



Public Access Counselor Annual Report

An overview of 2008



March 2009

A Message from
ILLINOIS ATTORNEY GENERAL
LISA MADIGAN



The most recent revelations of government corruption in Illinois have led to a sense of urgency to enact ethics reforms. With this urgency comes an opportunity—and an obligation—to make Illinois government more open and accountable to the people. Our best guarantee for an ethical government is to provide the people of Illinois with full and complete access to information about our government. The need for transparency led me in December 2004 to create within my office a Public Access Bureau to mediate cases involving open government. The Public Access staff also educates the public on their rights and trains government officials on their responsibilities under the state's sunshine laws.

The overwhelming need for this service was quickly apparent. From 2005 to 2008 the Public Access Bureau received more than 3,400 requests for assistance with problems encountered in dealing with the Freedom of Information Act and Open Meetings Act. The past calendar year has shown the demand for this service increasing, with 1,389 requests received. The vast majority of these requests come, not from the media, but from members of the public.

While the Public Access Bureau has significantly helped to increase access to public information, I believe more needs to be done. At the time this fourth annual report goes to press, my office is pursuing legislation that would strengthen both the role of Public Access Counselor and the state's Freedom of Information Act. A broad coalition has formed to push these changes. Our goal is to make Illinois' sunshine laws easier to understand, easier to follow and easier to enforce.

As you read this annual report, you will see that the Public Access Bureau is taking action every day to open government at all levels in the state of Illinois. Over the past year, the Public Access staff has provided dozens of training sessions around the state to help members of the public, the media and government officials understand their rights and responsibilities under the open government laws. The report will provide you with specific examples of how our Public

Access team has resolved Open Meetings and Freedom of Information Act issues. This report also provides information on how to receive assistance from this office.

I am proud of what my office has accomplished since 2004 in making state and local government more open to the people of Illinois. I also am devoted to improvements in our laws that will transform Illinois' culture of government secrecy to one of transparency.

Lisa Madigan
Attorney General

Table of Contents

1. Complaint Statistics
2. Training Seminars
3. How to File a FOIA Request
4. FOIA Facts
5. FOIA Assistance from the Office of the Attorney General
6. FOIA Case Examples
7. OMA Assistance from the Office of the Attorney General
8. OMA Case Examples
9. Frequently Asked Questions
10. FOIA Quiz
11. OMA Quiz
12. The Public Access and Opinions Division



Complaint Statistics

In 2008, the Public Access Bureau responded to 1,389 requests for assistance regarding the Illinois Freedom of Information Act, 5 ILCS 140, the Illinois Open Meetings Act, 5 ILCS 120, and related issues. The Bureau also conducted more than 35 training sessions for members of the public, government officials, members of the media and students.

The following is a statistical breakdown of the requests received by our office between January 1, 2008 and December 31, 2008. 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 sanitary districts and villages to the largest cities and state agencies.

TOTAL FREEDOM OF INFORMATION ACT CASES: 936

- 694 from Members of the Public
- 80 from the Media
- 162 from Government Officials

Further Freedom of Information Act (FOIA) Breakdown

- o **323 written FOIA requests for internal documents of the Office of Attorney General**
 - 290 from Members of the Public
 - 20 from the Media
 - 13 from Government Officials
- o **294 written FOIA-assist requests asking the Office of Attorney General to help obtain documents from public bodies**
 - 231 from Members of the Public
 - 37 from the Media
 - 26 from Government Officials
- o **319 FOIA telephone inquiries**
 - 173 from Members of the Public
 - 23 from the Media
 - 123 from Government Officials



TOTAL OPEN MEETINGS ACT CASES: 453

- 258 from Members of the Public
- 29 from the Media
- 166 from Government Officials

Further Open Meetings Act (OMA) Breakdown

- o **182 written inquiries**
 - 128 from Members of the Public
 - 15 from the Media
 - 39 from Government Officials
- o **271 OMA telephone inquiries**
 - 130 from Members of the Public
 - 14 from the Media
 - 127 from Government Officials



Training Seminars

The Attorney General's Public Access Bureau conducted **35 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 history of the laws, guidance on what government officials must do to comply with the laws, and how the public can use these sunshine laws to open government throughout Illinois. The training sessions covered every region of the State for groups large and small.

The 2008 training seminars included the following:

DATE	PUBLIC BODY	COUNTY
1-8-08	DeKalb Police Department	DeKalb
1-18-08	Municipal Clerks of Illinois	Champaign
1-23-08	Decatur Public Library	Macon
1-25-08	International Public Management Association (Greater Illinois Chapter)	Sangamon
2-4-08	DuPage Library System	DuPage
2-14-08	Prairie Area Library System	Sangamon
2-25-08	Southwestern Illinois College	Randolph
2-29-08	Midwest Foundation for Fair Contracting	Effingham
2-29-08	University of Illinois at Carbondale School of Public Health	Effingham
3-18-08	Township Officials of Illinois	Shelby
4-7-08	CMAP Citizens Advisory Committee	Cook
4-11-08	Southern Illinois University Carbondale School of Law	Jackson
4-21-08	Village of Elwood	Will
4-23-08	DuPage County Bar Association	DuPage
5-6-08	East Central Law Enforcement Training Center	Coles
5-7-08	City of Peoria	Peoria
5-7-08	New Lenox School District #122 Board of Education	Will
5-14-08	Construction Industry Service Corporation (CISCO)	Cook
5-21-08	Lorman Educational Services	Sangamon
6-6-08	Illinois Dept. of Revenue - Annual Meeting for County Supervisors of Assessments and Boards of Review	Sangamon



Training Seminars Continued

6-10-08	Southern Illinois Criminal Justice Mobile Training Unit #15	Williamson
6-10-08	Southern Illinois Criminal Justice Mobile Training Unit #15	Marion
6-18-08	Kendall County - County Municipal Officers	Kendall
6-24-08	Fosterburg Water District	Madison
7-25-08	State's Attorneys' Summer Conference	DuPage
7-29-08	Chicago Metro Section of the American Planning Association (Illinois Chapter)	DuPage
8-14-08	Wasco Sanitary District	Kane
9-23-08	Central Illinois Police Training Center Mobile Training Unit #7	Peoria
10-9-08	Southwestern Illinois Law Enforcement Commission	St. Clair
10-9-08	Southwestern Illinois Law Enforcement Commission	Madison
10-10-08	Illinois Institute for Local Government Law (ILGL) and Illinois Central College (ICC)	Peoria
10-16-08	Law Enforcement Records Managers of Illinois (LERMI)	DuPage
11-10-08	Township Officials Educational Conference	Sangamon
11-19-08	Newly Elected State's Attorneys	Sangamon
12-11-08	CIES Newly Elected Officials - Telenet	Sangamon

TOTAL: 35

Any group or entity interested in attending or hosting a Freedom of Information Act and/or Open Meetings Act training conducted by a representative of the Attorney General's Office should contact Delores Herren in the Public Access Bureau at (217) 558-0486 for more information.



How to File a FOIA Request

The following are instructions on how to file a FOIA request:

1. To ensure that you preserve all of your rights under the Freedom of Information Act, you should file a written request for documents, known as a Freedom of Information Act Request.
2. Be as specific as possible when identifying the documents you are seeking to obtain. Remember, a public body doesn't have to answer questions under FOIA. The law is designed to allow the public to inspect or receive copies of documents, not to require public bodies to answer questions.
3. Tell the public body whether you want copies or whether you want to examine the records in person. You have the right to do either.
4. You are permitted to ask for a waiver of fees. To do so, you may include the following statement in your written FOIA request: "I request a waiver of all fees for this request." You must include a specific explanation as to why the waiver of fees for the information is in the public interest—and not just your personal interest—and merits a waiver.
5. Include your name, telephone number, address, and e-mail address for contact information.
6. Always keep a copy of your FOIA letter and any responses you get from the public body.

FOIA Facts



Here are some critical facts to know when filing a FOIA request:

1. A public body must respond promptly, and absent extraordinary circumstances, within seven working days (excluding weekends and holidays) to a written FOIA request.
2. A public body may invoke an additional seven working days to respond to a request in limited circumstances.
3. If responding to your request would actually interfere with the functions of the body, it may be able to assert that the request is unduly burdensome and ask that you narrow the scope of your request.
4. A public body must respond to your request in writing.
5. If a public body denies your request or a portion of your request, it must cite the specific section of the law that allows it to withhold the information you are seeking.
6. A public body must inform you of your right to appeal a denial of information by giving you the name of the head of the public body and his or her address to use in filing an appeal.
7. A public body has seven working days to respond in writing to an appeal of a denial. The public body must inform you that you have a right to seek injunctive or declaratory relief in the Circuit Court if the denial of your information is upheld.



FOIA Assistance from the Office of Attorney General

The Public Access Bureau is available to try to assist you if a public body has denied or ignored your request for documents under the Freedom of Information Act, 5 ILCS 140/1. Unlike the Open Meetings Act, the Freedom of Information Act does not contain any fines or penalties for violations.

To receive assistance from the Office of the Attorney General:

1. Contact the Public Access Bureau at 500 S. 2nd Street, Springfield, IL 62706, or via e-mail at [publicaccess\[atg.state.il.us\]](mailto:publicaccess[atg.state.il.us]).
2. Send us a copy of the FOIA request that you submitted to the public body, a short explanation of the problems you are experiencing, and copies of any responses you have received from the public body.
3. Your explanation need not be lengthy—just provide enough information for us to have a clear picture of your interactions with the public body so far. Tell us:
 - a. The name of the public body involved.
 - b. The date you filed the FOIA request (and provide a copy of your FOIA request).
 - c. Any response you have received (and provide a copy).
 - d. Whether you have appealed any denial of your request and the status of that appeal (and provide copies of any appeal and responses).
 - e. What assistance you seek from our office.
 - f. Your name, address, telephone number, and e-mail, if applicable.

Once we receive your inquiry, we will evaluate the information provided and contact you or the public body or both, as appropriate.

FOIA Case Examples



Examples of Freedom of Information Act (FOIA) Cases

The following are some examples of how the Office of the Attorney General has intervened in disputes arising under the Freedom of Information Act (FOIA).

1. A member of the public sought copies of meeting minutes, bills and treasurer's reports from a Village under the Freedom of Information Act, but the Village failed to respond. The resident submitted a follow-up request more than six months later and was told at a Village Board meeting the following month that the Village was calculating the costs of responding to the request. The Attorney General's Office intervened and copies of the requested documents were provided to the resident.
2. A member of the public requested from a local Park District copies of meeting minutes, the District budget and a tax spreadsheet that board members had referenced. The District secretary/attorney informed the requestor that the fee for copies was \$25 per document. In response to contact from the Attorney General's Office, the secretary/attorney argued that the fee was appropriate because the copies were made at his office and accounted for his hourly fee for legal services. The Attorney General's Office advised him that the charge was not appropriate, and as a result, the requestor was able to get the copies she sought without paying the original fee of over \$300.
3. An individual contacted the Attorney General's Office after requesting a copy of a superintendent's employment contract from a School District and receiving in response a heavily redacted version. The Attorney General's Office consulted with the District and the District ultimately released the entire contract to the individual.
4. A resident sought basic information about a Village under FOIA, including a copy of the Village charter, bylaws, ordinances, meeting minutes, TIF information and employee salary information. After receiving no response for two months, the resident re-submitted a narrowed version of his request and was then told by the Village attorney that the Village needed more time to respond and would get the records to him within 30 days. The Attorney General's Office reached out and advised the Village of its obligations under FOIA, and the Village then provided the requested documents to the resident.
5. A member of the public requested meeting recordings from a local Sanitary District under the Freedom of Information Act. The District denied the request without stating a statutory exemption and instead claimed that the tapes could not be released because the minutes of those meetings had not yet been approved. The Office of the Attorney General contacted the District and it released the recordings to the citizen.
6. An individual requested certified payroll and other specified documents from a public School District. The School District failed to make a written response, and instead, forwarded the FOIA to an architectural firm with which it had worked on the project about which information was requested. The architectural firm responded to the requestor, enclosing in its response a bill in excess of \$200 representing its copying and labor/search time in responding to the FOIA request. In response to contact from the Attorney General's Office, the School District released the records, charging only the statutorily allowed actual cost of copying.



OMA Assistance from the Office of Attorney General

The Public Access Bureau may also be able to help you if you have concerns about a public body's compliance with the Illinois Open Meetings Act, 5 ILCS 120/1.

The Open Meetings Act provides for both civil and criminal enforcement. Subsection 3 of the Act (5 ILCS 120/3) is the civil enforcement provision. Subsection 3(a) authorizes any person, including the state's attorney of the county in which noncompliance may have occurred, to bring a civil action for the enforcement of the Act within 60 days after a meeting alleged to have been held in violation of the Act, or, if facts concerning the meeting are not discovered within that period, within 60 days of the discovery of the violation by the appropriate state's attorney. The provision also authorizes members of the general public to institute enforcement proceedings under the Act.

To receive assistance from the Office of Attorney General:

1. Contact the Public Access Bureau at 500 S. 2nd Street, Springfield, IL 62706, or via e-mail at [publicaccess\[atg.state.il.us\]](mailto:publicaccess[atg.state.il.us).
2. Provide us with an explanation of your OMA concerns, along with copies of any supporting documents you might have (such as meeting minutes, agendas, recordings or correspondence).
3. Your explanation need not be lengthy—just provide enough information for us to have a clear picture of what leads you to believe the public body failed to comply with the Open Meetings Act. Tell us:
 - a. The name of the public body involved.
 - b. The date of the alleged violation of the Open Meetings Act and a description of what happened (include copies of relevant documents, if any).
 - c. Whether you have contacted the public body regarding this alleged violation.
 - d. Whether you have contacted the local state's attorney for assistance, and the status of such request, if any (include copies of relevant correspondence).
 - e. What assistance you seek from our office.
 - f. Your name, address, telephone number, and e-mail, if applicable.

Once we receive your inquiry, we will contact the public body for more information regarding the alleged incident, evaluate all of the evidence available and advise you and the public body as appropriate.

OMA Case Examples



Examples of Open Meetings Act (OMA) Cases

The following are some examples of how the Attorney General's Office has intervened in disputes arising under the Open Meetings Act (OMA).

1. A resident contacted the Attorney General's Office after she was prevented from videotaping an open meeting of her Village Board. The Public Access Bureau contacted the Village attorney, who confirmed that the Village had prohibited her from taping. The Village agreed to promulgate reasonable rules to govern taping of meetings and, after some revisions at the urging of the Public Access Bureau, the Village developed reasonable rules and allowed the resident to continue taping Board meetings.
2. A county Forest Preserve Board voted by secret ballot to select the Board's president. The county state's attorney advised the Board that this was not appropriate under the Act and, when the Board refused to follow the state's attorney's advice, sought the assistance of the Attorney General's Office. The Public Access Bureau intervened and again advised the Board of its obligations, requesting that the Board members reveal their previous secret votes in an open meeting.
3. A complaint arose when a Board of Education allowed an absent member to participate in a meeting and vote on a matter before the Board via telephone without the use of a speakerphone. In response to an inquiry from the Attorney General's Office, the School District Superintendent acknowledged the Board's violation and indicated that the Board would arrange for Open Meetings Act training to ensure that Board members more clearly understood the Act's requirements.
4. An alderman on a City Council notified the Attorney General's Office that the City Council had failed to make a complete verbatim recording of a closed meeting. The closed meeting tape had been turned off when the discussion turned to matters involving potential litigation with the City Clerk. The Public Access Bureau intervened and the Council admitted its failure to comply with the Act's requirement that there be a verbatim recording of all closed meetings. The Attorney General's Office advised the City of its obligations under the law and recommended that the Board receive Open Meetings Act training.
5. A citizen became concerned that his Village Board consistently failed to post meeting notices and agendas and raised his concerns with the Attorney General's Office. The Public Access Bureau contacted the Village about this issue and the Village acknowledged its failure to do so. In response to the inquiry by the Attorney General's Office, the mayor of the Village stepped down and the remaining Board members received training from a representative of the Public Access Bureau. The Board members were very interested to learn about their obligations under the Open Meetings Act and demonstrated a commitment to openness and full compliance going forward.
6. A School District contacted the Attorney General's Office to report that it had inadvertently violated the Open Meetings Act by failing to review closed meeting minutes and to propose corrective action to be taken with regard to that omission. The Attorney General's Office commended the District on being forthcoming and, after review, approved of the proposed corrective measures.



Frequently Asked Questions

Q. Can a public body make me purchase copies of the records I request?

A. No. The Freedom of Information Act gives people making requests the right to choose whether they wish to receive copies of the records or just inspect those records.

Q. Are homeowner's associations subject to the Freedom of Information Act?

A. No. The Act only covers public bodies, not private organizations such as a homeowner's or condominium association.

Q. Can a public body charge me photocopying fees under FOIA?

A. Yes. A public body may charge fees that are reasonably calculated to reimburse the public body for its actual cost for copying the records, and for the use by any person of the public body's equipment to copy records. The public body cannot charge for the cost of searching for or reviewing the records. And the copying costs cannot exceed the actual cost of reproduction, unless otherwise provided by State statute. In general, the fees must be set according to a standard scale of fees, established and made public by the body imposing them. If a public body purposely imposes a fee that is not consistent with subsections (6)(a) and (b) of the Act, that is considered to be a denial of access to public records. The Office of the Attorney General charges 15 cents per page for documents in excess of 30 pages.

Q. Can a public body charge me to research my request for information?

A. No. The Act specifically states that the cost must exclude the research and review for the records.

Q. Does the Freedom of Information Act require a public body to withhold exempt records?

A. No. The Act lists a variety of types of records and information that a public body may withhold as exempt, but the Freedom of Information Act itself does not require that a public body withhold exempt records. Unless some other statute mandates that the public body keep that information confidential, the decision is always up to the public body.



Q. Are the e-mails of members of a public body considered public records under FOIA?

A. Yes. E-mails of a member of a public body would be considered public records for purposes of the Act. Certain exemptions may exist that permit a withholding of these records per section 7 of the Act, but the application of those exemptions depends on the content of the e-mails.

Q. Does a public body have to honor a "standing request" for information asking that the public body forward certain reports, such as accident reports, each month, under the Act?

A. No. A person cannot request that at regular intervals, such as each month, the public body provide copies of particular reports, such as accident reports. The public body is required to respond, however, to each individual request.



FOIA Quiz

1. A public body can charge up to .50 cents per page to photocopy documents as long as .50 cents is reasonable. True or False?

False. A public body may charge fees that are reasonably calculated to reimburse its actual cost for reproduction of the records. These fees cannot include the costs of any search for and review of the records and cannot exceed the actual cost of reproduction, unless otherwise provided by State statute. The fees must be imposed according to a standard scale of fees, established and made public by the body imposing them. When a public body purposely imposes a fee that is not consistent with subsections (6)(a) and (b) of this Act, that is considered a denial of access to public records.

2. Can the person requesting the documents visit a public body and inspect records instead of asking for photocopies?

Yes. It's your choice. Subsection 3(a) of the Act provides that "[e]ach public body shall make available to any person for inspection or copying all public records."

3. Was Illinois the first state in the nation or the last state in the nation to adopt a Freedom of Information Act?

Illinois was the last state in the nation to adopt a Freedom of Information Act, which became effective in 1984.

4. Is it okay for a public body to respond to a request for information by telephone rather than sending a letter to the requestor?

No. A public body may provide additional assistance by responding to a requestor via telephone, but Illinois law requires that a public body respond to a FOIA request in writing. 5 ILCS140/3(c).

5. Is a police report a public record available for inspection and copying?

Yes. Police reports are public records subject to any applicable exceptions that might permit a public body to withhold the records or portions of the records. 5 ILCS 140/2(c).



6. The Freedom of Information Act contains which of the following penalties for violation?
- o \$1500 fine for each violation
 - o \$50 for the second offense
 - o No penalties or fines

There are no penalties or fines for violating the Freedom of Information Act.

7. Is electronic mail subject to the Freedom of Information Act?

Yes. Subsection 2(c) of the Act defines the term "public records" to include all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, recorded information, and all other documentary information having been prepared, or having been or being used, received, possessed, or under the control of any public body. The physical characteristics of records are not relevant in determining whether they are "public records," because the Act expressly covers all records regardless of their physical form or characteristics. The most important factor in determining whether a record is a "public record" is whether it has been prepared, or was or is being used, received, possessed, or under the control of any public body. Thus, e-mail goes through the same analysis as any other document and, if no exception applies, the public body must release it.

8. Is a public body allowed to give the requestor photocopies of documents if the person requests the documents on a CD-ROM?

No. If the public body can furnish the documents on a CD-ROM as you requested, the public body must do that. The public body cannot elect to furnish records in a different format than requested. *See American Federation of State, County & Municipal Employees, AFL-CIO v. County of Cook*, 136 Ill. 2d 334, 345-47 (1990). When a requesting party asks for a copy of computerized records in electronic format, the public body may not satisfy the request by furnishing a printout of the records.



OMA Quiz

1. There are seven members on your board. You and two other members meet at a local restaurant to discuss an issue that is on the agenda for the next board meeting. Have you violated the Open Meetings Act?

Yes. In the absence of a statutorily fixed greater quorum, a gathering of three members of a seven-member body constitutes a majority of a quorum of the body, with a quorum being four members. Therefore, three members cannot meet and discuss board business unless all of the requirements of the Act have been met.

2. Four or more members of your seven-member board regularly stop for coffee after board meetings. Members present restrict their discussion to personal matters and do not discuss public business. Does the presence of a majority of your board constitute a meeting regardless of what is discussed?

No. Although a full quorum of the board is present, as long as the members do not discuss board business, there is no "meeting" for purposes of the Act.

3. There are seven members on your board. A member suggests that you restrict your committees to two members to avoid application of the Open Meetings Act. Will the Open Meetings Act apply to your two-member committee meetings?

Yes. For purposes of the Act, subsidiary bodies—such as board committees—are considered to be separate public bodies, and the application of the Act is based upon the number of members of the subsidiary body. As a result, creating two-member committees will not avoid the application of the Act.

4. Four members of your board are having coffee as in question two. A board member brings up a problem concerning an employee, and the rest of the board members present begin to discuss the employee's actions and whether he should be dismissed. You ask whether the board should be discussing dismissal of the employee out of the public view. The board member who brought up the issue tells you that personnel matters may be discussed in a closed meeting under an exception to the Act and, in addition, the board is not voting on the issue, only discussing it. The board continues its discussion but does not reach agreement on dismissing the employee. Did the board violate the Open Meetings Act?

Yes. To properly convene and hold a closed meeting, a public body must take a record vote in an open meeting. Further, the Act applies not only to discussions concerning taking action but also to deliberative discussions generally.



5. Your board is considering a number of candidates for a new administration position. A properly closed meeting is conducted and the board reaches a consensus on the best candidate. During the closed meeting, a member suggests that the board go ahead and vote on the candidate so that he can get started with several pressing projects. The board, by unanimous vote, takes action in the closed meeting to hire the administrator. At the next regular meeting of the board, the chairman announces that an administrator has been hired by the board and is at work. During the portion of the meeting set aside for public comment, a reporter for the local paper questions the hiring of the administrator in a closed meeting. Is she correct?

Yes. The Act specifically prohibits public bodies from taking final action in a closed meeting. If a lawsuit was filed to challenge this action, a court could void the decision to hire this administrator.

6. Your board meets to elect a new chairman. Three members are in contention for the chairmanship. It is suggested that, to avoid embarrassment or hard feelings, the board should select the new chairman by secret ballot. Is this permissible?

No. Public bodies cannot take action by secret ballot.

7. You are selected as chairman of the finance committee. Meetings are held on the first Monday of every month at 7:00 p.m. Special meetings are held occasionally. Your secretary calls to remind all members and puts up a notice on the door of the boardroom by noon on meeting days. Are you in compliance with the Act?

No. In general, the Act requires public bodies (including committees) to post a notice and an agenda at least 48 hours in advance of both regular and special meetings.

8. The press of business forces the division of the finance committee into two subcommittees. You tell your subcommittee chairmen not to worry about keeping minutes. Have you given the correct advice?

No. The law requires all public bodies (including committees and subcommittees) to keep minutes of their meetings and to make an audio or video recording of the proceedings of a body during a closed meeting.



9. Your board conducted a series of properly closed meetings concerning dismissal of an employee. The employee was terminated. Two years later, a reporter for the local newspaper asks to examine the minutes of those meetings, arguing that since the entire matter has been settled, the minutes should be made public. Is he correct?

Maybe. Minutes of a closed meeting may be made available to the public (including the media) if the public body determines that confidentiality is no longer necessary to protect the public interest or the privacy of an individual.

10. Your board properly closes a portion of a meeting to discuss a complaint lodged against an employee. In accordance with the requirements of the Open Meetings Act, you are making a verbatim audiotape recording of the meeting. The clerk asks whether it is also necessary to prepare minutes of the meeting. You advise her that minutes are necessary, even when a meeting is recorded. Are you correct?

Yes. The Act requires public bodies to keep minutes of all meetings, whether open or closed to the public. The verbatim record does not take the place of minutes.

11. An important vote will be held at this evening's meeting of your county board. Two of the board members are unavailable to attend. One is on vacation in Arizona and the other is out of town on business. Your board has not adopted procedures authorizing electronic attendance. Both members offer to attend telephonically. Is this permissible?

No. Electronic attendance may be permitted only if the public body has adopted rules authorizing it. Further, a member may participate electronically only if his or her absence falls within one of three categories: (a) personal illness or disability; (b) employment purposes or the business of the public body; or (c) family or other emergency. Absence due to a vacation is not a permitted category, although absence due to business is a permitted category.

12. Over the course of two days, three members of your seven-member county board engage in an exchange of e-mails concerning whether to offer benefits to help bring a proposed industrial development to your county. No consensus is reached. Have the three members violated the Act?

Maybe. The definition of "meeting" now expressly includes gatherings by electronic means (including e-mail) and "other forms of contemporaneous interactive communication." What constitutes a "contemporaneous" communication, with respect to e-mails, has yet to be determined. Our Public Access Bureau advises public bodies to avoid "mass," or group-wide, electronic mail exchanges between members of a public body.

The Public Access and Opinions Division



Attorneys

Michael Luke is a Senior Assistant Attorney General. He is a graduate of the University of Illinois (A.B. History, 1974; J.D., 1978). He served for two years as an Assistant State's Attorney in Piatt County, Illinois, before joining the Attorney General's staff in 1980. He currently serves as the Chief of the Public Access and Opinions Division in the Office of the Attorney General. Mr. Luke is a frequent speaker on issues relating to state and local government law and governmental ethics.

Heather Kimmons is an Assistant Attorney General serving as Assistant Public Access Counselor. Prior to joining the Office of the Attorney General in August 2007, she was an associate at the Decatur law firm of Johnson, Waller & Chiligris, where she also served as a guardian ad litem in the Sixth Judicial Circuit. Ms. Kimmons is also licensed to practice law in the state of Indiana, where she was in private practice with the Indianapolis law firm of Cohen & Malad, P.C., for seven years prior to returning to Illinois. She earned her law degree from Indiana University-Indianapolis, cum laude, and her undergraduate degree in journalism, cum laude, from the University of Illinois in Urbana-Champaign.

Amanda Lundeen is an Assistant Attorney General serving as Assistant Public Access Counselor. Before coming to the Office of the Attorney General in May 2008, she worked as an associate at the Springfield law firm of Giffin, Winning, Cohen & Bodewes, P.C. There she practiced in the areas of municipal and non-profit organization law, as well as general civil litigation. Ms. Lundeen is a graduate of Northern Illinois University (B.A. Psychology, 2003) and received her law degree from Washington University in St. Louis in 2006.

Support Staff

Jacqueline Pryor is a paralegal with 18 years of experience in the Office of the Attorney General. She conducts research and handles issues related to the Freedom of Information Act and the Open Meetings Act within the Division.

Delores Herren is an administrative secretary with 13 years of experience in state government, including four years with the Office of the Attorney General.