



Public Access Counselor Annual Report

An Overview of 2016



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A Message from
ILLINOIS ATTORNEY GENERAL
LISA MADIGAN

Every year, I recognize national “Sunshine Week” by releasing a report detailing the work of my office’s Public Access Counselor (PAC) to help thousands of people in Illinois obtain information from their government.

Seven years ago, I created the PAC in my office when I worked together with open government advocates and the legislature to reform Illinois’ open records laws. Since then, Illinois residents have used these stronger laws to shine a light on how their taxpayer dollars are being spent and how their government operates.

In 2016, the PAC received more than 4,700 requests for assistance from members of the public and the media. As a result, the PAC continues to make determinations on their behalf, including issuing binding opinions, which are a critical tool of the PAC to enforce rulings in court if a public body fails to comply with the law. These opinions create important legal precedence in Illinois to enforce open records rulings on behalf of the people of the state and foster increased transparency in government.

Since 2010, the PAC has issued 90 binding opinions, including 15 last year. The opinions issued in 2016 addressed significant barriers to obtaining records or attending a public meeting. One opinion addressed an emerging debate nationwide over whether emails sent and received on personally owned electronic devices that concern government business are subject to disclosure under the Freedom of Information Act. In response to a complaint by a member of the media, the PAC issued a binding opinion determining that in fact, emails on the personal accounts of public employees pertaining to the transaction of public business are public records subject to disclosure. In this influential ruling, the PAC said that the use of personal emails to hide the public’s business “would be contrary to the General Assembly’s intent of ensuring public access to full and complete information regarding the affairs of government.”

The PAC also works informally with the public to resolve disputes over records or government meetings without the need for a formal appeal process. Last year, the PAC’s informal intervention led to either a response or the release of records by a public body in over 1,270 of the matters filed. This demonstrates the importance and effectiveness of the PAC’s work to assist the public.

In addition, the PAC works to educate government officials about their duty to provide access to records under the law and offers a hotline that is answered by attorneys and staff who assist the public with records disputes or open meetings complaints.

Every year, thousands of people contact my office for help, and I am committed to empowering the people of our state by continuing to work to increase transparency at all levels of government.

Lisa Madigan
Attorney General

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Complaint Statistics

In 2016, the Public Access Counselor (PAC) received 4,720 formal requests for assistance pursuant to the Illinois Freedom of Information Act (FOIA), 5 ILCS 140, and the Illinois Open Meetings Act (OMA), 5 ILCS 120. In addition, the Public Access Bureau fielded an estimated 15 to 20 questions per day through the FOIA hotline and responded to more than 300 general inquiries through the Public Access email. The Public Access Bureau also conducted training sessions for members of the public, government officials, members of the media and students.

The following is a statistical breakdown of the formal requests received by our office between January 1, 2016, and December 31, 2016. The vast majority of the requests came from members of the public. The requests came from every area of the state and involved all types of public bodies, from the smallest villages to the largest cities and state agencies.

Total New Matters Before the Public Access Counselor in 2016: 4,720

Freedom of Information Act Requests Breakdown

- 4,354 requests for review by the PAC
 - 3,640 from members of the public
 - 681 from media outlets or other organizations
 - 33 from public bodies

Open Meetings Act Requests Breakdown

- 366 requests for review by the PAC
 - 297 from members of the public
 - 66 from media outlets or other organizations
 - 3 from public bodies

Average number of requests for review filed per month: 394



Training Seminars

The Attorney General's Public Access Bureau conducted 15 training sessions to educate members of the public, government officials and members of the media about their rights and responsibilities under the Freedom of Information Act and the Open Meetings Act. These trainings provide an overview of the laws, as well as guidance on what government officials must do to comply with the laws and how the public and the media can use these sunshine laws to open government throughout Illinois. The Public Access Bureau also coordinates online training covering both FOIA and OMA.

In 2016, the Attorney General's Office sponsored four training sessions throughout the state specifically targeted towards law enforcement agencies and the issues that those public bodies face. These training sessions were well-received. Participants evaluating the program agreed that the training would help them better respond to FOIA requests and understand the exemptions, and comments included "very informative" and "excellent."

Other trainings presented by attorneys in the Public Access Bureau included webinars through the University of Illinois Cooperative Extension Service, advanced training sessions focusing on recent developments in FOIA and OMA for groups such as municipal clerks and participation in panel discussions as part of sessions during larger, statewide conferences.

Any group or entity interested in attending or hosting a training conducted by a representative of the Attorney General's Office should contact Eileen Baumstark-Pratt at 1-866-376-7215 for more information.



Success Stories: Binding Opinions, Non-Binding Determinations & Informal Resolutions

In 2016, the PAC issued 15 binding opinions. The authority to issue binding administrative decisions has allowed the PAC to issue opinions that clarify the law and increase disclosure. In addition to these binding opinions, the PAC has successfully resolved thousands of disputes over the release of records through negotiations with requesters and public bodies and the issuance of non-binding determinations.

Here are some examples of how matters were resolved through binding opinions, non-binding determinations and informal resolutions in 2016. These examples highlight how the PAC is working to increase the public's access to their government.

Binding Opinions

Ill. Att'y Gen. Pub. Acc. Op. No. 16-002, issued February 10, 2016 – The requester sought records from the Illinois State Police (ISP) concerning the death of his daughter. ISP withheld certain responsive records, including crime scene and autopsy photographs, under the personal privacy exemption in section 7(1)(c) of FOIA. The requester narrowed the scope of this Request for Review to those photographs. The Attorney General concluded that a person's personal privacy interest ceases to exist after death, but close relatives retain a privacy interest in postmortem images of a family member. In this case, the requester was appointed executor of his daughter's estate and she was unmarried, signifying that the requester was the holder of the personal privacy interest and that his FOIA request constituted his consent to disclosure of personal information about his daughter to him. Accordingly, the Attorney General concluded that ISP violated FOIA by withholding the responsive photographs.

Ill. Att'y Gen. Pub. Acc. Op. No. 16-006, issued August 9, 2016 – A CNN reporter alleged that the Chicago Police Department (CPD) improperly denied her request for emails related to Laquan McDonald by claiming that emails on personal email accounts are not public records of CPD. In its response to this office, CPD argued that emails on the personal accounts of its employees are not subject to FOIA because CPD does not possess or control those emails. The Attorney General concluded that because public bodies act through their employees and officials, and because of the purpose of FOIA, communications pertaining to the transaction of public business are public records regardless of where they occur; otherwise, public officials could contravene FOIA simply by using personal accounts. The Attorney General further concluded that CPD failed to perform a reasonable search for communications to and from the officers' personal accounts, noting that CPD could potentially fulfill its obligations with respect to such a request by asking the officers to search their private email accounts themselves and turn over any responsive communications. This binding opinion also noted that communications pertaining to private affairs, rather than public business, are not subject to the requirements of FOIA.

Ill. Att'y Gen. Pub. Acc. Op. No. 16-007, issued September 13, 2016 – A member of the public alleged that the Board of Trustees of the Village of Lisle improperly entered a closed session during its June 6, 2016, meeting under the exception in section 2(c)(11) of OMA for pending, probable or imminent litigation. She alleged that she had raised the prospect of litigation in a previous meeting, but had explained during the June 6, 2016, meeting that her group would not be suing. In its response to this office, the Board argued that it entered closed session not because of the requester's previous threat of litigation but because there were other indications of potential litigation. However, the Attorney General concluded



Success Stories continued

that the Board did not enter into the closed session minutes a specific basis for finding that litigation was probable or imminent, as is expressly required by section 2(c)(11) of OMA. Further, the Attorney General concluded that the closed session verbatim recording evinced that the Board primarily discussed the mere possibility of litigation, which is not a sufficient basis to close a meeting under section 2(c)(11). The Village of Lisle filed an administrative review action in Sangamon County contesting the Attorney General's decision, but failed to serve the defendants with summons within 35 days. A motion to dismiss is pending.

III. Att'y Gen. PAC Req. Rev. Ltr. 16-008, issued November 1, 2016 – A member of the public alleged that the City of Collinsville improperly denied her request for emails between the city manager and a private firm that prepared a proposal for a TIF District. The City denied the request as unduly burdensome pursuant to section 3(g). In its response to this office, the City asserted that compliance with the request would require several hours to retrieve and review records totaling 174 pages, which would be an undue burden because it only has one IT employee and its FOIA Officer has additional administrative duties. Given the significant public interest in disclosure of communications between the City's chief administrative officer and a private firm that provides assistance for redevelopment projects, the Attorney General concluded that the City did not demonstrate that the request was unduly burdensome.

III. Att'y Gen. PAC Req. Rev. Ltr. 16-009, issued November 7, 2016 – Five news media outlets alleged that the Village of Downers Grove improperly redacted almost all the information from a police report of a criminal complaint filed by a State Representative, who resigned after filing the complaint. While the matter was under review, the Village issued a supplemental response that revealed that the subject had been extorted by a woman whom he communicated with over the Internet, but continued to withhold certain details of what happened and other information. The Attorney General concluded that: (1) production of records in supplemental response mooted the issue of whether the Village initially violated FOIA by withholding those records; (2) home addresses, personal telephone numbers, account identification numbers and URLs for personal Facebook pages are exempt under 7(1)(b), as are tracking numbers for wire transfers, which constitute personal financial information; (3) Facebook and Skype user names that were akin to or derived from the subject's legal name are not exempt under 7(1)(b); (4) dates of birth are exempt from disclosure under section 7(1)(c) of FOIA; (5) details about how the subject was lured into the extortion scheme and details of the communications are exempt under 7(1)(c); (6) amounts of extortion money paid by the subject are not exempt under 7(1)(c); (7) names and other information identifying suspects who have not been arrested or charged with a crime are exempt under 7(1)(c), but remaining portions of records are not exempt once identifying information has been redacted; (8) records pertaining to Internet companies that reveal specific types of information gathered pursuant to subpoenas and efforts to collaborate with investigators in the Philippines are exempt under section 7(1)(d)(v) as specialized investigative techniques; (9) other emails and documents obtained from companies that transmitted wire transfers reflect routine investigatory steps rather than specialized investigative techniques and therefore are not exempt under 7(1)(d)(v); (10) the protections for the privacy of crime victims in the Illinois Constitution apply to the criminal justice process rather than FOIA and do not even apply to the subject of the records at issue because he was not a victim of a violent crime; (11) a court order prohibiting disclosure of search warrants and complaints for search warrants was a valid basis for withholding those records.



Success Stories continued

Ill. Att’y Gen. Pub. Acc. Op. No. 16-012, issued December 21, 2016 – A member of the public requested information about bonuses received by public employees of the Freeport Housing Authority, which denied the request under section 7(1)(b) and 7(1)(c) of FOIA. The Attorney General concluded that the amount of compensation received by a public employee is not a unique identifier or private information under section 7(1)(b) nor an unwarranted invasion of personal privacy under 7(1)(c). Therefore, disclosure was required by section 2.5 of FOIA. The Authority also contended that it shouldn't have to provide the information because the request was a burdensome form of harassment. Although FOIA contains certain provisions for dealing with burdensome, voluminous and recurrent requests, a public body may not refuse to provide this type of information based on its perception of the requester's motives.

Ill. Att’y Gen. Pub. Acc. Op. No. 16-013, issued December 23, 2016 – A publisher, on behalf of the Lebanon Advertiser, alleged that the City of Lebanon held an improper closed session discussion about an across-the-board raise for non-union City employees under the exception in section 2(c)(1) of OMA. The City contended the discussion was proper based on an appellate court decision from the 1970s, but that decision construed a prior version of OMA that preceded the amendment that created section 2(c)(1). The Attorney General concluded that the exception in section 2(c)(1) of OMA is limited to discussion of certain matters concerning specific, individual employees, and that a public body may not discuss categories of employees or general budgetary matters under that exception.

Non-Binding Determinations

Ill. Att’y Gen. PAC. Req. Rev. Ltr. 37391, issued January 11, 2016 – The Village of Cahokia Board of Trustees refused to allow a member of the public to speak during the designated public comment period because she had not filled out and submitted a form requesting detailed information seven hours in advance of the meeting, in accordance with the Board's rules. After the PAC issued a determination in this matter concluding that the Board violated section 2.06(g) of OMA by enforcing an unreasonable rule to infringe on the woman's statutory right to address the Board, the Board changed its rules for public comment so that it no longer requires those who wish to speak at a meeting to obtain a specific form from the Clerk's Office.

Ill. Att’y Gen. PAC. Req. Rev. Ltr. 37793, issued February 3, 2016 – The editor of The Carbondale Times submitted a Request for Review alleging that the Illinois State Police (ISP) improperly charged copying fees for responsive compact discs after having issued a late response. The PAC determined that ISP waived its opportunity to assess copying fees by responding to the request in an untimely manner. ISP subsequently disclosed the requested CDs to the requester at no charge.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 40027, issued April 4, 2016 – A member of the public submitted a Request for Review alleging that the Board of Directors of the Lost Nation New Landing River Conservancy District of Illinois had failed to properly adjourn to a closed session. The Board's attorney subsequently advised his client of the proper method of entering into closed session, the requirement of a motion specifying what is to be discussed and a vote on that motion, and the requirement to return to open session prior to adjourning the meeting. In addition, the Board posted the closed session minutes on its website and provided the requester with a copy of the closed session verbatim recording of the meeting in question.



Success Stories continued

Ill. Att'y Gen. PAC Req. Rev. Ltr. 41336, issued June 2, 2016 – A woman living in Poland submitted a FOIA request to the Lake County Sheriff's Office seeking post-mortem photographs of her immigrant father, who died in an accident. The Sheriff's Office denied the request under section 7(1)(c) of FOIA as personal information that would cause a clearly unwarranted invasion of personal privacy if disclosed. The PAC determined that decedents do not have a personal privacy interest, and although close family members retain a privacy interest in post-mortem images of their loved ones, the Sheriff's Office did not demonstrate that anyone other than the requester had a greater privacy interest in the photographs. The Sheriff's Office complied with this office's determination, providing the requester with the photographs.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 27199, issued June 3, 2016 – A former member of the Bloomington City Council submitted a Request for Review alleging that the City Council violated OMA during a closed session by discussing matters outside the scope of the exception cited to close the meeting. The PAC reviewed the closed session verbatim recording and concluded that portions of the City Council's discussion exceeded the scope of the cited exception. The city attorney subsequently agreed to disclose portions of records pertaining to the closed session that improperly exceeded the scope of the cited exception.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 41988, issued June 16, 2016 – A reporter for ProPublica submitted a Request for Review alleging that the City of Chicago Department of Aviation improperly withheld emails exchanged by its chief of staff concerning the merger of American Airlines and U.S. Airways. The Department denied the request based on its assertion that the emails were "preliminary" inter-agency deliberative discussions about whether to support the proposed merger. The PAC concluded that some of the emails were exempt from disclosure under the section 7(1)(f) exemption, but an email from a representative of American Airlines was not exempt because it was an external communication from a third party with an independent interest in the city's position on the proposed merger. The department disclosed the email in question to the reporter.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 32580, issued June 17, 2016 – A member of the public submitted a Request for Review alleging that the Village of Niles failed to provide all records responsive to her request for various emails from Village officials and employees. The PAC determined that the Village failed to conduct a reasonable search for records. After receiving the determination, the Village provided the requester with additional records and amended its FOIA policy to ensure both thorough searches of Village recordkeeping systems and consultation with Village officials and employees.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 41455, issued July 6, 2016 – A reporter for the Chicago Reporter filed a Request for Review alleging that the Chicago Police Department (CPD) improperly withheld certain categories of information in arrest reports that he requested in a spreadsheet format. CPD initially denied the request under section 7(1)(a) of FOIA, asserting that federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 prohibit CPD from releasing this information. In its response to this office, CPD acknowledged that it erroneously denied the request for that reason, but stated that it could not provide the requested information because even though it was maintained in an electronic format, it could not be copied into a spreadsheet. The requester disputed that the information could not be provided in the requested spreadsheet format. The PAC concluded that the denial was improper because even if it was not feasible to provide the records in a spreadsheet, section 6(a) of



Success Stories continued

FOIA required CPD to give the reporter the option of receiving the information in either the electronic format in which it was maintained or in paper format. CPD subsequently provided the reporter with a spreadsheet containing the requested information.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 41406, issued August 25, 2016 – A field editor for Patch.com submitted a FOIA request to the City of Joliet seeking police reports concerning an incident involving a member of the Joliet City Council and a Will County Board member. The City redacted portions of the reports containing statements and the officers' narratives pursuant to sections 7(1)(a), 7(1)(b), 7(1)(c) and 7(1)(d)(iv) of FOIA. The PAC determined that some of the witness statements were exempt because the witnesses could be identified even if their names were redacted; however, the statements of the person arrested and the responding officers' observations of what occurred were not exempt under FOIA. The City subsequently disclosed the records.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 40614, issued September 22, 2016 – A member of the public submitted a Request for Review after the Illinois Department of Corrections denied her FOIA request seeking records about the investigation of her son's death while incarcerated. The PAC concluded that portions of the investigative reports were not exempt as preliminary opinions under section 7(1)(f) of FOIA and that the identities and statements of IDOC employees were not exempt under section 7(1)(d)(iv) of FOIA. Thereafter, IDOC furnished the requester with the non-exempt portions of the reports.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 43138, 43509, issued October 4, 2016 – Members of the public submitted Requests for Review alleging that the Collinsville City Council improperly denied their requests for an unedited copy of a video of the City Council's open meeting. The City Council denied the requests under section 7(1)(f) of FOIA, asserting that certain conversations among City Council members were deliberative in nature. The PAC reviewed the open meeting video and determined that the relevant conversations consisted only of frank comments that were not predecisional or deliberative within the scope of section 7(1)(f). The City Council provided the requesters with unedited copies of the requested open session video.

Informal Resolutions

2015 PAC 38266 – A member of the public filed a Request for Review after the Cook County Sheriff's Office denied his request for photographs relating to the investigation of his son's suicide. After mediation by the PAC, and on the basis of Binding Opinion 16-002, the Sheriff's Office agreed to furnish the photographs to the requester.

2016 PAC 40390 – A producer for NBC News/Dateline submitted a Request for Review alleging that the University of Illinois improperly denied its request for copies of photographs taken of an individual while he was a student at the university. The university initially denied the request under section 7(1)(a), which exempts from disclosure information that state or federal law specifically prohibits from being disclosed. The university specifically cited the Family Educational Rights and Privacy Act, which protects the privacy of student education records and prohibits the release of information from a student's education record without the consent of the student, unless the information falls within the scope of "directory



Success Stories continued

information." After receiving the PAC's initial letter of inquiry, the university reconsidered its position and agreed that since the photographs were documentation of the individual's participation on the university's football team they fall within the scope of "directory information" and could be disclosed without the student's consent. The university then disclosed the requested photographs.

2016 PAC 41175 – The publisher of the Lebanon-Advertiser filed a Request for Review alleging that the Lebanon Police Department (LPD) denied his request for arrest records related to a vandalism incident. The police department denied the request, citing an ongoing investigation. After a PAC attorney explained that section 2.15 requires the disclosure of arrest reports, the LPD disclosed records that satisfied the request.

2016 PAC 42802 – A reporter for the Randolph County Herald Tribune filed a Request for Review alleging that the Board of Education for Chester School District 139 had improperly discussed another pending Request for Review during closed session. After discussions with the PAC, the Board agreed to release a recording of the portion of the closed session relating to the other pending Request for Review.

2016 PAC 44523, 44530 – A member of the public and a reporter for the Kane County Chronicle submitted Requests for Review alleging that the member of the public had not been allowed to address members of the St. Charles Public Library Board because the Board had a rule that limited public comment to items on the meeting agenda. After discussions with the PAC, the Board agreed to amend its public comment rules to allow members of the public to comment on matters not on the meeting agenda.

2016 PAC 45242 – A member of the public submitted a FOIA request to the Village of Hillside for police records concerning an incident during which her parcels were lost or stolen. The Village denied the request on the basis that the form was filled out and filed incorrectly. After PAC intervention, the Village agreed to release the records to the requester.

2016 PAC 45313 – A State Journal-Register reporter submitted a FOIA request to the City of Springfield seeking information identifying the applicants for a vacant seat on the City Council. The City initially denied the request under section 7(1)(c) of FOIA as personal information that would cause a clearly unwarranted invasion of personal privacy if disclosed. An attorney in the Public Access Bureau contacted the City and explained that the public interest in the identities of applicants for a public office outweighs the privacy interest in applicants' names. After this discussion, the City disclosed the names of the applicants to the reporter.



The Freedom of Information Act

Attorney General Madigan worked closely with legislators and a coalition of open government advocates to strengthen and clarify the Freedom of Information Act to make it easier for people to obtain public records. In particular, the amended law established a “presumption of transparency” that defines all records as public. The amended law also shortened the initial time a government body has to respond to a FOIA request from seven to five business days and shortened the time for any extension from seven to five business days.

Other critical components of the law have greatly enhanced the public’s access to documents:

Refined Personal Privacy Exemption. Historically, government bodies throughout Illinois improperly justified withholding public records from the public by claiming that disclosure would violate the personal privacy of the individuals mentioned in the document. The amended law significantly limits and defines the personal privacy exemption to make sure that the public can gain access to records that relate to the public duties of government employees or officials.

Copying Charge Limits. The law provides that government bodies must respond to a FOIA request for a document by providing for free the first 50 pages of black and white, letter or legal sized copies and limiting the charge for the remaining black and white, letter or legal sized pages to 15 cents per page.

Electronic Format Requirement. To make it easier for the public to obtain records in an electronic format, the law requires that if a requester asks for a document that is maintained in an electronic format, the government body must furnish it in the electronic format, if feasible.

FOIA Officers. Further, the law requires public bodies to designate FOIA officers who must successfully complete an annual FOIA training prepared by the PAC. In addition, all elected or appointed members of a public body subject to OMA must complete the electronic training developed by the Attorney General’s PAC once during their terms of election or appointment.

FOIA Frequently Asked Questions



The Illinois Freedom of Information Act is designed to ensure that Illinois residents can obtain information about their government. Key changes to FOIA in recent years have made it easier for Illinois residents to hold their state and local governments accountable. To increase awareness about the public's rights and the responsibilities of public officials under FOIA, we prepared the following Frequently Asked Questions (FAQs).

WHO'S WHO UNDER FOIA

Public Access Counselor (PAC) – An attorney in the Attorney General's Office whose responsibility is to ensure compliance with FOIA. The PAC is part of the Public Access Bureau in the Attorney General's Office, which includes both attorneys and professional support staff members working to respond to FOIA and OMA issues raised by the public, members of the media and government officials. Working under the direction and supervision of the Attorney General, the PAC has the authority to review requests for documents and to determine whether those documents should have been produced under FOIA. The PAC also has the authority to determine whether a public body has violated OMA. As part of this public access work, the Attorney General has subpoena power, may issue advisory opinions to guide public bodies, may issue binding opinions in FOIA disputes and may sue to enforce binding opinions.

Public Body – FOIA defines "public body" as "all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof and a School Finance Authority created under Article 1E of the School Code." FOIA provides that a "'public body' does not include a child death review team, the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act," or a regional youth advisory board or the Statewide Youth Advisory Board established under the Department of Children and Family Services Statewide Youth Advisory Board Act.

FOIA Officer – A person appointed by the "public body." The FOIA officer's responsibility is to receive FOIA requests from the public and to send responses in compliance with FOIA. FOIA requires that each public body appoint one or more FOIA officers who must complete an annual electronic training program developed by the Attorney General's PAC. The Attorney General's Office makes the electronic training program available to all FOIA officers on the Attorney General's website.

Public Records – FOIA defines "public records" as "all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." A few examples of public records available under FOIA are: orders; rules; reports or studies; contracts; names, titles and salaries of public employees; and the voting records of public bodies. Information can be available in electronic as well as paper format.



FOIA Frequently Asked Questions continued

GENERAL INFORMATION

What is FOIA?

The Freedom of Information Act (FOIA) is a state statute that provides the public with the right to access government documents and records. The premise behind FOIA is that the public has a right to know what the government is doing. The law provides that a person can ask a public body for a copy of its records on a specific subject and the public body must provide those records, unless there is an exemption in the statute that protects those records from disclosure.

Who is subject to FOIA?

Public bodies are subject to FOIA. The judiciary is not subject to FOIA, but court records and proceedings generally are open to the public under other Illinois laws.

Who can file a FOIA request?

Anyone. Any person, group, association, corporation, firm, partnership or organization has the right to file a FOIA request to any state or local public body, including any city, township or county office.

HOW TO MAKE A FOIA REQUEST

I need information from a public body but I am not quite sure where to start or what to request.

What can I do?

If you would like to obtain information from a public body, you should begin by writing down a list of the information you are seeking. Then prepare a letter or email to that public body's office. If you are not sure to whom to address the letter, contact the public body's main office and request the contact information for the FOIA officer.

It is helpful if your correspondence includes your name, your address, the date and a daytime phone number so that the public body can contact you if they have any questions. Describe the information you are seeking with sufficient detail so that the public body can find the requested records. Providing as much information as possible in your request on the subject matter may expedite the public body's search process.

You do not need to describe the document specifically and accurately by the same name the public body uses. As long as the public body understands what you are requesting, it must release that information, even if you do not call it by the same name the public body uses.

Public bodies cannot require that the public submit FOIA requests on a specific form or in a specific format. Public bodies, however, can require that FOIA requests be submitted in writing.



FOIA Frequently Asked Questions continued

Public bodies must accept requests by mail, personal delivery, fax, email, or other means available to the public body. Public bodies may accept oral FOIA requests but are not required to do so.

Additionally, each public body must develop and make available upon request a list of documents that the public body will immediately provide to a requester. Each public body also must maintain a reasonably current list of all types or categories of records under its control, and the list should be reasonably detailed to aid persons in obtaining access to public records. This list must be available for inspection and copying.

What should I include in the FOIA request?

On your written request, include your name, address, the date and a daytime phone number so that the public body can contact you if they have any questions. Provide as much information as possible on the subject matter. This will help expedite the search process.

Can a public body require that a FOIA request be submitted on a certain form or in a certain format?

No. While public bodies may offer a form for FOIA requests, they cannot require that you use a specific form to make your request. Public bodies may accept oral FOIA requests but are not required to do so. Public bodies can require that FOIA requests be submitted in writing, but they must accept requests by mail, personal delivery, fax, email or other means available.

To whom do I submit a FOIA request?

FOIA requests should be submitted to the public body's designated FOIA officer. Every public body must prominently display at its office and make available certain information, including the name(s) of its FOIA officer(s). In addition, the public body must display and make available:

- Information on how to submit a FOIA request; and
- A brief description of the office, including its purpose, budget and number of employees.

Any public body that has a website must also post this information on that website.

How do I know who within a public body should receive my FOIA request?

Each public body must prominently display and make available upon request a directory designating the FOIA officer(s) for that body and the address where FOIA requests should be sent. This information must also be posted on the public body's website, if it has one.

What if I don't use the same name for a document that the public body uses? Can the public body deny my request for that reason?

No, the public body cannot deny the request just because you called the document by a different name. You do not need to describe the document specifically and accurately by the same name the public body



FOIA Frequently Asked Questions continued

uses. As long as the public body understands what you are requesting, they must release that information, even if you do not call it by the same name the public body uses.

How many days does the public body have to respond to my FOIA request?

A public body must respond to a FOIA request within 5 business days after the public body receives the request. Day 1 of the 5-day timeline is the first business day after the request is received by the public body. The date that the request was received by the public body does not count as “Day 1.” The public body may extend that time period for an additional 5 business days from the original due date if:

- The requested information is stored at a different location;
- The request requires the collection of a substantial number of documents;
- The request requires an extensive search;
- The requested records have not been located and require additional effort to find;
- The requested records need to be reviewed by staff who can determine whether they are exempt from FOIA;
- The requested records cannot be produced without unduly burdening the public body or interfering with its operations; or
- The request requires the public body to consult with another public body that has substantial interest in the subject matter of the request.

If additional time is needed, the public body must notify the requester in writing within 5 business days after the receipt of the request of the statutory reasons for the extension and when the requested information will be produced.

When does the 5 business day time period start?

On the first business day after the public body receives the request.

What is a “business day” or “working day”?

A “business day” or “working day” is a regular day of the week (Monday through Friday) when public offices and most businesses are open. Saturdays, Sundays and state holidays are not business days and cannot be counted in the 5 business day time period.

What is the incentive for a public body to respond to my request within 5 business days (or 10 business days if extended)?

Aside from the potential that a court ultimately could impose a civil penalty of between \$2,500 and \$5,000 per violation, public bodies have an additional incentive to respond within the time limits set forth. In the event a public body fails to respond within 5 business days, it cannot charge for reproduction costs when it does produce the document or treat the request as unduly burdensome.



Can I enter into an agreement with the public body to extend the deadline to respond?

Yes, but the agreement must be in writing.

Can the public body ask me why I want the information?

No, except to determine if the request is for commercial reasons or if the requester seeks a fee waiver. See below for more details on commercial requests and fee waivers.

FEES

Can the public body charge for copies?

Yes, but the fees are limited. For black and white, letter or legal sized copies (8 ½ x 11 or 8 ½ x 14), the first 50 pages are free, and any additional pages can cost no more than 15 cents a page. For color copies or abnormal sized copies, the public body can charge the actual cost of copying.

Can a public body charge for electronic copies?

Yes, but only the actual cost of the recording medium. For example, if information is produced on CDs, the public body may only charge the actual cost of purchasing the CDs. If a public body treats a FOIA request as voluminous, then it may charge certain fees based on megabytes of data provided, as detailed in the statute.

Is it possible for a public body to waive the copying fees?

Yes. Public bodies may waive or reduce copying fees if disclosure is in the public interest.

A waiver or reduction may be available if:

- The request is for information on the health, safety and welfare or the legal rights of the general public;
- The requester intends to disseminate the information; or
- No personal or commercial benefit will be received from document disclosure.

GETTING INFORMATION IN AN ELECTRONIC FORMAT

Can I request the documents in electronic form?

Yes, and the public body must provide you with those electronic documents in your requested format, if that is feasible for the public body. If that format is not available to the public body, they must provide the documents in the electronic format in which they are kept or on paper, at the option of the requester.



FOIA Frequently Asked Questions continued

If the public body has a database and the information I am seeking requires that the public body do a search of that database, does the public body have to conduct that search?

Yes, and the public body cannot charge you for that search.

Are emails subject to FOIA?

Yes. All electronic communications (as long as they do not fall within an exemption) are subject to FOIA.

FOIA OFFICERS

What is a “FOIA officer”?

A FOIA officer is a person appointed by the public body to ensure that the public body complies with FOIA. The FOIA officer’s responsibility is to receive FOIA requests from the public and to send responses in compliance with FOIA. FOIA requires that each public body appoint at least one FOIA officer and that the FOIA officer(s) complete an electronic training program developed by the Attorney General’s PAC. The training program must be completed annually.

Is every public body required to have a designated FOIA officer?

Yes. Every public body must prominently display at its office certain information, including the name(s) of its FOIA officer(s). In addition, the office must display:

- Information regarding how to submit a FOIA request; and
- A brief description of the office, including its purpose, budget and number of employees.

Any public body that has a website must also post this information on its website.

If the public body does not display the FOIA officer’s information, what should I do?

You can address the FOIA request to "FOIA Officer" using a general mailing or email address for the public body; a public body is responsible for forwarding all FOIA requests to its FOIA officer. However, the public body is required to post the name(s) of the FOIA officer(s), along with information concerning how to make a FOIA request, at the office of the public body as well as on any websites maintained by the public body. You may wish to call the public body to report that you were unable to locate the required information or contact the Attorney General’s PAC.

WHAT TO DO IF THE PUBLIC BODY DOES NOT RESPOND

What can I do if the public body doesn’t respond to my FOIA request?

If the public body does not respond to your request within 5 business days after receiving it, then their inaction is considered a denial of your request. If that occurs, you can either file a Request for Review with the Attorney General’s PAC or file a case in court.



WHAT TO DO IF YOUR FOIA REQUEST IS DENIED

What must the public body include in a denial?

The denial must be in writing and must reference a specific legal reason under FOIA to justify the non-disclosure. A public body has the burden of proving by clear and convincing evidence that the information is exempt from disclosure. The denial must also inform the requester of the right to seek review of the issue by the PAC in the Attorney General's Office, with the PAC's contact information, as well as the right to seek judicial review by filing a court case.

What can I do if the public body denies my request for information?

You can either file a Request for Review with the Attorney General's PAC or file a lawsuit in court.

HOW TO FILE A REQUEST FOR REVIEW WITH THE PAC

First, what is a Request for Review?

A Request for Review is correspondence that a requester may submit to the PAC if his or her request to inspect or copy a public record has been denied. This letter or email is a formal way of asking the PAC to take a look at the request and the public body's response (or lack thereof) and determine if a FOIA violation has occurred. The request must be in writing, must be signed by the requester and must include (1) a copy of the FOIA request and (2) any responses, including denial letters, from the public body. It must be submitted within 60 calendar days of the public body's final response (or the date upon which the response was due).

Is there a deadline for submitting a Request for Review?

Yes. The requester must submit a Request for Review to the PAC within 60 calendar days after the date of the final denial from the public body (or the date upon which the response was due).

How do I contact the PAC in the Attorney General's Office?

The PAC is a part of the Public Access Bureau in the Attorney General's Office. She may be contacted as follows:

Sarah Pratt
Public Access Counselor
Office of the Attorney General
500 S. 2nd Street
Springfield, Illinois 62701
Email: publicaccess@atg.state.il.us
FOIA Hotline: 1-877-299-FOIA (1-877-299-3642)



FOIA Frequently Asked Questions continued

What does the PAC do with my Request for Review?

The PAC will review your request and do one of three things:

1. Decide that no further action is necessary. If the PAC decides that the alleged violation is unfounded and no further action is necessary, the PAC will inform you and the public body of that decision.
2. Request more information from the public body. If more information is needed to review the issue, the PAC may, within 7 business days after receiving the Request for Review, send a copy of the request to the public body and ask for any records the PAC needs to complete the review. The public body has 7 business days to provide the requested information. The Attorney General, through the PAC, has the authority to issue a subpoena if the public body fails to fully respond.
3. The PAC may also try to resolve your FOIA dispute with the public body through informal efforts.

When will the PAC issue a final decision?

If the PAC decides to issue a binding opinion, the PAC will issue that opinion within 60 calendar days after receiving the Request for Review from the requester. The PAC may extend the 60-day time period by 30 business days by sending a written notice to the requester and the public body.

What are the different possible outcomes of a Request for Review by the PAC?

There are multiple ways the PAC may respond to a Request for Review:

- Work to resolve your FOIA dispute with the public body. 5 ILCS 140/9.5(f). The PAC may choose work informally to resolve the matter by means other than the issuance of a binding opinion. One of the ways that the PAC may work to informally resolve the matter is by issuing a non-binding determination letter. The PAC's decision to decline to issue a binding opinion is not reviewable.
- Review the issues in your FOIA dispute and determine that no further action is necessary. 5 ILCS 140/9.5(c). If the PAC decides that the alleged violations of FOIA are unfounded, the PAC will advise the requester and the public body of that decision. The PAC will not conduct any further review.
- Issue a binding opinion to resolve the FOIA dispute. 5 ILCS 140/9.5(f). The PAC will review any information needed to analyze the FOIA dispute that you have with the public body and any additional information that you or the public body choose to provide. If the PAC decides to issue a binding opinion, the PAC must issue that opinion within 60 calendar days after receiving the Request for Review, unless the PAC extends the time by no more than 30 business days. If the PAC's opinion orders the public body to produce records, the public body may appeal the opinion to the circuit court. If the public body does not appeal the opinion and fails to disclose the records as ordered by the opinion, the Attorney General's Office may sue the public body to enforce the opinion. If the opinion concludes that the records fall within a FOIA exemption and need not be disclosed, the requester may appeal the opinion to the circuit court.



Can the PAC issue advisory opinions to public bodies?

Yes. The PAC may assist any public body by issuing an advisory opinion to provide guidance on how to comply with FOIA. 5 ILCS 140/9.5(h). The public body may request an advisory opinion to obtain guidance on FOIA compliance. The request must contain sufficient accurate facts from which a determination can be made. The PAC may request additional information from the public body to facilitate the review. A public body that relies in good faith on an advisory opinion of the PAC is not liable for penalties in a subsequent lawsuit, so long as the facts upon which the opinion is based have been fully disclosed to the PAC.

Do I have to file a Request for Review with the PAC before I file a FOIA lawsuit in court?

No. You can file a FOIA lawsuit in court after you receive a denial from the public body, or after the PAC concludes a review of the matter. If the PAC decides to issue a binding opinion and you disagree with the opinion of the PAC, you can appeal the PAC's decision to the circuit court. You should be aware that if you ask the PAC to review a matter and then decide, before the PAC completes the review, to go ahead and file a lawsuit without waiting for the PAC's decision, the PAC will immediately stop working on your Request for Review to allow your lawsuit to move forward.

What's the difference between my two appeal options: filing a Request for Review with the PAC or filing a suit in court?

If the PAC issues a binding opinion deciding your case, then that opinion carries significant weight. If the losing party decides to appeal it to court, the court must give deference to the PAC's opinion and can only overturn it if it is clearly erroneous. If you decide not to seek assistance from the PAC and instead go straight to court, the public body has the burden to show that its denial was correct through clear and convincing evidence.

EXEMPTIONS – RECORDS THAT A PUBLIC BODY MAY WITHHOLD FROM DISCLOSURE

What is considered a “public record”?

“Public records” are defined in FOIA as “all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.” 5 ILCS 140/2(c). Given this broad definition, FOIA is intended to cover any document, regardless of form, that pertains to government business.



FOIA Frequently Asked Questions continued

Does “public record” include electronic information?

Yes. FOIA defines public records to include electronic documents and communications. When a person requests a record that is maintained in an electronic format, the public body must provide it in the electronic format specified by the request, if that is feasible for the public body. If it is not feasible, the public body must present the information in the format in which it is maintained by the public body or in a paper format at the option of the requester. The public body may charge a fee for the actual cost of purchasing the recording medium, such as a CD, but may not charge a fee for its search for or review of the information.

What kind of information can a public body decline to provide to me in response to a FOIA request?

FOIA has a presumption that all information is public, unless the public body proves otherwise. But there are several exceptions to public disclosure that include but are not limited to:

- Private information is exempt from disclosure under FOIA. FOIA defines “private information” as “unique identifiers, including a person’s social security number, driver’s license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal e-mail addresses.” Under FOIA, “private information also includes home addresses and personal license plate numbers, except as otherwise provided by law or when compiled without possibility of attribution to any person.”
- Personal information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the person who is the subject of the information. Under FOIA, the “unwarranted invasion of personal privacy” means the “disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject’s right to privacy outweighs any legitimate public interest in obtaining the information.” Disclosing information that relates to the public duties of public employees is not considered an invasion of personal privacy.
- Law enforcement records that, if disclosed, would interfere with a pending or reasonably contemplated proceeding or that would disclose the identity of a confidential source.
- Information that, if disclosed, might endanger anyone’s life or physical safety.
- Preliminary drafts or notes in which opinions are expressed or policies are formulated, unless the record is publicly cited and identified by the head of the public body.
- Business trade secrets or commercial or financial information that is proprietary, privileged or confidential and that, if disclosed, would cause competitive harm to the person or business.
- Proposals and bids for any contract, until a final selection is made.
- Requests that are “unduly burdensome.” (See next question.)



What does “unduly burdensome” mean?

An exemption exists for requests that are unduly burdensome. A request may be considered unduly burdensome if there is no way to narrow the request, and the burden on the public body to produce the information outweighs the public interest in the information. However, before relying on this exemption, the public body must first give the requester an opportunity to reduce the request to a manageable size. If it is still unduly burdensome, the public body must explain in writing the reasons why the request is unduly burdensome and the extent to which compliance will burden the operations of the public body. Such a response is considered a denial.

What is a “clearly unwarranted invasion of personal privacy”?

FOIA contains an exemption for records that, if disclosed, would result in a “clearly unwarranted invasion of personal privacy.” An “unwarranted invasion of personal privacy” means the “disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject’s right to privacy outweighs any legitimate public interest in obtaining the information.” Under FOIA, disclosing information that relates to the public duties of public employees is not considered an invasion of personal privacy.

COMMERCIAL REQUESTS

What is a request for information made for a commercial purpose?

A request is made for a commercial purpose when the requester seeks to use part or all of the public records for sale, resale, or solicitation or advertisement for sales or services. Requests by the news media, not-for-profit organizations, and scientific or academic institutions are not considered commercial information requests.

Are commercial information requests treated differently?

Yes. A public body has 21 business days to respond to a request for information that is made for a commercial purpose. The public body can either: (1) provide the requested records; (2) advise when the records will be provided and the costs; (3) deny the request (if it falls under an exception); or (4) advise the requester that the request is unduly burdensome.

Can the public body charge for responding to a commercial request?

FOIA allows public bodies to charge up to \$10 for each hour spent by personnel in searching for, retrieving or examining for redactions a record requested in a commercial request, except that public bodies cannot charge for the first 8 hours. A public body may also charge the actual cost of retrieving and transporting public records from an off-site storage facility maintained by a third-party storage company under contract with the public body. If a public body imposes such fees, it must provide the requester with an accounting of all fees, costs and personnel hours charged.



FOIA Frequently Asked Questions continued

REDACTIONS

Can a public body remove or black out information from produced documents?

Yes, if a record contains information that is exempt from disclosure under FOIA, a public body can remove or black out that exempt information from the public records. This is called “redaction.” The public body must, however, produce the remaining information.

OTHER FOIA QUESTIONS

Does a request for a copy of an ordinance require a FOIA request?

No. Ordinances are public documents that should be immediately available to the public without a FOIA request.

Can a public body allow you to inspect but not copy public documents?

No. They must allow you to inspect and obtain copies of public documents.

Can a public body ask the Attorney General’s PAC for advice regarding compliance with FOIA?

Yes, a public body can ask the Attorney General’s PAC for guidance on how to comply with FOIA. For example, if a public body expects to receive FOIA requests for a certain record or category of records that it maintains and is not certain if those records must be disclosed under FOIA, the public body may contact the Public Access Bureau through the FOIA hotline (1-877-299-3642) or by email (publicaccess@atg.state.il.us) for assistance. A public body may also ask the PAC for an advisory opinion regarding whether the record(s) must be disclosed under FOIA or fall under a FOIA exemption. The Attorney General’s PAC is not required by law to issue an advisory opinion in response to a request.

To ask for an advisory opinion from the Attorney General’s PAC, the head of the public body or its attorney must send a written request to the PAC. The request must contain sufficient accurate facts for the PAC to make a determination. The PAC may request additional information from the public body to assist in the review of the issue.

What happens if the public body relies on an advisory opinion from the PAC in responding to a FOIA request but still ends up being sued by a requester?

A public body that relies in good faith on an advisory opinion of the Attorney General’s PAC in responding to a request is not liable for penalties under FOIA, as long as the public body fully and fairly disclosed to the PAC the facts upon which the opinion was based.

The Open Meetings Act



Attorney General Madigan has helped pass legislation that reformed and strengthened the Open Meetings Act to ensure that all Illinoisans have access to their government.

The law's groundbreaking provisions codify the Public Access Counselor position within the Attorney General's Office and explicitly authorize the PAC to review and determine whether a government body has violated OMA. The law gives the PAC authority to subpoena needed information, issue advisory opinions to guide government bodies, issue binding opinions to resolve disputes and sue to enforce the binding opinions.

By creating a PAC with binding opinion authority to fight for an open and accountable government, this law has put Illinois at the forefront nationally and has given taxpayers a greater ability to know what their government is doing.

The law also requires public bodies to appoint OMA designees who are required to successfully complete an annual OMA training program prepared by the PAC. In addition, all elected or appointed members of a public body subject to OMA must complete the electronic training program developed by the Attorney General's PAC once during their terms of election or appointment.



OMA Frequently Asked Questions

The Open Meetings Act is designed to ensure that Illinois residents have access to their government. Attorney General Lisa Madigan has worked with legislators and a diverse group of individuals and organizations to strengthen the transparency laws in Illinois and hold government more accountable.

WHO'S WHO UNDER OMA

Public Access Counselor (PAC) – An attorney in the Attorney General’s Office who works to ensure compliance with OMA and FOIA. The PAC is a part of the Public Access Bureau in the Attorney General’s Office, which includes attorneys and professional support staff members working to respond to OMA and FOIA issues raised by the public, members of the media and government officials. Working under the direction of the Attorney General, the PAC has the authority to determine whether a public body has violated OMA. The PAC also has the authority to review requests for documents under FOIA and determine whether those documents should have been disclosed. As part of this public access work, the Attorney General has subpoena power, may issue advisory opinions to guide public bodies, may issue binding opinions in OMA and FOIA disputes and may sue to enforce binding opinions.

Public Body – OMA defines “public body” to include “all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof.”

Under OMA, “public body” also includes tourism boards and convention or civic center boards located in counties that are contiguous to the Mississippi River with populations of more than 250,000 but less than 300,000. OMA specifically provides that “public body” does not include a child death review team, the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act, or an ethics commission acting under the State Officials and Employees Ethics Act, a regional youth advisory board or the Statewide Youth Advisory Board established under the Department of Children and Family Services Statewide Youth Advisory Board Act, or the Illinois Independent Tax Tribunal.

Meeting – OMA defines “meeting” to include “any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business. Accordingly, for a 5-member public body, 3 members of the body constitute a quorum and the affirmative vote of 3 members is necessary to adopt any motion, resolution, or ordinance, unless a greater number is otherwise required.”



OMA Frequently Asked Questions continued

GENERAL INFORMATION

What is OMA?

The Open Meetings Act (OMA) is a state law that requires that meetings of public bodies be open to the public except in certain specific, limited situations (discussed in more detail below) where the law authorizes the public body to close a meeting. OMA also provides that the public must be given advance notice of the time, place and subject matter of meetings of public bodies.

What is the difference between FOIA and OMA?

FOIA applies when a member of the public is seeking access to public records. OMA is intended to ensure that the actions of public bodies are conducted in the open, through public meetings, and that the public is able to observe the deliberations behind those actions.

What type of “public body” is covered by OMA?

The “public bodies” covered by OMA include all legislative, executive, administrative or advisory bodies of:

- the State
- counties
- townships, cities, villages or incorporated towns
- school districts
- municipal corporations

“Public bodies” also include all committees, subcommittees and subsidiary bodies of public bodies. Examples of “public bodies” include everything from park district boards to city councils. “Public bodies” include, but are not limited to, any entity that is supported in whole or in part by tax revenue or which expends tax revenue.

PUBLIC MEETING

What is a “meeting”? How many members of the public body have to be present before OMA requirements apply?

A “meeting” under OMA is a gathering of a majority of a quorum of the members of a public body for the purpose of discussing public business. For example, for a 7-member board with a quorum of 4, a majority of the quorum would be 3. Under OMA, 5-member bodies have a 3-member quorum and require the affirmative vote of 3 members to adopt any motion, resolution or ordinance, unless a greater number is otherwise required.



PUBLIC NOTICE OF A MEETING

What is public notice?

Giving public notice of a meeting means that the public body must provide the date, time and location of a meeting.

When and how does a notice of a regular meeting have to be provided by a public body?

At the beginning of each calendar or fiscal year, every public body must create and make available to the public the schedule for regular meetings that year, including the dates, times and location of the meetings. Notice shall be given by posting a copy of the notice at the principal office of the body holding the meeting or, if no such office exists, at the building in which the meeting is to be held. If the public body has a website maintained by its own full-time staff, then notice of all meetings must also be posted on that website.

If the public body changes the regular meeting schedule, it must give 10 calendar days' notice of the change by publicizing the change in the newspaper and by posting information concerning the schedule change at the principal office of the public body. Newspaper publication is not required for rescheduling a single meeting.

The public body must post an agenda (see below) for the particular meeting at the principal office of the public body, at the location of the meeting and on the public body's website (if it has a website maintained by its own full-time staff) at least 48 hours in advance of the meeting. If a notice or agenda is not continuously available for the full 48-hour period due to actions outside of the control of the public body, then the lack of availability does not invalidate any meeting or action taken at a meeting.

MEETING AGENDA

What is an agenda?

An agenda is a list of the items to be acted upon or discussed during a meeting.

Can the agenda be changed?

Although a public body may remove an agenda item that it determines will not be addressed or add a new topic for discussion solely to increase transparency, a public body cannot add an item to the agenda on which action will be taken less than 48 hours before the meeting.

Can the public body take action on items not on the agenda of regular meetings?

No. While the public body can discuss items that are not on the agenda of a regular meeting, the public body cannot take action or make any decision with regard to items or topics not on the agenda of a regular meeting. It is important to note that at a special or emergency meeting, unlike a regular meeting,



OMA Frequently Asked Questions continued

a public body cannot even discuss items that did not appear on the agenda for the special or emergency meeting.

Is a public body required to allow a member of the public to speak at an open meeting?

Yes. OMA requires that public bodies give members of the public an opportunity to address public officials at public meetings. The procedure for public comment is governed by rules established and recorded by the public body.

TIME AND LOCATION OF A MEETING

When and where must an open public meeting be held?

A public body must hold a meeting at a specific time and place that is convenient and open to the public. A public body cannot hold a meeting on a public holiday, unless the regularly scheduled meeting falls on that holiday.

RECORDING OF A MEETING

May a member of the public record an open meeting?

Yes. Any member of the public can record the meeting by tape, film or other means, subject to some reasonable restrictions.

Is the public body required to take minutes of its open meetings?

Yes. The minutes must include:

- the date, time and place of the meeting;
- a list of the members present and absent from the meeting, and whether they attended in person, by phone or by video;
- a summary of the discussion of all matters proposed, deliberated or decided; and
- a record of any votes taken.

It is important to note that subsidiary bodies of public bodies (such as committees and subcommittees) are also required to take minutes of meetings.

A public body must make minutes of the meeting available for public inspection and post them on the public body's website (if it has one) within 7 calendar days after the minutes are approved by the public body. Typically, the minutes are approved at the next board meeting.



CLOSED MEETINGS – NOT OPEN TO THE PUBLIC

When can a meeting be “closed”? Can a public body ever meet in private?

Section 2(c) of the Open Meetings Act provides that a public body can close a meeting to the public only when the following topics are to be considered:

- the appointment, employment, compensation, discipline, performance or dismissal of a specific employee or legal counsel for the public body;
- collective negotiating matters or deliberations concerning salary schedules for one or more classes of employees;
- discipline or removal of an occupant of a public office or appointment of an individual to fill a vacant public office;
- evidence or testimony received in a hearing, provided that the body is a quasi-adjudicative body and prepares and makes available for public inspection a written decision setting forth its determinative reasoning;
- the purchase or lease of real property by the public body;
- the setting of a price for sale or lease of property owned by the public body;
- the sale or purchase of securities, investments or investment contracts;
- security procedures;
- student disciplinary cases;
- the placement of individual students in special education programs and other matters relating to individual students;
- pending or probable litigation against, affecting or on behalf of the public body;
- the establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act;
- conciliation of complaints of discrimination in the sale or rental of housing;
- ongoing, prior or future criminal investigations, when discussed by public bodies with criminal investigatory responsibilities;
- professional ethics or performance when discussed by an advisory body to a licensing or regulatory agency;
- discussions regarding self-evaluation, practices and procedures or professional ethics with representatives of statewide associations;
- the recruitment, credentialing, discipline or formal peer review of physicians or other health care professionals for a hospital or other health care center;
- deliberations for decisions of the Prisoner Review Board;
- review or discussion of applications received under the Experimental Organ Transplantation Procedures Act;
- classification and discussion of confidential matters of the State Government Suggestion Award Board;
- discussion of the minutes of a meeting that was lawfully closed under OMA;
- deliberations of the State Emergency Medical Services Disciplinary Review Board;



OMA Frequently Asked Questions continued

- the operation by a municipality of a municipal utility or power agency or natural gas agency regarding contracts relating to the purchase, sale or delivery of electricity or natural gas, or the results or conclusions of lead forecast studies;
- meetings of a residential health care facility resident sexual assault and death review team;
- an independent team of experts meeting under Brian’s Law;
- a mortality review team appointed under the Department of Juvenile Justice Mortality Review Team Act;
- discussion of certain confidential information by an elder abuse fatality review team;
- correspondence and records that may not be disclosed pertaining to the Public Aid Code;
- meetings between internal or external audit committees, finance committees and their equivalents when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds and fraud interviews conducted in accordance with generally accepted U.S. auditing standards;
- meetings and deliberations for decisions of the Concealed Carry Licensing Review Board under the Firearm Concealed Carry Act;
- meetings between the Regional Transportation Authority Board and its Service Boards when the discussion involves review of certain employment contracts; and
- meetings or portions of meetings of the advisory committee and peer review subcommittee created under Section 320 of the Illinois Controlled Substances Act during which specific controlled substance prescriber, dispenser or patient information is discussed.

A public body can close a meeting to the public only if its members are discussing a topic that is listed in Section 2(c) of the Open Meetings Act.

How can a public body “close” a public meeting?

If a public body wants to hold a closed meeting or wants to close a portion of an open meeting, the public body must vote to close the meeting by a majority vote of a quorum present in an open meeting. The public body must also cite the specific exemption in OMA that applies and allows the closure of the meeting.

Who can attend a “closed” meeting?

Only the members of the public body and others who are directly involved in the matter that is the basis for the closed meeting may attend the meeting. For example, witnesses giving testimony regarding a complaint against an employee may attend a meeting that is closed for purposes of discussing discipline of an employee.

Can a public body take binding action in a closed session?

No. A public body may not take any final action in a closed meeting.



OMA Frequently Asked Questions continued

How must a public body record a closed meeting?

A public body must make a verbatim record, audio or video, of any closed meeting and take minutes of the meeting. Semi-annually, the public body must meet to review the minutes of any closed meetings that occurred and determine whether the minutes of those closed meetings need to remain confidential. If they determine that it is no longer necessary to have the minutes remain confidential, they must make the minutes available to the public.

ATTENDING A MEETING BY PHONE OR VIDEO CONFERENCE

Can a member of a public body attend a meeting by telephone or video conference and not in person?

A member of a public body may attend a meeting by telephone or video conference only in accordance with and to the extent allowed by the rules of the public body. 5 ILCS 120/7(c). If a quorum of the members of the public body is physically present, then a majority of the public body may allow a member to attend by video or telephone conference if the member is prevented from physically attending because of: (1) personal illness or disability; (2) employment purposes or the business of the public body; or (3) family or other emergency. If a member wants to attend the meeting by video or telephone conference, he or she must notify the recording secretary or clerk of the public body before the meeting, unless advance notice is impractical.

IF YOU BELIEVE THAT A PUBLIC BODY HAS VIOLATED THE OPEN MEETINGS ACT, YOU CAN TAKE ACTION. HERE IS WHAT YOU NEED TO KNOW.

What can I do if I think a public body has violated OMA?

Within 60 calendar days from when the alleged violation occurred, you can file a Request for Review with the PAC at the Office of the Attorney General, or you can bring a civil action in circuit court against the public body. If facts concerning an OMA violation are not discovered within the 60-day period, but are discovered up to two years after the alleged violation by a person using reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.

What is a Request for Review?

A Request for Review is correspondence sent to the PAC that lays out the basis for an alleged violation of OMA. The request must be made in writing, must be signed by the requester and must include a summary of the facts supporting the allegation.

Is there a deadline for submitting a Request for Review?

Yes. A person seeking review of an issue by the PAC must send the Request for Review to the PAC within 60 calendar days after the date of the alleged OMA violation. As of August 19, 2015, if facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date



OMA Frequently Asked Questions continued

not exceeding two years after the alleged violation by a person using reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.

What happens when I submit a Request for Review with the PAC?

When the PAC receives a written Request for Review from a member of the public, the PAC has seven working days to determine whether further action is warranted. 5 ILCS120.3.5(b). If the PAC reviews the Request for Review and determines that further action is warranted, she must forward a copy of the Request for Review to the public body within 7 business days of receiving the request. At that time, the PAC can specify records or other documents that the public body must furnish to facilitate the PAC's review. The public body must provide the requested records within 7 business days of receiving the request from the PAC.

Within 7 business days of receiving the request from the PAC, the public body may also, but is not required to, provide an answer to the allegations in the Request for Review. The answer may take the form of a letter, brief or memorandum.

The PAC must forward a copy of the public body's answer (with any confidential information redacted) to the member of the public who requested the review of the alleged OMA violation. The requester then may, but is not required to, respond in writing to the public body's answer. If the requester decides to respond, he or she must do so within 7 working days of receiving the public body's answer. The requester must send a copy of his or her response to the public body.

Once she has all of the necessary information to analyze the OMA issue and determine whether the public body violated the law, the PAC may:

1. Decide that no further review is necessary and that the allegations are unfounded.
2. Work informally to resolve the dispute. The PAC can decide to work informally to try to resolve the dispute between the member of the public and the public body.
3. Issue an opinion resolving the matter. If the PAC decides to issue a binding opinion, she must issue the opinion within 60 days after receiving all the documents necessary to make a determination of the issues raised in the Request for Review. Under OMA, the PAC may extend this time by up to 21 business days by sending written notice to the requester and the public body.

What kind of information can the PAC request as she reviews the Request for Review?

The PAC can request any information necessary to decide whether an OMA violation has occurred. Under OMA, the PAC has the same authority as a court to request and review any audio or video tapes of a closed meeting.

Do I have to file a Request for Review with the PAC before I can file suit in court?

No.



Can I bring my own OMA action in court?

Yes.

What are the penalties that a public body may incur if it violates OMA?

Criminal Penalties: Under the law, a state's attorney may bring a criminal action for a violation of OMA. A violation of OMA is a Class C misdemeanor, which is punishable by up to 30 days in jail and a fine of up to \$1,000.

Civil Penalties: In a civil lawsuit for a violation of OMA, a court may take a number of actions, including: (1) ordering a public body to conduct an open meeting; (2) granting an injunction against future violations by the public body; (3) ordering the public body to make available to the public the minutes of a closed meeting; (4) declaring null and void any final action taken at a closed meeting in violation of OMA; or (5) awarding any other relief that the court deems appropriate. The court also may require the public body to pay the attorney's fees and costs of the person who filed the civil lawsuit alleging the OMA violation.

How do I contact the PAC?

The PAC is a part of the Public Access Bureau in the Attorney General's Office. She may be contacted as follows:

Sarah Pratt
Public Access Counselor
Office of the Attorney General
500 S. 2nd Street
Springfield, Illinois 62701
Email: publicaccess@atg.state.il.us
FOIA Hotline: 1-877-299-FOIA (1-877-299-3642)

If a member of the public believes that a public body has improperly denied his or her FOIA request, or that a public body has violated OMA in the way that it conducted, or failed to conduct, a public meeting, then the member of the public may submit a Request for Review to the PAC.

In the case of FOIA, the Request for Review is a formal way of asking the PAC to take a look at the original FOIA request, as well as the public body's response, and determine if a FOIA violation has occurred. In the case of OMA, the Request for Review is a formal way of asking the PAC to determine if the actions of the public body in connection with a public meeting violated OMA. 5 ILCS 140/9.5(a); 5 ILCS 120/3.5(a).

How to Submit a Request for Review



The OMA Request for Review must be made in writing, be signed by the requester and include a summary of the facts supporting the allegation. In a FOIA Request for Review, the member of the public must also include a copy of the original FOIA request and any responses from the public body. 5 ILCS 140/9.5(a), (b); 5 ILCS 120.3.5(a).

A Request for Review must be submitted to the PAC within 60 calendar days after the denial of the FOIA request or the conduct that is alleged to have violated OMA. If facts concerning an OMA violation are not discovered within the 60-day period, but are discovered up to two years after the alleged violation by a person using reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation. 5 ILCS 140/9.5(a); 5 ILCS 120/3.5(a).

A Request for Review may be submitted to the PAC by either electronic mail or U.S. Mail. To submit a Request for Review by U.S. Mail, please address it to:

Sarah Pratt
Public Access Counselor
Office of the Attorney General
500 S. 2nd Street
Springfield, Illinois 62701

To submit a Request for Review by electronic mail, please email the request to Sarah Pratt, Public Access Counselor, at publicaccess@atg.state.il.us.

The Request for Review does not need to follow any particular format. If you would like to use a sample request form, however, please visit our website at www.IllinoisAttorneyGeneral.gov.



LISA MADIGAN
ILLINOIS ATTORNEY GENERAL