does the name of the Administrative Law Judge, or other decision-maker in a judicial or quasi-judicial proceeding need to be reported?

A: Yes.

Adoption or Repeal of a Rule or Regulation

Q: What kinds of appearances regarding the adoption or repeal of a rule or regulation are covered under Project Sunlight?

A: An interaction is only covered by this category if an individual is advocating for the repeal or adoption or amendment of a rule or regulation subject to the State Administrative Procedures Act (“SAPA”), and the person from the state entity they are interacting with plays a role in that decision making process.

This category differs from a “regulatory matter” because it is limited to appearances that attempt to influence the adoption or repeal or amendment of a rule or regulation. This does not cover the application or interpretation of rules and regulations that are already in place.

Q: Are appearances relating to statutes or appropriation bills required to be reported?

A: No. This reporting category is limited to agency rules and regulations. Appearances regarding the repeal or adoption or amendment of a statute, including an appropriation bill, are exempted.

LOGISTICS

Q: When must appearances be reported in the Project Sunlight database?

A: Meetings should be timely entered into the database within five business days after they occur.

Q: If multiple covered individuals attend one meeting that is covered by Project Sunlight, do they need to be individually entered?

A: No. Each meeting need only be entered into the Project Sunlight database once. If multiple covered individuals from state entities attend a meeting, only one person need enter the appearance.

Q: Who at the state agency or authority must do the reporting into the database?

A: The agencies and authorities are responsible for internally assigning those staff members who will be responsible for reporting the appearances.