



Public Access Counselor Annual Report

An overview of 2017

March 2018



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.

Since becoming Attorney General, I have fought to make government more open and accessible to the people of Illinois. After taking office in 2003, I created the position of Public Access Counselor in my office to resolve requests for help from the public and the media when they are denied access to public records or public meetings.

For many years, our work to increase access to government in Illinois was constrained by a culture of secrecy and inadequate laws. In 2010, I lead an effort to reform and strengthen the Illinois Freedom of Information Act (FOIA), which established the role of the PAC under the law and allowed it to enforce its decisions regarding the disclosure of public records or open meetings complaints.

Under the law, the PAC and the Assistant Attorneys General in the Public Access Bureau review requests to determine whether documents must be disclosed under FOIA and whether a government body has violated the Open Meetings Act (OMA). In the eight years since its creation, more than 35,000 matters have been submitted to the PAC for assistance by members of the public and the media, and 92 percent of those matters have been closed. In 2017 alone, the PAC received nearly 3,900 requests – over 320 matters per month – for help in obtaining government documents or access to a public meeting.

The Public Access Counselor’s determinations have created new and important legal guidance in Illinois to enforce disclosure of records and foster increased transparency in government. The PAC’s determinations have successfully clarified the law, especially on issues that have not been addressed by courts. Among its significant decisions, the PAC helped raise awareness that electronic records sent or received on personal devices can be public records when they pertain to the transaction of public business. The PAC has also required public bodies to broadly disclose records that relate to how taxpayer money is spent and public employees’ qualifications for their government positions. The PAC’s determinations have also encouraged public bodies to provide clearer information on their meeting agendas and adopt reasonable rules designed to accommodate the public’s right to speak at public meetings.

Last year, the PAC also continued the important work of training government officials across Illinois about their duty to provide access to records. In addition, the Public Access Bureau fielded tens of thousands of phone calls on its hotline to help public bodies, the public and the media understand the open records and open meetings laws.

As Attorney General, I am proud of empowering the people of our state by increasing transparency at all levels of government. My work to strengthen our sunshine laws has increased the ability of Illinois residents to understand how their taxpayer dollars are being spent and how their government operates.

Lisa Madigan
Attorney General

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Complaint Statistics

In 2017, the Public Access Counselor (PAC) received 3,888 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 received 336 written inquiries through the Public Access email. The Public Access Bureau also conducted more than 40 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 from January 1, 2017, to December 31, 2017. 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 2017: 3,888

Freedom of Information Act Requests Breakdown

- 3,515 requests for review by the PAC
- 2,933 from members of the public
- 567 from media outlets or other organizations
- 15 from public bodies

Open Meetings Act Requests Breakdown

- 373 requests for review by the PAC
- 306 from members of the public
- 58 from media outlets or other organizations
- 9 from public bodies

Average number of requests for review filed per month: 324

Training Seminars



The Attorney General’s Public Access Bureau conducted 43 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 (FOIA) and the Open Meetings Act (OMA). 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 2017, the Public Access Bureau also conducted trainings around the state in conjunction with the Illinois Municipal League for newly elected officials. Other trainings presented by attorneys in the Public Access Bureau included webinars through the University of Illinois Cooperative Extension Service and advanced training sessions focusing on recent developments in FOIA and OMA for groups such as municipal clerks. The attorneys in the Public Access Bureau also participated in panel discussions as part of sessions during larger, statewide conferences.

<u>Date:</u>	<u>Title/Group:</u>	<u>Location:</u>
January 24, 2017	FOIA for Law Enforcement, State’s Attorney’s Association Training	Springfield
January 25, 2017	Panel Discussion/Questions about OMA and FOIA, United Counties Council of Illinois Annual Legislative Conference	Springfield
January 27, 2017	FOIA, International Union of Operating Engineers	Countryside
February 28, 2017	FOIA and OMA, Coroner’s Association Conference	Springfield
March 2, 2017	FOIA/OMA Updates, South/Southwest Clerks’ Association Educational Meeting	Chicago Heights
March 28, 2017	OMA, Ethics Officer Conference	Springfield
April 20, 2017	FOIA, Kane County Bar Association	Geneva
April 22, 2017	FOIA/OMA Panel Discussion, Illinois News Broadcaster Association Spring Conference	Urbana
April 25, 2017	FOIA, Illinois Association of County Auditors	Springfield
April 28, 2017	FOIA/OMA, Southern Illinois Editorial Association	Cartersville
May 15, 2017	FOIA, CLE Panel Discussion, Chicago Bar Association	Chicago
May 18, 2017	OMA for Newly Elected Local Government Officials, Kendall County State’s Attorney’s Office	Yorkville
May 18, 2017	FOIA, University of Illinois Extension	Webinar
May 31, 2017	OMA/FOIA for Local Government Officials, sponsored by Bi-State Regional Commission	Hampton
June 7, 2017	OMA/FOIA Updates, Hispanic Lawyers Association of Illinois	Chicago
June 9, 2017	FOIA/OMA Training for Illinois Municipal League’s Newly Elected Officials Seminar	Springfield
June 10, 2017	FOIA/OMA Training for Illinois Municipal League’s Newly Elected Officials Seminar	Galesburg
June 15, 2017	FOIA for Law Enforcement	Vernon Hills Police Department (2 sessions)



Training Seminars continued

June 14, 2017	FOIA/OMA Training for Illinois Municipal League's Newly Elected Officials Seminar	Champaign
June 17, 2017	FOIA/OMA Training for Illinois Municipal League's Newly Elected Officials Seminar	Belleville
June 22, 2017	FOIA/OMA Training for Illinois Municipal League's Newly Elected Officials Seminar	Mount Vernon
June 23, 2017	FOIA/OMA Champaign County Elected Officials	Champaign
June 28, 2017	OMA/FOIA for Local Government Officials, Kankakee County State's Attorney's Office	Bourbonnais (2 sessions)
June 29, 2017	FOIA/OMA Training for Illinois Municipal League's Newly Elected Officials Seminar	Bolingbrook
June 30, 2017	FOIA/OMA Training for Illinois Municipal League's Newly Elected Officials Seminar	Rochelle
July 24, 2017	Meeting with Members of Ukrainian Parliament, Discussion of Open Government	Springfield
August 9, 2017	FOIA for Law Enforcement, Illinois LEAP (Law Enforcement Administrative Professionals)	Round Lake
August 9, 2017	FOIA/OMA Presentation for Madison County-area Elected Officials	Edwardsville
August 22, 2017	FOIA/OMA Presentation for Stark County-area Elected Officials	Toulon
September 14, 2017	OMA, Illinois Educational Labor Relations Board	Chicago
October 11, 2017	FOIA, Illinois Attorney General's Office CLE	Chicago
October 16, 2017	FOIA Nuts and Bolts, Parks Advisory Council (convened by Friends of the Parks)	Chicago
October 20, 2017	FOIA, Illinois Attorney General's Office CLE	Springfield
October 25, 2017	FOIA for Requesters and Local Governments, Indiana, Illinois, Iowa Foundation for Fair Contracting	Downers Grove
November 2, 2017	OMA, Township Clerks Association of Cook County	Alsip
November 6, 2017	FOIA/OMA, LaSalle County Elected Officials and Employees	Ottawa
November 9, 2017	FOIA/OMA, Local Government Law Consortium Panel	Chicago
November 14, 2017	FOIA/OMA, Township Officials of Illinois	Springfield (2 sessions)
November 17, 2017	FOIA/OMA for Public Schools, Illinois Association of School Board (IASB) Conference	Chicago
December 1, 2017	FOIA/OMA, Illinois Public Sector Labor Relations Law Conference, Chicago-Kent, Panel Presentation	Chicago

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 2017, 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 transparency. 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 2017. 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. 17-001, issued March 14, 2017: An attorney sought from the Illinois State Police (ISP) a copy of a police report related to a traffic crash. ISP denied the request pursuant to section 7(1)(d)(i) of FOIA, asserting that disclosure would interfere with a pending review of whether to file criminal charges. The PAC concluded that ISP's explanation was conclusory, and did not explain how disclosure of the records would interfere with a pending or actually and reasonably contemplated law enforcement proceeding as required to demonstrate that records are exempt from disclosure pursuant to section 7(1)(d)(i). Accordingly, the PAC concluded that ISP violated FOIA by withholding the records.

Ill. Att'y Gen. Pub. Acc. Op. No. 17-003, issued May 26, 2017: The Taylorville Sanitary District (District) provided heavily redacted records in response to the Taylorville City Clerk's FOIA request for copies of billing invoices and the District's contracts with a private company to operate its water utility. The District provided no reason for the redactions in its response to the request, but asserted to the Public Access Bureau that the financial terms of the contracts and the amounts paid were exempt from disclosure pursuant to section 7(1)(g) of FOIA. Section 7(1)(g) permits a public body to withhold trade secrets and commercial or financial information furnished under a claim that it is privileged, proprietary, or confidential if disclosure would cause competitive harm. The District also argued that a confidentiality clause in its contract with the private company prohibited the District from disclosing the records. The PAC concluded that section 7(1)(g) was inapplicable and that the confidentiality clause did not cover the redacted information. In addition, the redacted portions of the records directly related to the District's use of public funds and therefore were subject to disclosure pursuant to article VIII, section 1(c) of the Illinois Constitution of 1970 and section 2.5 of FOIA. Accordingly, the PAC directed the District to furnish the City Clerk with unredacted copies of the records.

Ill. Att'y Gen. Pub. Acc. Op. No. 17-004, issued June 6, 2017: The McLean County State's Attorney complained that the Bloomington City Council improperly used the litigation exception found in section 2(c)(11) of OMA to discuss its continued participation in an intergovernmental agreement with the town of Normal in closed session. The city justified the closed session by arguing that litigation about the 30-year-old agreement was probable. The PAC concluded the closed session discussion concerned the agreement itself – rather than the strategies, positions, theories, or consequences of any probable or imminent litigation. The city filed an administrative review action appealing the decision that is pending in Sangamon County.



Success Stories Continued

Ill. Att’y Gen. Pub. Acc. Op. No. 17-010, issued July 25, 2017: A union representative submitted a FOIA request to the City of Joliet (City) seeking copies of certified payroll records for a certain construction project. The City provided copies of the records but, without explanation, redacted the names of employees. In its response to this office, the City asserted that the records were exempt from disclosure pursuant to section 7(1)(c) because disclosure would constitute an unwarranted invasion of personal privacy. The PAC concluded that (1) the City has not sustained its burden of demonstrating that disclosure of the names of employees in certified payrolls would be highly objectionable to a reasonable person; and (2) the records were subject to disclosure because they relate to the City’s use of public funds. Accordingly, the PAC concluded that the City violated FOIA by withholding the records.

Ill. Att’y Gen. Pub. Acc. Op. No. 17-011, issued August 14, 2017: The Will County Sheriff’s Office denied a radio reporter’s request for copies of two recordings of calls to 9-1-1 made from the family home of a child who was later found deceased in the family home. The Sheriff’s Office denied both requests pursuant to sections 7(1)(b) and 7(1)(d)(vii) of FOIA. First, the Sheriff’s Office asserted that voice recordings are a type of biometric identifier and thus a form of “private information” that is exempt from disclosure under section 7(1)(b). The PAC rejected that argument as inconsistent with the definition of “biometric identifier,” and concluded that FOIA cannot be read as exempting from disclosure all voice recordings in the possession of public bodies. With respect to section 7(1)(d)(vii), the PAC concluded that the Sheriff’s Office failed to demonstrate that disclosure of the limited information in the recordings would obstruct an ongoing investigation. The PAC directed the Sheriff’s Office to disclose the recordings. The Will County Sheriff’s Office has filed an administrative review action that is presently pending in Sangamon County.

Ill. Att’y Gen. Pub. Acc. Op. No. 17-013, issued November 21, 2017: The president of the Peoria chapter of the NAACP submitted a Request for Review complaining that the Mapleton Village Board violated the OMA by improperly entering a closed session to discuss a Board member’s allegedly racist comments. The Board cited an exception to the general requirement that public bodies must conduct public business openly, section 2(c) (4) of OMA, which allows closed session discussion of evidence or testimony as a quasi-adjudicative body. The PAC concluded that this exception did not apply because the Board did not consider evidence or testimony. In addition, the Board considered the information that was provided in closed session as a legislative body, rather than as a quasi-adjudicative body. Therefore, the PAC concluded that the Board violated OMA and directed it to disclose the closed session recording.

Ill. Att’y Gen. Pub. Acc. Op. No. 17-014, issued December 20, 2017: McLean County denied a request by a member of the public seeking copies of FOIA requests submitted to the County Clerk, and responses to those requests. The County denied the request in its entirety on the basis that it was inconsistent with the purpose and intent of FOIA. The PAC noted that the County did not identify an exemption in section 7 of FOIA that provides a basis for withholding the records. The PAC also emphasized that FOIA does not contain a provision that permits a public body to deny a FOIA request based on its perception of the purpose of the request. Accordingly, although it may have been permissible for the County to redact the names and addresses of individual requesters, the PAC concluded that the County violated FOIA by withholding the records in their entirety.



Success Stories continued

Non-Binding Determinations

Ill. Att’y Gen. PAC Req. Rev. Ltr. 44377, issued February 1, 2017: A reporter from Pensions & Investments submitted a Request for Review challenging, among other things, the Illinois State Board of Investment’s denial of certain information within an investment consultant’s report and an external auditor’s report. The Board withheld the information as trade secret information pursuant to section 7(1)(g), real estate sale information pursuant to section 7(1)(r), and audit information pursuant to section 7(1)(m). The PAC determined that, for much of the information withheld pursuant to section 7(1)(g), the Board did not meet its burden of demonstrating by clear and convincing evidence that the redacted information was exempt. By contrast, the PAC determined that the Board did not violate FOIA by withholding certain equity and debt information obtained from a private equity fund pursuant to section 7(1)(g). Further, the PAC concluded that the Board had waived its right to assert the section 7(1)(r) exemption because it had previously disclosed the information during an open meeting in the presence of members of the public and the media, including the requester. Finally, the PAC concluded that the audit report was prepared by a private accounting firm and therefore did not constitute materials prepared or compiled with respect to an internal audit, as required by section 7(1)(m). Upon receiving the determination, the Board provided the requester with the information.

Ill. Att’y Gen. PAC. Req. Rev. Ltr. 43386, issued March 21, 2017: A member of the public submitted a Request for Review alleging that the Illinois State Police (ISP) improperly withheld dashboard camera video footage of a traffic stop. The PAC determined ISP had not sustained its burden of showing by clear and convincing evidence that either exemption it cited was applicable because it had not provided PAC with facts demonstrating how the release of the responsive dash cam video recording would (1) interfere with an investigation, or (2) create a substantial likelihood that a person would be deprived of an impartial hearing. ISP subsequently disclosed the requested dash cam video footage to the requester.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 47489, 47491, issued May 26, 2017: A member of the public and a reporter for the Herald & Review submitted Requests for Review alleging that the Decatur Township Cemetery Board did not provide sufficient advance notice of a meeting because the agenda for the meeting was not readable from outside of the locked doors of the Township building. The PAC reviewed photographs of the agenda’s location and the response by the Cemetery Board and concluded that the Board had failed to provide continuous notice of the meeting for the entire 48 hours before the meeting, as required by the Open Meetings Act. The Board had already taken steps to hold the meeting again after proper posting of notice. The Board also changed its practice to posting the agendas directly on the glass doors of the building.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 45668, issued July 21, 2017: A member of the public submitted a Request for Review alleging that the Illinois Department of Healthcare and Family Services improperly denied her request for the most recent contract between Liberty Dental Plan and Harmony Health Plan granting Liberty the right to serve as the dental administrator for Illinois Medicaid beneficiaries enrolled in Harmony managed care plans. The Department denied the request based on its assertions that the contract was not a public record, or alternatively, that it was exempt pursuant to section 7(1)(g) because it contained trade secret information. The PAC determined that the contract was a public record because it pertained to the Department’s governmental function of administering medical assistance programs. The PAC also found that the Department’s conclusory arguments



Success Stories Continued

were insufficient to meet its burden of demonstrating that the information in the contract was exempt trade secret information. In addition, the PAC further concluded that the payment rates and methodologies contained in the contract related to the use of public funds and were subject to disclosure pursuant to section 2.5 of FOIA. After receiving the determination, the Department provided the contract to the requester.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 46719, issued August 16, 2017: A member of the public submitted a Request for Review alleging that the City of Bloomington had improperly withheld a body camera recording of an encounter he had with a police officer concerning his business. The City had redacted the recording pursuant to section 7.5(bb) of FOIA, which exempts certain recordings made under the Law Enforcement Officer-Worn Body Camera Act (Body Camera Act). The City asserted that only recordings that were “flagged” in accordance with the Body Camera Act could be released to the subject of the encounter captured on the recording. The PAC found that the Body Camera Act did not require a recording to be “flagged” to be subject to disclosure under FOIA. The City requested that the PAC reconsider its determination in this Request for Review, which the PAC declined. The City complied with the PAC’s determination by providing the requester with the body camera recording.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 47401, issued August 29, 2017: A reporter for the Aurora Beacon-News submitted a FOIA request to the City of Aurora seeking records about a police officer-involved shooting, most notably the dashboard camera video recording of the traffic stop of the suspect. The City denied the request in part and declined to provide certain video recordings, including the dash cam video, because it claimed it lacked the technological ability to appropriately redact them. The PAC determined that the City improperly withheld certain records in their entirety, and concluded that the City was obligated to appropriately redact and furnish all records responsive to the request, including the video recordings. After the determination, the City publicly released the dash cam video and furnished additional records to the requester.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 45983, issued August 31, 2017: A reporter for the DeKalb Daily Chronicle submitted a FOIA request to Northern Illinois University seeking legal invoices and deposition transcripts from a lawsuit filed against the University. The University denied the request in part, and did not furnish any of the deposition transcripts on the basis that a protective order in the case barred their disclosure. The PAC reviewed the protective order and determined that it did not bar the disclosure of the transcripts. The PAC also determined that the University had improperly redacted portions of the legal invoices. After receiving the PAC’s determination, the University furnished the transcripts and revised legal invoices to the requester.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 49623, issued September 12, 2017: A member of the public sought certain emails between a McHenry County Board member and the Lake in the Hills Sanitary District, including emails from the Board member’s personal account. McHenry County denied the request for responsive emails from the Board member’s personal account. The PAC determined that emails stored on the Board member’s personal account pertaining to the transaction of public business were subject to FOIA. After the PAC’s determination, McHenry County disagreed but decided to release the responsive emails.



Success Stories continued

Ill. Att’y Gen. PAC Req. Rev. Ltr. 48845, issued September 21, 2017: A reporter for the Invisible Institute submitted a FOIA request to Metra seeking a copy of the most recent internal investigation of a Metra police officer. Metra furnished records in response to the request, but redacted the names of public employees under the section 7(1)(c) exemption. The PAC determined that the identities of public employees named in the records bore on their public duties, and thus did not constitute an unwarranted invasion of personal privacy. Metra subsequently furnished the unredacted records to the requester.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 50117, issued November 15, 2017: A reporter for the Quad-City Times submitted a Request for Review alleging the City of Moline had improperly redacted the name of an applicant to hunt deer within City limits. The City had redacted the name pursuant to sections 7(1)(b) and 7(1)(c) of FOIA. The PAC found that the public has an interest in knowing who has been authorized to hunt and concluded that the City did not demonstrate that the hunter had a personal privacy interest that outweighed the legitimate public interest in the information. The City complied with this office’s determination by providing the requester with the records that included the hunter’s name.

Informal Resolutions

2017 PAC 46488: A reporter submitted a FOIA request to the Illinois State Board of Education (ISBE) seeking records reflecting the names of the evaluators for the request for proposals for the State’s college entrance exam provider. After an Assistant Attorney General in the Public Access Bureau discussed with ISBE that disclosure of the names of the evaluators would not constitute a clearly unwarranted invasion of personal privacy because of the evaluators’ significant role in transacting public business, ISBE disclosed the names to the reporter.

2017 PAC 46521: A reporter for the Chicago Tribune sent a FOIA request to the Illinois State Police (ISP) seeking crime statistics for the year 2016 that had been submitted to ISP by other police agencies. ISP initially denied the request pursuant to section 7(1)(f), asserting that it was preliminary data. After PAC intervened and advised ISP that this very same issue was the subject of a previous binding opinion, Ill. Att’y Gen. Pub. Acc. Op. No. 13-015, issued September 24, 2013, ISP released the statistics to the reporter.

2017 PAC 46971: A reporter for the Chicago Sun-Times submitted a FOIA request to the Noble Network of Charter Schools seeking vendor lists for the five most recent fiscal years, which the Network denied as unduly burdensome. After PAC intervention, the parties agreed to a production schedule that allowed the Network to provide copies of the records over the course of a couple of months.

2017 PAC 49004: A Navy recruiter filed a Request for Review alleging that the Woodstock Police Department had improperly denied his request for copies of a candidate’s juvenile records. After PAC explained to the police department that the Juvenile Court Act of 1987 contains an exception permitting disclosure of minors’ police records to authorized military personnel for official purposes, the police department provided the recruiter with copies of the records.

2017 PAC 49118: A reporter for the Northwest Herald submitted a FOIA request to the McHenry County Coroner’s Office seeking the identity of a deceased minor. The Coroner’s Office denied the request. After intervention



Success Stories Continued

by the PAC, the Coroner's Office agreed to release the identity of the deceased minor.

2017 PAC 49459: A reporter for the Northwest Herald submitted a Request for Review alleging that the Huntley Fire Protection District improperly withheld a letter of resignation from the District's former Fire Chief. The District initially denied the request under section 7(1)(n), which exempts from disclosure "[r]ecords relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed." After receiving the PAC's initial letter of inquiry, the District reconsidered its position and provided the letter to the requester.

2017 PAC 50112: A reporter for Journal & Topics newspapers filed a Request for Review after Community Consolidated School District 59 failed to respond to his FOIA request seeking records about the issuance of \$20 million in bonds for use by the School District. After discussions with the PAC, the School District agreed to provide the reporter with copies of the records.

2017 PAC 50233: A woman filed a FOIA request with the Springfield Police Department seeking the police report regarding her son's heroin overdose. The Department provided the report with her son's name and information redacted. The mother submitted a Request for Review to the Public Access Bureau contesting those redactions and explaining that her son had died from the overdose. After intervention by the PAC, the Department provided unredacted records to the decedent's mother.

2017 PAC 50403: A reporter for WAND-TV submitted a Request for Review after the Decatur Police Department denied her FOIA request seeking its pursuit policy and squad car video of the pursuit of a vehicle seen leaving the area of a double homicide. The Department provided a heavily redacted copy of its pursuit policy and withheld the video of the pursuit in its entirety, citing an ongoing investigation. After discussions with the PAC, the Department agreed to provide requester with the video of the pursuit and spoke with the requester about its pursuit policy.

2017 PAC 50727: A member of the public filed a Request for Review after the Illinois State Police denied her FOIA request for the job application of the employee who was ultimately chosen for a position for which she had applied. ISP had 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. After mediation by the PAC, and on the basis of Binding Opinion 14-015 (Ill. Att'y Gen. Pub. Acc. Op. No. 14-015, issued November 25, 2014), ISP disclosed the responsive applications.

The Freedom of Information Act



GENERAL INFORMATION

What is 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 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.

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.



FOIA Frequently Asked Questions

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 its 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 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 five business days after the public body receives the request. Day one of the five-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 one." The public body may extend that time period for an additional five 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;



FOIA Frequently Asked Questions continued

- 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 five 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 five 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 five business day time period.

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

Aside from the potential outcome 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 five 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.



FOIA Frequently Asked Questions continued

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 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.

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:



FOIA Frequently Asked Questions continued

- 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 five 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 nondisclosure. 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



FOIA Frequently Asked Questions continued

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:

- 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.
- Request more information from the public body. If more information is needed to review the issue, the PAC may, within seven 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 seven 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.
- 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 to 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.



FOIA Frequently Asked Questions continued

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. If compliance concerns a FOIA request that may be the subject of a Request for Review, the PAC may provide general advice but will not issue an advisory opinion.

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 email 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).



FOIA Frequently Asked Questions continued

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 eight 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 five-member public body, a quorum of the members of a public body held for the purpose of discussing public business. Accordingly, for a five-member public body, three members of the body constitute a quorum and the affirmative vote of three-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 seven-member board with a quorum of four, a majority of the quorum would be three. Under OMA, five-member bodies have a three member quorum and require the affirmative vote of three members to adopt any motion, resolution or ordinance, unless a greater number is otherwise required.



OMA Frequently Asked Questions continued

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, a public body cannot even



OMA Frequently Asked Questions continued

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. The primary purpose of adopting rules governing public comment is to accommodate the public's statutory right to address the public body while ensuring that the public body can maintain order and decorum at its meetings.

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 seven calendar days after the minutes are approved by the public body. Typically, the minutes are approved at the next board meeting.



OMA Frequently Asked Questions continued

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; and
- Meetings of the Tax Increment Financing Reform Task Force under Section 2505-800 of the Department of Revenue Law of the Civil Administrative Code of Illinois.

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. In addition, if you timely file a Request for Review and the PAC resolves the matter by means other than a binding opinion, you may file suit within 60 days of the decision by the Attorney General.

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.



OMA Frequently Asked Questions continued

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 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 seven 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 seven business days of receiving the request from the PAC.

Within seven 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 seven 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.



OMA Frequently Asked Questions continued

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