

March 14, 2022

ATTORNEY GENERAL RAOUL ISSUES 2021 PUBLIC ACCESS REPORT DURING SUNSHINE WEEK

Public Access Bureau Handled Over 3,000 New Matters, Doubled Training Participants

Chicago — In recognition of Sunshine Week, Attorney General Kwame Raoul released the Public Access Counselor Annual Report with details of a sampling of over 3,000 new matters received in 2021. The Public Access Counselor (PAC) works to increase transparency in Illinois government by resolving disputes regarding public bodies' compliance with the state's Freedom of Information Act (FOIA) and Open Meetings Act (OMA). [The 2021 report](#) also describes how the PAC was able to more than double the number of individuals who participated in trainings related to Illinois' transparency laws.

Since the PAC's creation under state law in 2010, members of the public and the media have submitted 49,199 matters to the PAC for review, and approximately 95% of those matters have been closed. Last year, the PAC received 3,051 formal requests for assistance pursuant to FOIA and OMA – an average of nearly 254 new matters per month. Additionally, in response to the pandemic, the PAC's transition to virtual trainings allowed the bureau to more than double the number of people who received FOIA and OMA training.

"Although we highlight government transparency during Sunshine Week, the Public Access Counselor, or PAC, in the Attorney General's office works throughout the year to ensure that government agencies are accessible to the people they serve," Raoul said. "The Public Access Bureau's trainings are critical in helping public bodies understand and meet their obligations under transparency laws. During 2021, the bureau's continuation of virtual trainings more than doubled the number of training participants, and I look forward to building on that success."

The Public Access Counselor's determinations have created new and important legal guidance in Illinois to enforce the disclosure of records and foster increased transparency in government. They have successfully clarified the law, especially on issues that have not been addressed by courts.

In addition to analyzing and resolving disputes through binding and non-binding opinions, the PAC conducts trainings that inform government officials about their duties under FOIA and OMA, and fields thousands of phone calls on its hotline (1-877-299-FOIA) to help public bodies, the public, and the media understand the open records and open meetings laws. Because mitigations put in place to prevent the spread of COVID-19 remained in place for much of 2021, the Public Access Bureau continued to conduct online trainings. The bureau increased participation in virtual training seminars by hosting 16 remote sessions attended by more than 1,700 individuals – more than twice the number of participants in 2020.

In 2021, the PAC issued 12 binding opinions, decisions that are enforceable in court and create legal guidance concerning Illinois' government transparency laws. Among the notable matters that resulted in binding opinions last year were the following:

- **No. 21-001, issued Jan. 26, 2021:** The Chicago Police Department denied as unduly burdensome a reporter's request seeking any subpoenas and search warrants from federal law enforcement or regulatory agencies. When the reporter contacted the department to discuss narrowing the request to manageable proportions, the department did not engage in an appropriate good-faith dialogue. FOIA requires a public body that considers a request to be unduly burdensome to offer to talk to the requester about narrowing the scope of the request. Because the department failed to do so, the

PAC determined it had improperly denied the request. The PAC also concluded the department did not demonstrate that the request for subpoenas posed an undue burden, nor did it prove that any grand jury subpoenas it received were specifically prohibited from disclosure.

- **No. 21-011, issued Dec. 14, 2021:** A member of the public alleged that the Jersey Community Unit School District No. 100 Board of Education violated OMA in connection with its Sept. 16, 2021 remote meeting by livestreaming the meeting and not allowing the public to attend in person. The PAC considered whether there was a disaster proclamation in effect at the time of the meeting, whether the board president determined that in-person attendance was not practical or prudent due to the pandemic, and whether the board properly livestreamed the meeting so that all discussion and roll call votes were clearly audible. The PAC determined that, because the board met those requirements, it held a proper remote meeting.

The PAC also helps resolve transparency issues between government bodies and members of the public through the use of non-binding determinations and informal negotiations. Here are some examples of such resolutions:

- **2021 PAC 66538, 66539, 66541:** A reporter submitted a request for review contesting the city of Joliet Police Department's denial of several FOIA requests for various police records concerning the department's response to an officer-involved shooting. The department initially denied one request and indicated any records responsive to the other FOIA requests were in the possession of the Will Grundy Major Crimes Task Force, an entity that the police department stated was investigating the incident. After the PAC asked the department to explain its denial, the department acknowledged the denial was in error and provided the records, with some redactions.
- **2021 PAC 66631:** A member of the public submitted a request for review contesting the Housing Authority of McDonough County's denial of a FOIA request as unduly burdensome. Upon reviewing the file, the PAC noted that the housing authority's response was sent after the statutory deadline by which a public body may deny a request as unduly burdensome. The PAC negotiated with the housing authority to arrange a rolling production schedule for the requested records, and as a result, the housing authority provided copies of records every week for several months until it had fully complied with the request.

More information about Illinois' sunshine laws, as well as a copy of the report that includes frequently asked questions can be found on Raoul's [website](#). For assistance from the Public Access Bureau, contact the hotline at 1-877-299-FOIA (3642), or send an email to public.access@ilag.gov.

Public Access Counselor Annual Report

An Overview
of 2021

March 2022





A Message from
ILLINOIS ATTORNEY GENERAL
Kwame Raoul

Although COVID-19 restrictions remained in place for much of 2021, the Public Access Counselor (PAC) built on the progress made in 2020 to increase the public's safe access to government. The transition to remote trainings allowed the PAC to expand its reach and more than double the number of people who received valuable training on the Freedom of Information Act (FOIA) and the Open Meetings Act (OMA). The PAC's work to ensure the public has tools to obtain information from the government, and advising public bodies of their obligations under the law, is key to ensuring transparency. The 2021 Sunshine Week report details the PAC's important work in these areas.

Since 2010, the PAC has handled more than 49,000 matters. In 2021 alone, the PAC received over 3,000 requests for assistance from members of the public and media seeking access to records or public meetings, averaging over 250 requests per month. The PAC received over 330 informal written inquiries related to convening public meetings and responding to information requests. The majority of these inquiries were resolved informally or through determination letters. However, the PAC issued 12 binding opinions, including eight addressing FOIA issues and four addressing OMA issues.

The PAC's binding opinions are critical to reinforcing the law in frequently misunderstood areas, including a public body's duty to confer with a requester when claiming a request is unduly burdensome. The PAC also clarified some new areas, such as the required procedures for public bodies holding meetings remotely during a public health emergency. This guidance ensures that Illinois government remains open and accessible during the pandemic and in the face of future challenges. By expanding trainings and offering opinions on new open government procedures, the PAC continues to enhance openness and transparency of government operations as we move forward on a path to our new normal.

Kwame Raoul
Attorney General

Table of Contents

1.	Complaint Statistics.....	4
2.	Training Seminars.....	5
3.	Success Stories: Binding Opinions, Non-Binding Determinations & Informal Resolutions.....	6
4.	The Freedom of Information Act.....	14
5.	FOIA Frequently Asked Questions.....	15
6.	The Open Meetings Act.....	24
7.	OMA Frequently Asked Questions.....	25
8.	How to Submit a Request for Review.....	31

Complaint Statistics

In 2021, the Public Access Counselor (PAC) received 3,051 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 371 written inquiries through the Public Access email address. On average, the PAC received 254 requests for review each month. The Public Access Bureau also conducted 31 training sessions for members of the public, government officials, attorneys, members of the media and students.

Of the formal requests received by the PAC from Jan. 1, 2021, to Dec. 31, 2021, 2,718 were related to FOIA, and 333 pertained to OMA. 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.

Training Seminars

Even though continued COVID-19 restrictions on in-person gatherings remained in place through much of 2021, the Public Access Bureau increased participation in its training seminars by hosting 16 remote sessions attended by more than 1,700 individuals. Additionally, the Public Access Bureau was invited to deliver virtual trainings at a number of events, including the University of Illinois Extension's Local Government Education Series, the Illinois Heartland Library System's annual conference, the Illinois Government Auditing Conference, a Midwest Association of Public Procurement meeting, a Kane County Bar Association Local Government Committee meeting, the Illinois Public Sector Labor Relations Law Conference, and a law school class. When in-person events were permissible, the Public Access Bureau participated in the conferences held by Illinois Municipal League, the Law Enforcement Records Managers of Illinois, the Illinois Municipal Treasurers Association's Municipal Treasurers Institute, and the Illinois Association of School Boards' Administrative Professionals' Program.

The Public Access Bureau will continue to examine opportunities to increase the number of trainings held across the state. The bureau will also evaluate ways to create and expand programs tailored for specific units of government and public bodies that are interested in promoting transparency and openness in government.

In addition to providing in-person and virtual trainings, attorneys in the Public Access Bureau provide informal education to members of the public, attorneys, and public employees each day by answering questions received through the bureau's hotline, as well as by responding to written inquiries. The Public Access Counselor also updates the required online trainings 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 Theresa Geary at special.events@ilag.gov for more information.

Individuals Receiving FOIA and OMA Training From the PAC in 2021: 2,822

Breakdown of PAC trainings:

- 2,822 members of the public, media and government educated
- 31 FOIA and OMA training sessions

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

There are three main ways by which the PAC can 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 with the public body or issue a determination letter to resolve the dispute.**
3. **Issue a binding opinion to resolve the dispute.**

In 2021, the PAC issued 12 binding opinions, eight addressing FOIA issues and four addressing OMA issues. The authority to issue binding administrative decisions has allowed the PAC to produce opinions that clarify the law and increase transparency. More specifically, the binding opinions issued in 2021 emphasized a public body's duty to confer with a requester when claiming a request is unduly burdensome, clarified the required procedures for public bodies holding meetings remotely during a public health emergency, and interpreted the exemptions for disclosures under FOIA and closed meetings under OMA.

The PAC has also successfully resolved hundreds of disputes over the release of records and issues related to open meetings 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 2021. These examples highlight the PAC's work to increase the public's access to government.

Binding Opinions

Ill. Att'y Gen. Pub. Acc. Op. No. 21-001, issued Jan. 26, 2021: The Chicago Police Department denied as unduly burdensome a Chicago Tribune reporter's request seeking any subpoenas from federal law enforcement or regulatory agencies and any search warrants served on the department. When the requester contacted the department in an attempt to confer about narrowing his request to manageable proportions, the department did not engage in an appropriate good-faith dialogue. Section 3(g) of FOIA requires a public body that considers a request to be unduly burdensome to offer to confer with the requester about narrowing the scope of the request. Because the department failed to do so, the PAC determined it had improperly denied the request as unduly burdensome. The PAC also concluded that the department did not demonstrate that the portion of the request seeking subpoenas posed an undue burden, nor did it prove that any grand jury subpoenas it received were specifically prohibited from disclosure.

Ill. Att'y Gen. Pub. Acc. Op. No. 21-002, issued Feb. 17, 2021: The village of Bartlett's police department denied a Daily Herald Media Group reporter's request seeking records concerning complaints or allegations over a specified time period involving a named individual and location. The department withheld records concerning an allegation of a sexual offense against a minor allegedly committed by an adult. The PAC determined that, although law enforcement records naming adults as alleged perpetrators are not protected by the Juvenile Court Act of 1987, disclosure of the records would constitute a clearly unwarranted invasion of personal privacy. Specifically, information identifying victims of alleged sexual offenses is inherently highly personal, and acutely so when the victim is a minor. Further, the suspect was not a public figure and was never arrested. The

Success Stories continued

department sustained its burden of proving by clear and convincing evidence that the records were exempt from disclosure under section 7(1)(c) of FOIA.

Ill. Att’y Gen. Pub. Acc. Op. No. 21-003, issued March 4, 2021: A member of the public alleged that the Hillsboro City Council entered into closed session to discuss “possible litigation” without any basis to do so. In closed session, the city’s attorney advised the city council that litigation was possible because of previous public statements made by the member of the public who submitted the request for review. When no litigation is pending, legal action must be “probable” or “imminent” under section 2(c)(11) of OMA, but the materials the council submitted to the PAC supporting its decision to enter closed session did not reference either term. The closed session minutes likewise did not contain a finding that litigation was “probable” or “imminent,” or the basis for such a finding. Accordingly, the PAC determined that the city council’s discussions violated section 2(a) of OMA because they did not involve pending, probable, or imminent litigation as required to enter closed session under section 2(c)(11) of the Act.

Ill. Att’y Gen. Pub. Acc. Op. No. 21-004, issued May 24, 2021: The city of Geneva denied a member of the public’s request seeking communications exchanged between the city and a third-party business concerning the business’ application for zoning modifications. The city withheld the records pursuant to section 7(1)(f) of FOIA, arguing that the records were pre-decisional and deliberative. The PAC determined that the withheld communications did not fall within the scope of the deliberative process exemption because they were provided to a third-party business whose own interests were independent from the city’s interests. In fact, the third-party business appeared likely to benefit from the city’s final decision concerning the zoning applications. Therefore, the city violated FOIA by denying the request under section 7(1)(f) of FOIA.

Ill. Att’y Gen. Pub. Acc. Op. No. 21-005, issued June 2, 2021: The Morton Grove Police Department denied a request from an organizer of an advocacy coalition seeking records concerning the use of benefit time by department police officers and employees. The department redacted responsive information pursuant to section 7(1)(v) of FOIA but did not set forth a factual basis for its denial, thus violating section 9 of FOIA. In its response to the PAC, the department also cited section 7(1)(d)(vi) as a basis for its redactions; however, the department did not demonstrate that basic employee attendance records are the type of sensitive records that could endanger one’s life or physical safety if disclosed. Therefore, the PAC determined that the department did not sustain its burden of proving the applicability of section 7(1)(d)(vi), nor did it demonstrate that employee attendance records fall within the plain language of section 7(1)(v).

Ill. Att’y Gen. Pub. Acc. Op. No. 21-007, issued July 27, 2021: The Office of the City Clerk of the City of Chicago redacted the names of recipients of parking exceptions from records responsive to a request from a member of the public. Because the city clerk’s office did not demonstrate that the names met the plain language of the definition of “private information”, the PAC determined that the city clerk’s office did not sustain its burden of proving the applicability of section 7(1)(b). Further, the city clerk’s office did not demonstrate that disclosing the names would be highly personal or objectionable to a reasonable person, nor that the subjects’ privacy interests outweigh any legitimate public interest in disclosure – given news reporting at the time concerning a local alderperson and the use of parking exceptions. Therefore, the PAC determined that the city clerk’s office did not sustain its burden of proving the names were exempt from disclosure under section 7(1)(c) of FOIA.

Success Stories continued

Ill. Att’y Gen. Pub. Acc. Op. No. 21-009, issued Sept. 21, 2021: A sports writer for The State Journal-Register alleged that the Hillsboro Community Unit School District No. 3 Board of Education violated the requirements of OMA by requiring members of the public to provide their public comments concerning a controversial personnel issue in closed session. The board argued that open session discussion of specific employees’ retention would violate their rights. However, the PAC determined that OMA neither forbids discussing such personnel decisions in open session nor authorizes a public body to prohibit the public from addressing the subject in open session. Accordingly, the PAC concluded that the board violated OMA by providing no opportunity for public comment in open session.

Ill. Att’y Gen. Pub. Acc. Op. No. 21-010, issued Oct. 12, 2021: The City of Chicago Office of Emergency Communications redacted the name of an employee who engaged in misconduct from records responsive to a request from a Chicago Tribune reporter. The PAC determined that names were a basic identification rather than unique identifiers and therefore were not exempt under section 7(1)(b) of FOIA. Additionally, the PAC determined that the disclosure of the names could not constitute an unwarranted invasion of the employees’ personal privacy under section 7(1)(c) of FOIA because the definition of that term specifically excludes information that bears on the public duties of public employees. Lastly, the PAC rejected the office’s claim that the records are exempt from disclosure under section 7(1)(n) of FOIA, as review of the records showed they were investigatory in nature, and there was no indication that the resolution of the matters advanced to a formal proceeding that could constitute an adjudication.

Ill. Att’y Gen. Pub. Acc. Op. No. 21-011, issued Dec. 14, 2021: A member of the public alleged that the Jersey Community Unit School District No. 100 Board of Education violated OMA in connection with its Sept. 16, 2021 remote meeting by livestreaming the meeting and disallowing in-person attendance by the public. The PAC specifically reviewed the following requirements of section 7(e) of OMA: (1) There was a disaster proclamation in effect for the meeting that satisfied section 7(e)(1); (2) under section 7(e)(2), the board demonstrated that the board president properly made the determination that in-person attendance was not practical or prudent due to the pandemic; (3) the board fulfilled section 7(e)(4) by livestreaming the meeting, and all discussion and roll call votes during the meeting were clearly audible. The PAC determined that, because the board met the requirements of section 7(e) of OMA, it held a proper remote meeting.

Determination Letters

Ill. Att’y Gen. PAC Req. Rev. Ltr. 61662, issued Jan. 22, 2021: A member of the public submitted a FOIA request to the village of Glendale Heights seeking a copy of records related to their application for employment with the village’s police department. The village denied the records pursuant to section 7(1)(q) of FOIA, which permits the withholding of test questions, scoring keys and other examination data. Based on a review of the responsive records, the PAC determined that the village improperly withheld records regarding the requester’s background investigation, because these records did not constitute test-related information or other examination data. Following the issuance of this determination, the village disclosed the background investigation records.

Ill. Att’y Gen. PAC Req. Rev. Ltr. C-0078 through C-0089, C-0091 through C-0097, issued Sept. 1, 2021: A news reporter who covers the City of Chicago Mayor’s Office submitted requests for review contesting the

Success Stories continued

mayor's office's failure to respond to various FOIA requests seeking copies of text messages between the mayor and certain named parties. The reporter also alleged that the mayor's office provided an incomplete response to one of the requests because it did not encompass the mayor's personal phone. In conjunction with a binding opinion (21-008) requiring the mayor's office to promptly respond to one of the requests, the PAC issued a consolidated determination letter asking the mayor's office to promptly issue full responses to all of the requests, including text messages concerning public business from the mayor's personal phone. As a result, the mayor's office began releasing large volumes of text messages.

Ill. Att'y Gen. PAC Req. Rev. Ltr. C-0054 (68367), issued Sept. 13, 2021: A member of the public submitted a request for review contesting the McLean County Sheriff's Office's denial of a FOIA request seeking video recordings pertaining to the arrest of a named individual. The sheriff's office partially denied the request, arguing that the recording were made during a custodial interrogation, and were therefore exempt from disclosure under State law. Based on a review of the withheld recordings, the sheriff's office's response, and an analysis of the section of the Code of Criminal Procedure that addresses custodial interrogations and video recordings, the PAC determined that one of the recordings fell within the scope of that law, which specifically prohibits the disclosure of video recordings made during custodial interrogations. However, the PAC determined that the remaining videos were not recorded during custodial interrogations, and that disclosure of those other recordings would not violate the personal privacy of the arrestee. Upon receiving the determination, the sheriff's office released to the requester the portion of the records that the PAC determined were not exempt from disclosure.

Ill. Att'y Gen. PAC Req. Rev. Ltr. C-0064 (70178), issued Sept. 14, 2021: An attorney submitted a request for review alleging that the village of Melrose Park improperly denied his FOIA request for all reports pertaining to a specific incident. The village had denied the reports in their entirety pursuant to sections 7(1)(d)(ii) and 7(1)(d)(vii) of FOIA on the basis that disclosure would obstruct an ongoing investigation. Upon review, the PAC determined that the village had not established that disclosure of the records would obstruct an investigation. Specifically, the village did not demonstrate that the information received from dispatch regarding the incident, the arrestee's identity, the responding officer's description of the events, or the description of the officers' activities in responding to the incident, were exempt from disclosure. The village subsequently disclosed the portions of the reports that the PAC determined did not fall within the scope of the 7(1)(d) exemptions.

Ill. Att'y Gen. PAC Req. Rev. Ltr. S-0308, issued Oct. 25, 2021: A member of the public alleged that the Morgan County Housing Authority Board of Commissioners failed to approve its Jan. 14, 2021, meeting minutes within 30 days of the meeting or by the board's second subsequent meeting. Upon receipt of the request for review, the board acknowledged that it had failed to approve the minutes in a timely manner as required by section 2.06(b) of OMA but argued that it was prevented from doing so at that time because of technical difficulties beyond its control. The board asserted that it would approve the minutes in question at its next regular meeting following its response to the PAC's inquiry. The PAC's subsequent review of the board's Aug. 12, 2021 meeting minutes confirmed that the board approved its Jan. 14, 2021, minutes at that meeting.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 66010, issued Nov. 30, 2021: A Chicago Tribune reporter submitted a FOIA request to the City of Chicago Office of Police Accountability (COPA) seeking face sheets concerning any complaints against a police officer who responded to a domestic disturbance at the home of the Chicago Police

Success Stories continued

Department's (CPD) former superintendent. The requested sheet contained basic information, such as the name of the subject of the complaint and the nature of the allegations, but did not report substantive details or provide narrative descriptions. COPA asserted that disclosure of the form would interfere with a CPD internal investigation because it was likely the subject was not aware of investigation when the request was submitted only two days after the incident. The PAC determined that COPA did not meet its burden of demonstrating that the face sheet was exempt from disclosure. COPA did not confirm the subject of the investigation had not been notified of the investigation, and did not articulate how disclosure of the limited information in the face sheet could interfere with the investigation even if it had not been disclosed to the subject. COPA disclosed the face sheet after receiving the determination.

Ill. Att'y Gen. PAC. Req. Rev. Ltr. 66826, issued Dec. 20, 2021: ProPublica reporter submitted a request a request for review contesting the City of Chicago Mayor's Office's partial denial of her request for emails related to a particular subject. The mayor's office redacted certain portions of the responsive emails at issue pursuant to section 7(1)(f) of FOIA, asserting the redacted material contained internal communications in which the mayor provided opinions and recommendations regarding the mayor's office's process for responding to media inquiries. The PAC determined that the disclosure of some portions of redactions would reveal the pre-decisional formulation of action by city officials concerning how to respond to media inquiries, and therefore, those portions may be withheld from disclosure pursuant to section 7(1)(f) of FOIA. However, the PAC also determined that other redacted portions were not pre-decisional deliberative material, but instead contained a directive concerning an existing internal policy about responding to media inquiries. After receiving the determination, the mayor's office released the portion of the email that the PAC determined did not fall within the scope of the section 7(1)(f) exemption.

Informal Resolutions

2020 PAC 64584: A member of the public submitted a request for review contesting the city of Evanston's denial of his FOIA request; the city asserted that the responsive records were available through the Illinois Department of Transportation. After the PAC facilitated communications between the city's legal counsel and the requester, the city was able to identify responsive records and subsequently furnished them to the requester.

2020 PAC 66310: The superintendent of the Kane County Veterans Assistance Commission submitted a request for review alleging that the Office of the Governor improperly denied as unduly burdensome his request for copies of various communications between the Governor's office and the Illinois Department of Veterans Affairs. After receiving the PAC's initial letter of inquiry, which specifically asked the Governor's office to explain how fulfilling the FOIA request would unduly burden its operations, the Governor's office reconsidered its position and provided the records to the requester.

2021 PAC 66524: A member of the public submitted a request for review contesting St. Charles Community Unit School District No. 303's denial of a FOIA request seeking a spreadsheet of final failing grades for three school years broken down by school and letter grade. The district asserted that it did not possess records containing that information in the format requested. After the PAC explained that searching for and providing information contained within its record-keeping system was not creating a new record, the district provided the information in a format that was satisfactory to the requester.

Success Stories continued

2021 PAC 66538, 66539, 66541: A Joliet Herald-News reporter submitted a request for review contesting the City of Joliet Police Department's denial of several FOIA requests for various police records concerning the police department's response to an officer-involved shooting. The police department initially denied one request pursuant to section 7(1)(d)(i) of FOIA and indicated any records responsive to the other FOIA requests were in the possession of the Will Grundy Major Crimes Task Force, an entity that the police department stated was investigating the incident. After the PAC sent a letter asking the department to explain its denial, the police department acknowledged the denial was in error and provided the records, with some redactions, to the reporter.

2021 PAC 66608: A member of the public submitted a FOIA request to the Plainfield Police Department seeking a copy of a police report. The department initially denied the FOIA request because the investigation remained ongoing. However, upon receiving a letter from the PAC requesting additional information, the department determined that it was able to release a minimally-redacted copy of the report, and promptly disclosed it.

2021 PAC 66631: A member of the public submitted a request for review contesting the Housing Authority of McDonough County's denial of a FOIA request as unduly burdensome. Upon reviewing the file, the PAC noted that the response by the housing authority was sent after the section 3(f) deadline in FOIA by which a public body may deny a request as unduly burdensome. In order to ensure that the requester received the records to which they were entitled, the PAC negotiated with the housing authority to arrange a rolling production schedule for the requested records. The housing authority provided the requester with copies of records every week for several months until it had fully complied with the request.

2021 PAC 66785: A member of the public submitted a request for review contesting the Chicago Police Department's assertion that it possessed no records responsive to a FOIA request concerning an unsolved murder. After the PAC sent an initial letter of inquiry asking the department to explain its search for responsive records, the department was able to identify responsive records and subsequently provided them to the requester.

2021 PAC 67485: An attorney representing a client submitted a request for review contesting the Will County Sheriff's Office's partial denial of a FOIA request seeking copies of records relating to an incident that occurred at an identified address. The sheriff's office had redacted information relating to the requester's client. After the PAC facilitated communications between the parties, the sheriff's office released the record without the redactions.

2021 PAC 67724: A member of the public submitted a request for review challenging the length of time that the Chicago Police Department stated that it would take to respond to the individual's FOIA request for copies of certain arrest reports. The requester sought the records for use in academic research. In a 2017 request, the PAC had assisted the requester in negotiating with the department an arrangement for disclosing the arrest reports in a manner that would not unduly burden its operations. In this request for review, the requester explained that the department had complied with the agreement for years, but no longer appeared to be cooperative. After the PAC intervened, the department completed its response approximately one month later, significantly faster than its original estimate of six months.

Success Stories continued

2021 PAC 68483: A member of the public submitted a request for review contesting the completeness of the City of Chicago Department of Public Health's response to her FOIA request that sought certain service billing and activity data for fiscal years 2018, 2019, 2020 and 2021. In her request for review, the requester explained that in response to a previous FOIA request for the same information for different fiscal years, the department had provided more information than it did in response to the more recent FOIA request. The PAC sent the department a letter asking if it maintains the data the requester identified in her request for review and, if so, whether it would issue a supplemental response that includes the specified information for the relevant years. After receiving the PAC's letter, the department issued a supplemental response that included all of the data the requester sought.

2021 PAC 68586: A member of the public submitted a request for review asserting that the City of Chicago Department of Streets and Sanitation had failed to respond to a FOIA request seeking records of service requests regarding deceased cats. After receiving a letter from the PAC, the department realized it had mixed the request up with a similar one, and provided the requester with a copy of the service requests.

2021 PAC S-0124: A member of the public submitted a request for review complaining that she had requested a report from the Gurnee Police Department but it had never been provided. After the PAC facilitated communications between the department and the requester, the department provided the requested report, and the requester withdrew her request for review.

2021 PAC C-149: A member of the public submitted a request for review contesting the City of Kewanee Police Department's denial of a FOIA request seeking records pertaining to the traffic stop of his son. After the PAC sent a letter asking the department to explain the denial, the department issued a supplemental response containing responsive records.

2021 PAC S-224: A member of the public submitted a request for review of the Chicago Police Department's denial of a FOIA request seeking body camera and other footage of an incident in which he was involved. The department asserted section 3(g) of FOIA and stated that it generally needed a case number to locate records. After the PAC sent a letter asking the department to explain its denial, the department reconsidered its denial and performed a supplemental search. The department located responsive footage, which was subsequently released to the requester.

2021 PAC C-0233: A reporter for WBBM-TV Chicago submitted a FOIA request to the Kendall County Sheriff's Office seeking records concerning alleged misconduct and discipline of former employees. The sheriff's office disclosed records but redacted, pursuant to the section 7(1)(c) exemption, the name of an employee who had been terminated. The sheriff's office asserted that the name was exempt because disclosure would cause an unwarranted invasion of a third party's right to privacy. After receiving the PAC's initial letter of inquiry, which noted that the section 7(1)(c) exemption expressly excludes information that bears on the public duties of public employees and offered the option of resolving the request for review by disclosing the redacted name, the sheriff's office provided the name to the reporter.

Success Stories continued

2021 PAC S-280: A member of the public submitted a request for review because the village of La Grange failed to provide certain records in response to his FOIA request. After the PAC contacted the village to ask about its search process, the village subsequently discovered that its contractor, Seven Brothers, did have the requested records and provided them, thus satisfying his request.

2021 PAC C-440: A news reporter submitted a request for review disputing Naperville Community Unit School District No. 203's denial of records reflecting the findings of an investigation into the transfer, guardianship and residency practices at Naperville Central High School. After the PAC requested an explanation of the denial and followed up with the district, the district reconsidered its denial and agreed to provide copies of responsive records after making certain permissible redactions. The requester confirmed that the district's revised response resolved his concerns.

2021 PAC C-545: The editor in chief of a student-run newspaper submitted a request for review of the Illinois State Police's (ISP) denial of a FOIA request seeking records related to an auto accident. ISP denied the request under the section 7(1)(d) exemptions, asserting that the incident was under investigation. After the PAC sent a letter asking ISP to explain its denial, ISP reconsidered its response and offered to release a portion of the responsive records to the requester. The requester was satisfied with that resolution.

2021 PAC S-727: A member of the public submitted a request for review alleging that the Board of Education of Elementary School District 159 violated OMA because it had not posted the minutes of one of its meetings on the district's website. After intervention by the PAC, the district realized that it had failed to post the minutes due to technical difficulties and subsequently posted them on its website.

2021 PAC S-793: A member of the public submitted a request for review challenging the village of Morton Grove's denial of her FOIA request seeking a copy of the village's third-party liability policy. The village initially withheld the records, citing an exemption for proprietary information. The PAC's initial inquiry sought the village's explanation and factual basis for its denial. The village reconsidered its denial, and provided the requester with a copy of the policy.

The Freedom of Information Act

GENERAL INFORMATION

What is the Freedom of Information Act?

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 their government is doing. The law provides that a person can request a copy of a public body's 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 FILE 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. Be sure to 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. 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.

FOIA Frequently Asked Questions

What should I include in my FOIA request?

Your written request should 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, as 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 or website portal for FOIA requests, they cannot reject your request if you do not use a specific method. 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 certain information available on its website, 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.
- 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.

Is electronic information considered to be a public record?

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. If it is not feasible, the public body must present the information in the format in which it is maintained 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 or flash drive, but it cannot 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.

FOIA Frequently Asked Questions continued

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, not the date that the request was received. 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.
- 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.
- 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 explaining 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.

FOIA Frequently Asked Questions continued

Was the five business day response period changed because of the COVID-19 pandemic?

No. The deadlines for responses remain the same. In light of office closings, remote work, and additional demands on public bodies during the pandemic, the PAC issued guidance encouraging requesters and public bodies to work together to agree on reasonable and appropriate response times.

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 paper (8 1/2 x 11 or 8 1/2 x 14), the first 50 pages are free, and any additional pages can cost no more than 15 cents per 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 a flash drive, the public body may only charge the actual cost of purchasing the flash drive. 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.
- 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.

FOIA Frequently Asked Questions continued

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

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

Are emails subject to FOIA?

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

FOIA OFFICERS

What is a “FOIA officer?”

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

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

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

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

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

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

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

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?

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 to justify withholding the record. 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, including 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?

First, it is important to know that FOIA does include provisions that exempt some records and information from public disclosure, such as unique personal or private information, certain law enforcement records, preliminary drafts, business trade secrets, and requests that are unduly burdensome. If a public body has denied, in part or in full, your 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

What is a Request for Review?

A request for review is correspondence that a requester may submit to the PAC if his or her request to inspect or copy a public record has been denied, or if the public body has failed to respond. This letter or email is a formal way of asking the PAC to examine 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 a response from the body 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 a response from the body was due). Note that this time

FOIA Frequently Asked Questions continued

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?

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

Leah Bartelt
Public Access Counselor
Office of the Attorney General
500 S. 2nd Street
Springfield, Illinois 62701
Email: public.access@ilag.gov
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 IllinoisAttorneyGeneral.gov.

What does the PAC do with my Request for Review?

The PAC will review your request and do one of the following:

- Review the issues in your FOIA dispute and determine that no further action is necessary. If the PAC decides that the alleged violations are unfounded, the PAC will inform you and the public body of that decision.
- 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.
- 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.

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.

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, you can appeal the PAC's decision to 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 in order 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 the PAC's opinion to the 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.” 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, 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 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.

FOIA Frequently Asked Questions continued

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).

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.

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 (public.access@ilag.gov) 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

The Attorney General's office helped pass legislation that reformed and strengthened the Open Meetings Act (OMA) to improve public access to government deliberations.

The law's provisions codified the 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.

OMA Frequently Asked Questions

GENERAL INFORMATION

What is OMA?

The Open Meetings Act 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 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, and the affirmative vote of three members is necessary to adopt any motion, resolution, or ordinance, unless a greater number is otherwise required.

PUBLIC NOTICE OF A MEETING

What is public notice?

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

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

At the beginning of each calendar or fiscal year, every public body must create and make available to the public the schedule for regular meetings that year, including the dates, times, and locations 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 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 may not discuss items that did not appear on the agenda for the special or emergency meeting.

OMA Frequently Asked Questions continued

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.
- 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 a website maintained by full-time staff) 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 specific employees, specific individuals who serve as independent contractors in a park, recreational, or educational setting, or specific volunteers of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee, a specific individual who serves as an independent contractor in a park, recreational, or educational setting, or a volunteer of the public body or against legal counsel for the public body to determine its validity. However, a meeting to consider an increase in compensation to a specific employee of a public body that is subject to the Local Government Wage Increase Transparency Act may not be closed and shall be open to the public and posted and held in accordance with this Act.
- 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.
- 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.

OMA Frequently Asked Questions continued

- 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.
- 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.
- 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.
- Deliberations or portions of deliberations for decisions of the Illinois Gaming Board in which there is discussed any of the following: (1) personal, commercial, financial, or other information obtained from any source that is privileged, proprietary, confidential, or a trade secret; or (2) information specifically exempted from the disclosure by federal or state law.
- Deliberations for decisions of the Illinois Law Enforcement Training Standards Board, the Certification Review Panel, and the Illinois State Police Merit Board regarding certification and decertification.
- Meetings of the Firearm Owner's Identification Card Review Board under Section 10 of the Firearm Owners Identification Card Act.

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. Because these exceptions are contrary to the requirement that all meetings of public bodies shall be open, the exceptions are to be strictly construed, extending only to subjects clearly within their scope.

OMA Frequently Asked Questions continued

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?

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.

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.
- 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.

The COVID-19 pandemic and limitations on in-person gatherings resulted in the Illinois General Assembly amending the Open Meetings Act, effective June 12, 2020. Notwithstanding the limits on remote attendance

OMA Frequently Asked Questions continued

described above, the new section 7(e) of OMA allows a public body to hold an open or closed meeting by audio or video conference without the physical presence of a quorum of the members during a public health emergency, as long as several enumerated conditions are met. Meetings must still be open to the public to attend and comment, either remotely or in person, depending on the circumstances.

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.

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. A request for review must be submitted to the PAC within 60 calendar days after the conduct that is alleged to have violated OMA. If the 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.

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:

Leah Bartelt
Public Access Counselor
Office of the Attorney General

OMA Frequently Asked Questions continued

500 S. 2nd Street
Springfield, Illinois 62701

To submit a request for review by electronic mail, please email the request to public.access@ilag.gov.

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 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 Aug. 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. If the PAC reviews the request for review and determines that further action is warranted, the PAC 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 further 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 the PAC 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

OMA Frequently Asked Questions continued

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 they review the Request for Review?

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

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

No.

Can I bring my own OMA action in court?

Yes.

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

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

Civil Penalties: In a civil lawsuit for a violation of OMA, a court may take a number of actions, including:

1. Ordering a public body to conduct an open meeting.
2. Granting an injunction against future violations by the public body.
3. Ordering the public body to make available to the public the minutes of a closed meeting.
4. Declaring null and void any final action taken at a closed meeting in violation of OMA.
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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ILLINOIS ATTORNEY GENERAL