

Public Access Counselor Annual Report

An Overview
of 2018

March 2019



KWAME RAOUL
ILLINOIS ATTORNEY GENERAL



A Message from
ILLINOIS ATTORNEY GENERAL
Kwame Raoul

“Sunlight is said to be the best of disinfectants . . .”

U. S. Supreme Court Justice Louis D. Brandeis

The Office of the Attorney General observes Sunshine Week by releasing an annual report detailing the work of the Public Access Counselor (“PAC”), which serves the vital function of promoting transparency and openness in our government. As the newly-elected Attorney General of Illinois, I am proud to offer the public this look at the PAC’s activities in 2018.

In my inaugural address and again here, I will applaud the work of my predecessor, Lisa Madigan for her sustained commitment to the furtherance of transparency in our state. The Public Access Counselor was established in 2003 by Attorney General Madigan to resolve requests for further assistance when the public and the media are denied access to public records or public meetings. In 2009, as an Illinois State Senator, I worked with the Office of the Attorney General to sponsor changes in state law that codified the Public Access Counselor’s role and clearly stated high expectations of compliance by government entities.

Since being sworn in as Attorney General in January of 2019, I have been able to start the process of examining how our PAC functions in order to increase transparency at all levels of government in Illinois. My primary goal is to ensure that the PAC is properly resourced to fulfill its current statutory role and also allow it to expand the important work of training government officials across Illinois about their duty to provide access to records and public meetings.

From its inception, in statute in 2010 the PAC has handled more than 38,000 matters that have been submitted for assistance by members of the public and the media. In 2018 alone, the PAC received nearly 3,800 requests — more than 300 matters per month — for help in obtaining government documents or access to a public meeting. While the PAC has a nine-year record of promoting transparency, we must ensure that it has the resources it needs to fulfill its obligations and operate efficiently for the benefit of our citizens. The PAC and the Assistant Attorneys General in the Public Access Bureau help the people of our State to understand how their taxpayer dollars are being spent and how their government operates, with the overall goal of promoting government accountability. I appreciate your interest in the Public Access Counselor and invite you to turn to it whenever it is needed.

A handwritten signature in black ink, consisting of stylized initials 'K' and 'R' followed by a surname.

Kwame Raoul
Attorney General

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Complaint Statistics

In 2018, the Public Access Counselor (PAC) received 3,748 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 address. The Public Access Bureau also conducted more than 30 training sessions for members of the public, government officials, attorneys, members of the media, and students.

The following is a statistical breakdown of the formal requests received by our office from January 1, 2018, to December 31, 2018. The vast majority 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 2018: 3,748

Breakdown of Freedom of Information Act requests:

- 3,372 total requests for review by the PAC
- 2,657 from members of the public
- 695 from media outlets or other organizations
- 20 from public bodies

Breakdown of Open Meetings Act requests:

- 376 total requests for review by the PAC
- 309 from members of the public
- 59 from media outlets or other organizations
- 8 from public bodies

Average number of requests for review filed per month: 312

Training Seminars



The Attorney General's Public Access Bureau conducted 32 training sessions to educate members of the public, government officials, members of the media, and attorneys about their rights and responsibilities under the Freedom of Information Act (FOIA) and the Open Meetings Act (OMA), as well as this office's interpretation of those statutes. 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 them to open government throughout Illinois. The Public Access Counselor also updates the required online training covering both FOIA and OMA each year.

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.

Date	Title/Hosting Group	Location
January 11, 2018	OMA/FOIA for Elected Official DeKalb County State's Attorney's Office	Sycamore
January 24, 2018	FOIA Basics for Municipalities City of Wood Dale	Wood Dale
February 21, 2018	FOIA Overview Indiana, Illinois, Iowa Foundation for Fair Contracting	Rockford
February 27, 2018	FOIA Overview Chicago-Kent College of Law (Open Government seminar)	Chicago
March 1, 2018	FOIA Fellows (day-long event for journalists) DePaul Center for Journalism	Chicago
April 9, 2018	FOIA/OMA Recent Law Update- Chicago Bar Association, Adminis- trative Law Section	Chicago
April 10, 2018	OMA County Supervisors of Assessments of Illinois	Springfield
April 13, 2018	FOIA Overview Illinois Innocence Project	Springfield
April 13, 2018	University of Illinois Law School class	Springfield
April 19, 2018	FOIA League of Women Voters (Springfield chapter)	Springfield



Training Seminars continued

April 24, 2018	FOIA for Law Enforcement Illinois Valley Crime Prevention Commission — MTU 5	Ottawa
May 3, 2018	OMA University of Illinois Extension webinar	Online
May 8, 2018	FOIA for Law Enforcement Round Lake Police Department	Round Lake
May 10, 2018	FOIA for Procurement Officers IPHEC Spring Conference	Springfield
May 16, 2018	OMA Illinois Liquor Control Commission	Chicago
May 17, 2018	FOIA/OMA Illinois Rural Water Association	Fairview Heights
May 23, 2018	FOIA for Municipalities City of Northlake	Northlake
June 5, 2018	FOIA for Law Enforcement New Lenox Police Department	New Lenox
June 7, 2018	FOIA/OMA Panel Chicago Bar Association, Local Government Law Section	Chicago
June 21, 2018	FOIA for Law Enforcement Law Enforcement Records Manag- ers of Illinois	Burr Ridge
July 10, 2018	FOIA for Law Enforcement Highland Park Police Department	Highland Park
September 13, 2018	FOIA for Law Enforcement Rockford Police Department	Rockford
September 19, 2018	OMA Northern Illinois Newspaper Asso- ciation, NIU	DeKalb
September 20, 2018	FOIA/OMA Recent Issues with Attorney Ruth Schlossberg Illinois Municipal League Conference	Chicago
October 4, 2018	OMA for Elected Officials City of Wood Dale	Wood Dale
October 15, 2018	FOIA/OMA Municipal Clerks of Illinois Institute	Springfield



Training Seminars continued

October 23, 2018	FOIA CLE Office of the Attorney General	Chicago
October 25, 2018	FOIA CLE Office of the Attorney General	Springfield
November 13, 2018	FOIA/OMA Illinois Municipal Treasurers Association Institute	Bloomington
November 16, 2018	FOIA/OMA for Schools and School Boards Illinois Association of School Boards Conference	Chicago
November 16, 2018	FOIA/OMA Illinois Rural Water Association	East Peoria
November 30, 2018	FOIA/OMA Panel Presentation Illinois Public Sector Labor Relations Law Conference (Chicago-Kent College of Law)	Chicago



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

There are three main types of ways the PAC may respond to a Request for Review:

1. **Review the issues in the FOIA or OMA dispute and determine that no further action is necessary.**
2. **Work informally or through a non-binding determination to resolve the dispute with the public body.**
3. **Issue a binding opinion to resolve the dispute.**

In 2018, the PAC issued 18 binding opinions. The authority to issue binding administrative decisions has allowed the PAC to produce opinions that clarify the law and increase transparency. This year's binding opinions have enforced public bodies' primary duty to respond to FOIA requests, emphasized the types of information that must be disclosed, clarified a public body's burden when claiming a request is unduly burdensome, and reinforced that the exceptions in the Open Meetings Act must be construed narrowly.

The PAC has also successfully resolved hundreds of disputes over the release of records and open meetings issues through negotiations with requesters and public bodies, as well as 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 2018. These examples highlight how the PAC is working to increase the public's access to government.

Binding Opinions

Ill. Att'y Gen. Pub. Acc. Op. No. 18-004, issued March 6, 2018; (2017 PAC 50559).

A reporter from the *Daily Herald* sought from the City of Elgin a copy of the budget a building developer submitted to the City as a condition of receiving City funds for a redevelopment project. The City denied the request, asserting that the budget was a trade secret exempt from disclosure pursuant to section 7(1)(g). The Attorney General rejected the City's assertion, finding that the budget was not submitted under a claim of confidentiality and that the City had failed to establish that disclosure of the budget would cause the developer to suffer competitive harm. Accordingly, the Attorney General directed the City to furnish the reporter with unredacted copies of the budget.

Ill. Att'y Gen. Pub. Acc. Op. No. 18-005, issued March 13, 2018; (2017 PAC 50592).

A member of the public submitted a FOIA request to the City of Nashville seeking information about wages and salaries its employees received in 2016 and 2017. The City denied the request as an unwarranted invasion of personal privacy under section 7(1)(c) of FOIA. The Attorney General concluded that the disclosure of the amount of compensation received by a public employee relates to the City's receipt of public funds and, therefore, is required by section 2.5 of FOIA. Additionally, the Attorney General determined that the disclosure of this information is not a clearly unwarranted invasion of personal privacy under 7(1)(c). Because there is a significant public interest in the amount of public funds paid to public employees, any privacy interest an employee may have in this information is outweighed by the public's legitimate interest in knowing how public funds are spent.



Success Stories continued

Ill. Att’y Gen. Pub. Acc. Op. No. 18-009, issued July 16, 2018; (2018 PAC 52464).

A member of the public submitted a FOIA request to the City of Chicago Department of Business Affairs and Consumer Protection seeking a list of all properties in the City that have been granted a Commissioner’s Adjustment under the Shared Housing ordinance, including property index numbers (PINs). The Department provided copies of the records but redacted the PINs as private information that are exempt under section 7(1)(b) of FOIA. In its response to this office, the Department asserted that that the property index numbers were also exempt pursuant to section 7(1)(c) of FOIA because disclosure would constitute an unwarranted invasion of personal privacy. The Attorney General concluded that (1) the Department did not sustain its burden of demonstrating that PINs are unique identifiers exempt under 7(1)(b) because a PIN identifies a parcel of property, not a particular individual, is readily available on governmental websites, and constitutes basic identification of a parcel of property. It was also determined that the Department did not sustain its burden of demonstrating that PINs are highly personal information within the meaning of section 7(1)(c) of FOIA. Accordingly, the Attorney General directed the Department to furnish the requester with unredacted copies of the records.

Ill. Att’y Gen. Pub. Acc. Op. No. 18-012, issued October 2, 2018; (2018 PAC 53879).

A union official filed a Request for Review alleging that the Board of Trustees of Western Illinois University violated the Open Meetings Act by improperly discussing its budget, layoffs, and related matters in closed session. The Board asserted that its closed session was authorized by the section 2(c)(1) exception that permits public bodies to discuss the appointment, employment, compensation, discipline, performance, or dismissal of specific employees. After reviewing a verbatim recording of the discussion, this office determined that the Board mostly discussed budgetary matters and considerations applicable to categories of employees rather than the merits or conduct of specific employees. Accordingly, the Attorney General concluded that those portions of the closed session discussion were improper and directed the Board to disclose them.

Ill. Att’y Gen. Pub. Acc. Op. No. 18-015, issued October 30, 2018; (2018 PAC 54229).

A county auditor alleged that the Finance Committee of the McLean County Board improperly entered closed session during its June 6, 2018, meeting under the exception in section 2(c)(1) of OMA, which permits a public body to discuss a specific employee’s performance during closed session. The county auditor alleged that the Committee discussed the duties and salaries of the county auditor and county coroner - independently elected county officers - in closed session. The county auditor argued this discussion was improper because the county officers are public officials, not employees. In its response to this office, the State’s Attorney, on behalf of the Committee, contended the discussions were permitted by section 2(c)(1) because the county officers were employees of the County based on certain portions of the Illinois Counties Code (Code). The Attorney General concluded that the County does not have an employer-employee relationship with the county officers under the usual common law rules, and that the cited portions of the Code did not support the Committee’s arguments that it did have such a relationship. Also, the Attorney General determined that under the definitions of “public office” and “employee” in section 2(d) of OMA, the occupant of a position cannot simultaneously be both a public officer and an employee. Here, the county auditor and the county coroner hold public offices, and therefore, are not employees of the County within the scope of section 2(c)(1) of OMA. Accordingly, section 2(c)(1) of OMA did not authorize the Committee’s closed session discussion of the county officers’ duties and salaries. Also, although not cited by the Committee as a basis for entering closed session, the Attorney General



Success Stories continued

concluded that section 2(c)(3) of OMA would not have authorized the closed session discussions because the Committee does not possess the power to remove the county officers.

Ill. Att’y Gen. Pub. Acc. Op. No. 18-016, issued November 14, 2018; (2018 PAC 54236).

An attorney for a motorist injured in a car accident requested a copy of the traffic crash report. The Rock Island Police Department (Department) denied the report in its entirety under section 7.5(bb) of FOIA, which exempts records prohibited from being disclosed by the Juvenile Court Act. Specifically, the Department contended that section 1-7(A) of the Juvenile Court Act prohibited disclosure of the report because it contained the names of the motorist’s minor children. The Department argued that section 1-7(A) of the Juvenile Court Act prohibits disclosure of any law enforcement record naming minors in any capacity. The Attorney General concluded that section 1-7(A) the Juvenile Court Act prohibits disclosure of law enforcement records only when a minor was investigated, arrested, or taken into custody—it does not apply to records in which a minor is listed as a victim or witness. Accordingly, the Attorney General concluded that the Department improperly withheld the traffic crash report in its entirety.

Ill. Att’y Gen. Pub. Acc. Op. No. 18-018, issued December 31, 2018; (2018 PAC 55153)

A reporter from *South Side Weekly* sought records concerning complaints of misconduct against a former police officer of the Metropolitan Water Reclamation District of Greater Chicago. The District withheld two reports concerning complaints against the officer on the basis of section 7(1)(c), arguing that because one complaint was unfounded and one involved conduct by the officer that was found to be appropriate, the disclosure of the accusations would be a highly objectionable invasion of the officer’s personal privacy. The Attorney General concluded that because the complaints concern the officer’s actions while he was performing his public duties as a District police officer, the records unequivocally bear on the officer’s public duties. Accordingly, disclosure of the reports would not constitute an unwarranted invasion of the officer’s personal privacy. However, the Attorney General found that information identifying the individuals who made the complaints is highly personal and the subjects’ privacy rights outweigh any legitimate public interest in disclosure of their identities. Therefore, that identifying information may be redacted from the responsive reports.

Non-binding determinations

Ill. Att’y Gen. PAC Req. Rev. Ltr. 45387, issued July 6, 2018: A reporter with *WSPY News* submitted a Request for Review alleging that the City of Sandwich improperly redacted names from applications for building permits, citing exemptions for private and personal information under sections 7(1)(b) and 7(1)(c) of FOIA. The PAC determined that the City improperly redacted names as unique identifiers under section 7(1)(b), despite the fact that the City had already disclosed home addresses related to the permit applications. In addition, the PAC determined that the City had not demonstrated that the privacy interests in the names connected to the home addresses in the building permit applications outweighed the public interested in disclosure. The City subsequently provided copies of the permit applications to the requester.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 49828, issued February 20, 2018: A member of the public alleged, among other things, that the Maine Township Board of Supervisors violated the Open Meetings Act (OMA) by failing to post notice and an agenda for 6:30 p.m. meetings that occurred on August 22, 2017, and September 26, 2017.



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The Board argued that its 6:30 p.m. gatherings were not subject to the requirements of OMA because the Board did not discuss public business; rather, trustees gathered to individually review the Township's bills, without deliberation or discussion. The Board explained that the trustees voted on the bills at the ensuing 7:30 p.m. Board meetings. The PAC noted that a meeting under OMA includes collective discussion and the exchange of facts preliminary to an ultimate decision. Because the purpose of the 6:30 p.m. gatherings was to obtain information in anticipation of voting on the payment of the bills at the ensuing regular Board meetings, the information obtained during those gatherings was preliminary to the ultimate decision of whether to approve the bills. The PAC determined that the Board engaged in the collective inquiry phase of deliberation during its 6:30 p.m. gatherings before voting at 7:30 p.m. on the approval of the Township bills. Therefore, this office concluded that the 6:30 p.m. gatherings constituted meetings subject to the requirements of OMA. Since receiving notice of the Request for Review filed in this matter, the Board has adopted the practice of providing notice of the 6:30 p.m. meetings by including them on the agendas for its regular Board meetings.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 50429, issued May 8, 2018: A newspaper reporter submitted a FOIA request to the Jerseyville Police Department seeking copies of complaints and police reports concerning a specific address and the individuals who resided there before the death of one of their children. The Police Department denied a report generated more than a year before the child's death pursuant to section 7(1)(d)(i) of FOIA, asserting that disclosure of the records would interfere with the investigation of the child's death by revealing the identities of witnesses. After receiving a Request for Review, this office determined that the Department was not entitled to withhold the entire report, but could redact the complainant's name and identifying information. The Police Department provided the reporter with a copy of the report in accordance with the determination.

Ill. Att'y Gen. PAC. Req. Rev. Ltr. 50521, issued February 16, 2018: A member of the public submitted a Request for Review alleging that the Chicago Police Department (CPD) improperly redacted information from a traffic crash report, citing exemptions for private and personal information and ongoing investigations. The PAC determined that CPD had not sustained its burden of showing by clear and convincing evidence that these exemptions were applicable, because CPD failed to provide PAC with both a written explanation for the applicability of the asserted exemptions and unredacted copies of the responsive record for PAC's confidential review. CPD subsequently disclosed an unredacted copy of the traffic crash report to the requester.

Ill. Att'y Gen. PAC. Req. Rev. Ltr. 51070, issued May 25, 2018: A reporter with the *Chicago Tribune* submitted a Request for Review alleging that the Chicago Transit Authority (CTA) improperly cited sections 7(1)(c) (personal information) and 7(1)(v) (security concerns) of FOIA to withhold video footage of a high-profile shooting. The PAC determined that CTA improperly withheld that record because the public interest in disclosure of the responsive footage outweighed the relevant privacy interests in this instance. In addition, the PAC determined that CTA had not demonstrated that disclosure of the footage would jeopardize the overall effectiveness of CTA's camera system or the safety of any person within the meaning of section 7(1)(v). After receiving PAC's determination, CTA provided a copy of the video to the requester.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 51508, issued June 7, 2018: An attorney, on behalf of a client, submitted a Request for Review alleging that the Illinois State Police (ISP) improperly responded to a request for records pertaining to a motor vehicle crash that occurred at a particular location on Interstate 80. ISP had responded



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that it was unable to search for records by location and needed at least one name and a date of birth of someone involved in the accident. The requester challenged the adequacy of ISP's search for responsive records. The PAC determined that ISP did not provide a sufficient explanation of its search efforts. For instance, ISP did not describe any actual measures that it took to search for responsive records based on the information that the attorney provided about the accident. After receiving PAC's determination, ISP performed a supplemental search and provided responsive records to the requester.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 51671, issued July 18, 2018: A reporter for *The Telegraph* submitted a Request for Review alleging that the Sny Island Levee Drainage District had improperly redacted portions of legal invoices concerning legal work for a group of levee districts. The District had redacted certain billing entry descriptions pursuant to section 7(1)(m) of FOIA, claiming attorney-client privilege and attorney work-product. The PAC found that four particular billing entry descriptions did not contain information about the specific nature of services that were provided by the District's attorneys and were not exempt as attorney-client privileged communications or attorney work-product. The District complied with this office's determination by providing the reporter with the four billing entry descriptions.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 52227, issued August 3, 2018: A member of the public submitted a Request for Review involving a denial by the Metropolitan Water Reclamation District of a request for copies of contracts between the District's outside law firm and consultants it had engaged to assist in the creation of a report for the District. The District had argued that it did not possess copies of the contracts and that it did not have to provide the requester with copies of contracts that its law firm possessed. PAC issued a determination concluding that the denial was improper under section 7(2) of FOIA, which provides that records in the possession of an agency with whom a public body contracts to perform a governmental function are considered records of the public body for purposes of FOIA. On August 13, 2018, the District furnished copies of the contracts to the requester.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 52312, issued June 1, 2018: A reporter for the *Northwest Herald* submitted a FOIA request to the City of McHenry seeking police reports concerning a particular incident involving an adult and a minor. The City provided the reporter with records, but redacted portions pursuant to sections 7(1)(b) (private information) and 7(1)(c) (personal information) of FOIA. The reporter submitted a Request for Review to the PAC seeking, among other things, the location where the incident occurred. The PAC concluded that certain information redacted by the City, including the non-residential address where police responded, was not exempt because there is significant public interest in the disclosure of the locations where crimes were reported, even if no arrests were made. Upon receipt of the determination letter, the City provided the reporter with the information that had been improperly redacted.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 52650, issued October 30, 2018: A member of the public submitted a Request for Review alleging that the Metropolitan Water Reclamation District of Greater Chicago improperly denied his request for the engagement letter and scope of work documenting the District's agreement with a law firm retained to provide services to the District. The District denied the records pursuant to section 7(1)(m) of FOIA, asserting that the records were protected by the attorney-client privilege. The PAC determined that, contrary to the District's assertions, the record did not contain any legal advice or any substantive information about the District's motive for seeking legal advice beyond what had already been made public. Rather, the



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records contained statements regarding the general purpose of the work to be performed and facts outlining the parties' agreement, none of which was privileged or exempt from disclosure pursuant to section 7(1)(m) of FOIA. Upon receiving the determination, the District provided the requester with the requested records.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 53248, issued August 27, 2018: A reporter with WGN-TV submitted a Request for Review alleging that the Illinois Department of Corrections (IDOC) improperly withheld communications responsive to his FOIA request for copies of records concerning the cancellation of an inmate debate program. The PAC determined that IDOC had improperly withheld communications with third parties because IDOC had not demonstrated that those communications were part of predecisional deliberations within the scope of the section 7(1)(f) exemption. IDOC acknowledged its error and provided copies of those communications to the reporter.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 53708, issued August 28, 2018: An assistant news director for 13 WREX submitted a Request for Review alleging that the Boone County Sheriff's Office (Sheriff's Office) improperly withheld copies of 9-1-1 call recordings under sections 7(1)(d)(i) (interference with pending investigation) and 7(1)(d)(iii) (deprivation of fair trial) of FOIA. The PAC determined that the Sheriff's Office failed to demonstrate that there was an ongoing investigation concerning the recordings, and that the Sheriff's Office failed to articulate how the release of the recordings would have created a substantial likelihood that a person would be deprived of a fair trial. After receiving PAC's determination letter, the Sheriff's Office provided the requester with copies of the responsive 9-1-1 call recordings.

Informal resolutions

2018 PAC 51609: A reporter for *Reason* magazine submitted a FOIA request to the City of Chicago Department of Administrative Hearings seeking database information concerning vehicle impounds. The reporter requested the Department's database dictionary with the intention of using that information to submit a follow-up FOIA request for specific information from the database. The Department asserted several objections to turning over the database dictionary, and the requester submitted a Request for Review. The PAC spoke with the Department to get an understanding of what fields existed in the database and spoke with the requester to understand what fields were most relevant to his research. On March 12, 2018, the Department furnished the requester with a report containing the data in the fields relevant to the requester's research. A month after receiving the data, the reporter published a lengthy story citing data it received in a public records request from the Department. <https://reason.com/archives/2018/04/25/chicago-debt-impound-cars-innocent>

2018 PAC 52057: A reporter for the *Daily Southtown/Tribune Publishing* submitted a Request for Review alleging that the Will County Sheriff's Office improperly withheld certain 9-1-1 recordings of calls for service and police reports, citing the exemptions concerning private and personal information in sections 7(1)(b) and 7(1)(c) of FOIA. Concerning the request for the 9-1-1 call recordings, the Sheriff's Office initially asserted that the recordings contained "biometric identifiers[.]" which are included in the definition of "private information" found in section 2(c-5) of FOIA and are therefore exempt from disclosure under section 7(1)(b) of FOIA. The PAC's initial letter of inquiry referenced a prior binding opinion by the Attorney General, Ill. Att'y Gen. Pub. Acc. Op. No. 17-011, issued August 14, 2017, to the Sheriff's Office, which had rejected the argument that 9-1-1



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call recordings contained “biometric identifiers.” The Sheriff’s Office reconsidered its position and provided the records to the requester.

2018 PAC 53314: A reporter for KWQC TV-6 submitted a Request for Review alleging that the Rock Island Police Department (Department) had improperly denied his request for police reports and video footage of an incident that resulted in the arrest of three individuals for battery, citing an ongoing investigation. The PAC contacted the Department requesting an explanation for its assertion that disclosure of the records would interfere with pending law enforcement proceedings. After receiving the PAC’s letter, the Department provided the reporter with the requested reports and footage, but redacted certain portions pursuant to sections 7(1)(d)(iv) and 7.5(k) of FOIA. The reporter informed the PAC that the records he received from the Department resolved the matter.

2018 PAC 53387: A member of the public submitted a Request for Review alleging that the Belleville Police Department (Department) improperly cited several FOIA exemptions to withhold records that related to the investigation of a homicide that had occurred on June 11, 2004. After receiving the PAC’s initial letter of inquiry, which specifically asked the Department to explain how the release of the requested records — involving a murder that occurred fourteen years ago — would fall within the scope of the cited section 7(1)(d) exemptions, the Department reconsidered its position and provided the records to the requester.

2018 PAC 53393: A professor and interim head of the Department of Urban and Regional Planning at the University of Illinois submitted a FOIA request to the City of Chicago Department of Buildings (Department) seeking a list of the dates, inspection numbers, and addresses of all periodic conservation inspections since 2006. The Department responded that the information could be found on the City of Chicago’s Data Portal, but the requester could not find the information and filed a Request for Review. Through communications with the parties, the PAC clarified what records the requester was seeking and what information the Department was able to provide, resulting in the Department providing the requester with information sufficient to satisfy his request.

2018 PAC 53912; 2018 PAC 53916: A member of the public submitted a Request for Review alleging that the State Universities Retirement System (SURS) and the Teachers’ Retirement System (TRS) of the State of Illinois improperly withheld records concerning employees’ accrued balances of sick days, holidays, and vacation days as “personal information” under section 7(1)(c) of FOIA. After receiving the PAC’s initial letter of inquiry and discussing the matter with PAC, both SURS and TRS reconsidered their positions and provided the records to the requester.

2018 PAC 54458: A reporter for the *Rockford Star Register* submitted a FOIA request to the Winnebago County Sheriff’s Department seeking records concerning physical altercations among detainees. The Sheriff’s Department initially denied certain information related to the incidents. After intervention by the PAC, the Sheriff’s Department released information to the reporter.

2018 PAC 54684; 2018 PAC 54693; 2018 PAC 54699: A reporter with IllinoisLeaks.com submitted Requests for Review alleging that the Northern Edgar County Ambulance Service (Service) had violated OMA at meetings in July and August 2018 by taking action on items that were not on the agenda and by improperly discussing



Success Stories continued

items in closed session. After receiving the Service's response to the allegations, the reporter contacted the PAC seeking assistance with mediating the matters. The PAC contacted the coordinator of the Service and discussed the Service's obligation to place items on the agenda that are the subject of final action and the permissible subjects of closed session discussion listed in section 2(c) of OMA. After speaking with the Service, the reporter agreed that the Service's violations of OMA had been resolved by the PAC's educational outreach to the Service.

2018 PAC 55365: A member of the public submitted a Request for Review alleging that the Winnebago Housing Authority Board continually violated OMA by failing to post meeting minutes on its website within 10 days after the minutes were approved. After intervention by the PAC, the Board acknowledged its error and agreed to fully comply with the requirements of OMA in the future.

2018 PAC 56150: A law firm submitted a FOIA request to the City of Waukegan (City), on behalf of its client, seeking two police reports. The City provided one of the reports but denied the other report, citing a section of the Juvenile Court Act. The law firm submitted a Request for Review to the PAC explaining that the withheld report pertains to a minor victim of a sexual assault by an adult, and that its client is the mother of the minor victim. After intervention by the PAC, including discussing the requirements of the JCA with the City, the City provided a copy of the police report to the law firm.



FOIA: About the Law & Frequently Asked Questions

GENERAL INFORMATION

What is the Freedom of Information Act?

The Freedom of Information Act (“FOIA”), 5 ILCS 140, is a state statute that gives the public the right to access government documents and records. The premise behind FOIA is that members of the public have a right to know what their 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. These include legislative, executive, administrative, and advisory bodies of the State, state universities and colleges, boards and commissions of the State, units of local government, and subsidiary bodies, such as committees and subcommittees, of any of the above. For purposes of FOIA, “public body” does not include a child death review team, the Illinois Child Death Review Teams Executive Council, a regional youth advisory board, or the Statewide Youth Advisory Board. The judiciary also 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 can file a FOIA request. Any person, group, association, corporation, firm, partnership or organization has the right to make a FOIA request to any state or local public body, including any city, township, or county office.

MAKING 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.



FOIA Frequently Asked Questions continued

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

What should I include in my 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 with any questions. Provide as much information as possible on the subject matter of the record(s) you are requesting. 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 they 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.



FOIA Frequently Asked Questions continued

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.

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 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 it receives the request. Day one of the five-day timeline is the first business day after the request is received. 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,
- The request requires an extensive search,
- The requested records have not been located and require additional effort to find,



FOIA Frequently Asked Questions continued

- 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 a 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. It must communicate to the requester the statutory reason(s) 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?



FOIA Frequently Asked Questions continued

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

Can a public body charge for electronic copies?

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

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 it 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 Frequently Asked Questions continued

FOIA OFFICERS

What is a “FOIA officer?”

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

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

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

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

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

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

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

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. The public body must allow you to inspect and obtain copies of public documents.



FOIA Frequently Asked Questions continued

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 within five business days?

If the public body does not respond to your request within five business days after receiving it, then its 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 (see p. 19-20 for examples of reasons allowed under the law) to justify the nondisclosure. If the denial is challenged in court, the 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.

EXEMPTIONS:

RECORDS THAT A PUBLIC BODY MAY WITHHOLD FROM DISCLOSURE

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

FOIA makes the 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, defined in FOIA 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." 5 ILCS 140/2(c-5). 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." Id.

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.

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.



FOIA Frequently Asked Questions continued

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 a person or business.

Proposals and bids for any contract, until a final selection is made.

Requests that are “unduly burdensome.” 5 ILCS 140/3(g).

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.” 5 ILCS 140/7(c). 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. At that point, the public body can either

1. Provide the requested records,



FOIA Frequently Asked Questions continued

2. Advise when the records will be provided and the cost to the requester,
3. Deny the request (if it falls under an exception), or
4. Advise the requester that the request is unduly burdensome.

The other distinction between commercial and non-commercial requests is that the PAC does not consider Requests for Review of denials of commercial information requests. A requester may, however, ask the PAC to review a public body's decision to treat a certain request as commercial in purpose.

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

FOIA allows public bodies to charge up to \$10 for each hour (after the first eight hours, for which there will be no charge) spent by personnel in searching for, retrieving or examining for redactions a record requested in a commercial request. 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.

HOW TO FILE A REQUEST FOR REVIEW WITH THE PAC

What can I do if I believe a public body has wrongly denied my request for information?

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

What is a Request for Review?

For FOIA, a Request for Review is correspondence that a requester may submit to the PAC if his or her request to inspect or copy a public record has been denied, or if the public body has failed to respond. 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

- A copy of the FOIA request, and
- 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 a response from the body was due, if it failed to respond).

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 a response from the body was due, if it failed to respond). Note that this time limit is counted in calendar days (i.e., including Saturdays, Sundays, and holidays), not business days.

How do I contact the PAC in the Attorney General’s Office or file a Request for Review?

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



FOIA Frequently Asked Questions continued

500 S. 2nd Street
Springfield, Illinois 62701
Email: publicaccess@atg.state.il.us
FOIA Hotline: 1-877-299-FOIA (1-877-299-3642)

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.

What does the PAC do with my Request for Review?

There are three main types of ways the PAC may respond to a Request for Review:

1. Review the issues in your FOIA dispute and determine that no further action is necessary. 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.
2. Work to resolve your FOIA dispute with the public body. 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.
3. Issue a binding opinion to resolve the FOIA dispute. 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.

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.

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. 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



FOIA Frequently Asked Questions continued

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.

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.

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

Yes, a public body may 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 (<mailto: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: About the Law & Frequently Asked Questions

GENERAL INFORMATION

What is the Open Meetings Act?

The Open Meetings Act (“OMA”), [5 ILCS 120](#), is a state law designed to ensure that Illinois residents have access to their government.

The OMA 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 Attorney General’s role in enforcing the OMA?

The Office of the Attorney General helped pass legislation that reformed and strengthened the OMA to improve public access to government deliberations.

The law’s provisions codify the Public Access Counselor (“PAC”) 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 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 a training program authorized under the law once during their terms of election or appointment.

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?

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



OMA Frequently Asked Questions continued

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.” 5 ILCS 120/1.02.

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, an ethics commission acting under the State Officials and Employees Ethics Act, a regional youth advisory board, the Statewide Youth Advisory Board, or the Illinois Independent Tax Tribunal.

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, and
- municipal corporations.

Public bodies also include all committees, subcommittees, and other 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 unless a greater number is required.

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.” 5 ILCS 120/1.02.



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 public with a meeting's date, time, and location.

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(s) of the meetings. It must post a copy of this 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 each 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 discussed or acted upon 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 may not 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 their meetings.

A public body must make minutes of the meeting available for public inspection and post them on the public



OMA Frequently Asked Questions continued

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 meeting.

CLOSED MEETINGS – NOT OPEN TO THE PUBLIC

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

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

- The appointment, employment, compensation, discipline, performance, or dismissal of a specific employee or legal counsel for the public body;
- Collective negotiating matters or deliberations concerning salary schedules for one or more classes of employees;
- Discipline or removal of an occupant of a public office or appointment of an individual to fill a vacant public office;
- Evidence or testimony received in a hearing, provided that the body is a quasi-adjudicative body and prepares and makes available for public inspection a written decision setting forth its determinative reasoning;
- The purchase or lease of real property by the public body;
- The setting of a price for sale or lease of property owned by the public body;
- The sale or purchase of securities, investments or investment contracts;
- Security procedures;
- Student disciplinary cases;
- The placement of individual students in special education programs and other matters relating to individual students;
- Pending or probable litigation against, affecting, or on behalf of the public body;
- The establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act;
- Ongoing, prior or future criminal investigations, when discussed by public bodies with criminal investigatory responsibilities;



OMA Frequently Asked Questions continued

- Conciliation of complaints of discrimination in the sale or rental of housing;
- 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;
- 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;



OMA Frequently Asked Questions continued

- Meetings between the Regional Transportation Authority Board and its Service Boards when the discussion involves review of certain employment contracts;
- 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.
- Meetings of the group established to discuss Medicaid capitation rates under Section 5-30.8 of the Illinois Public Aid Code.

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.

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.



OMA Frequently Asked Questions continued

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. 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:

- personal illness or disability,
- employment purposes or the business of the public body, or
- 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 PAC.

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.

How do I submit a Request for Review to the PAC?

If a member of the public believes 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.



OMA Frequently Asked Questions continued

An OMA Request for Review must be made in writing, be signed by the requester, and include a summary of the facts supporting the allegation.

Requests for Review may be submitted to the PAC by either electronic mail or U.S. Mail. By U.S. Mail, contact the PAC as follows:

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

Via email: publicaccess@atg.state.il.us

Requests for Review must be in writing, but for more information or assistance in submitting a request, contact the PAC's hotline: 1-877-299-FOIA (1-877-299-3642).

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.

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 (i.e., days that are not Saturdays, Sundays, or state holidays) to determine whether further action is warranted. 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.



OMA Frequently Asked Questions continued

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 a written notice to the requester and the public body.

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

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

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

No.

Can I bring my own OMA action in court?

Yes.

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

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



OMA Frequently Asked Questions continued

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.



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