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Client Alert: Seven Things to Consider Regarding “Sunshine Laws”

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Considering a headquarters relocation or the construction of a new facility? As you navigate seeking incentives for your projects, it is important to keep in mind that many of the public entities that you will be negotiating with are subject to various “sunshine laws” that could lead to public disclosure of your project before you are ready to have the information become public.

As you consider beginning discussions with public entities, it is essential to have a plan on how to manage the timing (and content) of the public disclosure of your project and understand the limitations of the public entities that you will be working with.

- **Have a clear timeline as to when, ideally, the nature of your project will become public.** This may require coordinating amongst various stakeholders at your company, including public relations, human resources, and financing. Communicating your timeline upfront with the public entity will be essential in meeting your goals.
- **Understand the limitations of the public entities that you will be engaging with.** Not all public entities are created equal when it comes to sunshine laws. Some quasi-public entities are generally exempt from disclosure requirements while others, like port authorities, have far more flexibility with specific statutory provisions that may (for a time) provide an exemption to disclosure.
- **Non-disclosure agreements require special attention.** Depending on the counter-party, non-disclosure agreement may be of either little or great value. It is never a good idea, however, to use a standard non-disclosure agreement that your company uses in its day-to-day business. These agreements will lack essential provisions to address, among other things, how to handle a public records request.
- **Using shell entities.** At times, it might be possible in the initial stages to utilize a wholly owned subsidiary with a name that does not divulge too much information. Remember that the corporate records, however, are always public and without appropriate caution, it may be possible to learn more than was intended if a less-than-unique name is chosen or if information about the incorporators or

the statutory agent could lead an interested party to the identify of your company.

If, despite your efforts, it becomes likely that the news of your project will break prior to when you would like, here are a few tips that we recommend:

- **Never be caught off guard.** Once incentives projects are in there infancy, bring communications professionals in as part of the team. It is highly unlikely that you will have full control over the timeline of news breaking. That said, plan ahead. Your team should always be armed with talking points if a reporter were to call today.
- **Identify a spokesperson.** Know who will take the lead on responding to media inquiries throughout the duration of the project. A singular, consistent voice makes for the clearest communication.
- **Don't forget about internal messaging.** Nothing damages internal morale more than your employees learning about a major project through the media before they hear about it from their own employer. Sometimes such communication – given the project – may be impossible to accomplish. However, all efforts should be taken to notify all corners of the company prior to discussing the project publicly.

Vorys economic development incentives counsel work with Vorys strategic communications professionals to provide guidance through all phases of incentives negotiations.