



Public Access Counselor Annual Report

An Overview of 2011



March 2012

A Message from
ILLINOIS ATTORNEY GENERAL
LISA MADIGAN



Every year, thousands of people in Illinois find themselves in need of information from their government, whether from a state agency, city hall or their children's school. Historically in Illinois, those information seekers were often confronted with denials, delays and excuses, instead of gaining access to information that is rightfully theirs.

In 2010, all that began to change. That year marked the debut of the state's strengthened sunshine laws, which were enacted as a result of landmark legislation passed in 2009. The law now provides improved tools and provisions to make sure the public has timely access to information and public meetings, and it penalizes governments when their officials knowingly try to prevent public access to government information.

In the years since the new measures went into effect, my office's Public Access Bureau has reviewed thousands of disputes under the Freedom of Information Act and the Open Meetings Act and helped to shed light on the workings of all levels of government. Last year was no exception. In 2011, the Public Access Bureau received 5,164 new matters, the majority of which came from members of the public.

Another critical aspect of the Public Access Counselor's role has been to educate public officials, members of the public and the media about their rights and responsibilities under the amended open government laws. Over the past year, the Public Access staff has provided 34 training sessions around the state to raise awareness and understanding of the Freedom of Information Act and the Open Meetings Act. Additionally, the office has registered over 28,000 people to take online training about the state's sunshine laws.

The last two years of operating under these strengthened transparency laws have marked the start of a new era for Illinois. I am encouraged by the progress we have made and remain committed to continuing our work to help restore the public's confidence in government.

A handwritten signature in black ink that reads "Lisa Madigan". The signature is fluid and cursive.

Lisa Madigan
Attorney General

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Complaint Statistics

In 2011, the Public Access Counselor (PAC) responded to 5,164 formal requests for assistance pursuant to the Illinois Freedom of Information Act, 5 ILCS 140, and the Illinois Open Meetings Act, 5 ILCS 120. In addition, the Public Access Bureau fielded an estimated 30 to 50 questions per day through the FOIA hotline concerning FOIA, OMA and related issues and received over 400 general inquiries through the Public Access e-mail. The PAC also conducted more than 30 training sessions for members of the public, government officials, members of the media and students.

The following is a statistical breakdown of the formal requests received by our office between January 1, 2011 and December 31, 2011. The vast majority of the requests came from members of the public. The requests came from every area of the state, and involved all types of public bodies, from the smallest villages to the largest cities and state agencies.

Total New Matters Before Public Access Counselor: 5,164

Freedom of Information Act (FOIA) Requests Breakdown

- **2,561 requests for review by the PAC**
 - 2,000 from Members of the Public
 - 171 from the Media
 - 390 from Other Entities
- **2,317 pre-authorization requests* from public bodies to deny FOIA requests**
 - 154 pre-authorization requests originated from Media FOIA requests

*The Illinois General Assembly amended FOIA to eliminate pre-authorization requests through Public Act 97-579, effective on August 26, 2011.

Open Meetings Act (OMA) Requests Breakdown

- 286 requests for review by the PAC
 - 229 from Members of the Public
 - 12 from the Media
 - 45 from Other Entities

The total number of Requests for Review filed with the PAC increased from an average of 162 per month in calendar year 2010 to 237 per month in 2011.

Training Seminars



The Attorney General's Public Access Counselor conducted 34 training sessions to educate members of the public, government officials and members of the media about their rights and responsibilities under the Freedom of Information Act and the Open Meetings Act. These trainings provide an overview of the laws, as well as guidance on what government officials must do to comply with the laws and how the public can use these sunshine laws to open government throughout Illinois. The training sessions covered every region of the State and involved both large and small groups. The Public Access Counselor also coordinates online training for 28,829 registered users.

The 2011 training sessions included the following:

PUBLIC BODY	CITY
Northern Illinois Alliance of Fire Protection Districts (NIAFPD) Conference	Naperville
Illinois Institute for Local Government Law Annual Conference	Naperville
Office of the Illinois Comptroller County Treasurer Training	Springfield
Illinois Attorney General's Office - Teleconference with Law Enforcement	Teleconference
Illinois Attorney General's Office - Teleconference with Law Enforcement	Teleconference
Better Government Association Citizen Watchdog Training	Springfield
Project First Rate Public Construction Workshop	Rockford
Illinois Sex Offender Management Board	Springfield
Illinois Sheriffs' Association	Springfield
Chicago Bar Association	Chicago
Law Enforcement Records Managers of Illinois	Carol Stream
International Visitors Leadership Program of the US Department of State	Chicago
McHenry County Board	Woodstock
Illinois Statewide Building Trade Council	Bloomington
Illinois Attorney General's Office - Law Enforcement	Springfield
Better Government Association	River Forest
National Association of Housing and Redevelopment Officials, Illinois Chapter	Springfield
Laborers District Council Chicago	Burr Ridge
Illinois Association of County Zoning Officials	Utica
University of Illinois Extension	Webinar
Illinois Park & Recreation Association	Lombard
Illinois Association of County Clerks	Effingham
Illinois Valley Building Trade	Utica
Better Government Association	Chicago
Construction Industry Service Corporation (CISCO) - DuPage & Fox Valley Building Trades	Warrenville
Illinois Institute for Continuing Legal Education	Chicago



Training Seminars continued

Kendall County Courthouse
Office of the Illinois Lieutenant Governor

Illinois Family Support Enforcement Association Conference
State Representative Carol Sente
Chicago Federation of Labor
City of O' Fallon
Chicago-Kent Conference on Illinois Public Sector Labor
Relations Law
Better Government Association

Yorkville
Teleconference from
Chicago to Springfield
& Carbondale
Springfield
Lincolnshire
Chicago
O' Fallon

Chicago
Maywood

TOTAL: 34

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



The Freedom of Information Act

Attorney General Madigan worked closely with legislators and a coalition of open government advocates in 2009 to pass legislation that significantly strengthened and clarified the Freedom of Information Act to make it easier for people to obtain public records. In particular, the amended law established a “presumption of transparency” that defines all records as public. The amended law also shortened the initial time a government body has to respond to a FOIA request from seven to five business days and shortened the time for any extension from seven to five business days.

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

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

Copying Charge Limits. The law provides that government bodies must respond to a FOIA request for a document by providing for free the first 50 pages of black and white, letter or legal sized copies and limiting the charge for the remaining black and white, letter or legal sized pages to 15 cents per page in 2011.

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

FOIA Officers. Further, the law requires public bodies to designate FOIA officers who must successfully complete an annual FOIA training prepared by the PAC.

To provide you with additional information about the public’s rights and the responsibilities of public officials under FOIA, we offer responses to the following Frequently Asked Questions (FAQs).



FOIA Frequently Asked Questions

The Illinois Freedom of Information Act (FOIA) is designed to ensure that Illinois residents can obtain information about their government. Key changes to the Freedom of Information Act have made it easier in recent years for Illinois residents to hold their state and local governments accountable.

WHO'S WHO UNDER FOIA

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

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

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

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



GENERAL INFORMATION

What is FOIA?

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

Who is subject to FOIA?

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

Who can file a FOIA request?

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

HOW TO MAKE A FOIA REQUEST

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

If you would like to obtain information from a public body, you should begin by writing down a list of the information you are seeking. Then prepare a letter 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.

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

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

Public bodies cannot require that the public submit FOIA requests on a specific form or in a specific format. Public bodies, however, can require that FOIA requests be submitted in writing. Public bodies must accept requests by mail, personal delivery, fax, e-mail, or other means available to the public body. Public bodies may accept oral FOIA requests but are not required to do so.



FOIA Frequently Asked Questions continued

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

What should I include in the FOIA request?

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

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

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

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 Web site must also post this information on that Web site.

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

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

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

No, the public body cannot deny the request just because you called the document by a different name. You do not need to describe the document specifically and accurately by the same name the public body uses. As long as the public body understands what you are requesting, they must release that information, even if you do not call it by the same name the public body uses.



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

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

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

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

When does the 5 business day time period start?

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

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

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

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

Aside from the potential that a court ultimately could impose a civil penalty of between \$2,500 and \$5,000 per violation, public bodies have an additional incentive to respond within the time limits set forth. In the event a public body fails to respond within 5 business days, it cannot charge for reproduction costs at a later time 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. The agreement will also relieve the public body of having to comply with other legal deadlines in FOIA.

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

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



FEES

Can the public body charge for copies?

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

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;
- There is an intent to disseminate the information; or
- No personal or commercial benefit will be received from document disclosure.

GETTING INFORMATION IN AN ELECTRONIC FORMAT

Can I request the documents in electronic form?

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

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 e-mails 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 developed by the Attorney General’s PAC. The training 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 Web site must also post this information on its Web site.

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

Contact the Attorney General’s Public Access Counselor at 1-877-299-FOIA. The public body must 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 Web sites maintained by the public body.

WHAT TO DO IF THE PUBLIC BODY DOES NOT RESPOND

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

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

WHAT TO DO IF YOUR FOIA REQUEST IS DENIED

What must the public body include in a denial?

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

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

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



HOW TO FILE A REQUEST FOR REVIEW WITH THE PUBLIC ACCESS COUNSELOR (PAC)

First, what is a Request for Review?

A Request for Review is a letter that a requester may submit to the PAC if the requester believes that the public body has not followed FOIA. This letter is a formal way of asking the PAC to take a look at the request and the public body's response (or lack thereof) and determine if a FOIA violation has occurred. The request must be in writing, must be signed by the requester, and must include (1) a copy of the FOIA request and (2) any responses, including denial letters, from the public body. It must be submitted within 60 calendar days of the public body's final response (or the date upon which the response was due).

Is there a deadline for submitting a Request for Review?

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

How do I contact the Public Access Counselor in the Attorney General's Office?

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

Sarah Pratt
Acting Public Access Counselor
Public Access Bureau
500 S. 2nd Street
Springfield, Illinois 62706
E-mail: publicaccess@atg.state.il.us
FOIA Hotline: 1-877-299-FOIA (1-877-299-3642)

What does the PAC do with my Request for Review?

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

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



When will the PAC issue a final decision?

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

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

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

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

Can the PAC issue Advisory Opinions to Public Bodies?

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

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

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



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

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

EXEMPTIONS – RECORDS THAT ARE NOT PUBLIC

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

The FOIA law 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, which is exempt from disclosure under FOIA. FOIA defines “private information” as “unique identifiers, including a person’s social security number, driver’s license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal e-mail addresses.” Under FOIA, “private information also includes home addresses and personal license plate numbers, except as otherwise provided by law or when compiled without possibility of attribution to any person.” when compiled without possibility of attribution to any person.”
- Personal information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the person who is the subject of the information. Under FOIA, the “unwarranted invasion of personal privacy” means the “disclosure



of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." Disclosing information that relates to the public duties of public employees is not considered an invasion of personal privacy.

- Law enforcement records that, if disclosed, would interfere with a pending or reasonably contemplated proceeding or that would disclose the identity of a confidential source.
- Information that, if disclosed, might endanger anyone's life or physical safety.
- Preliminary drafts or notes in which opinions are expressed or policies are formulated, unless the record is publicly cited and identified by the head of the public body.
- Business trade secrets or commercial or financial information that is proprietary, privileged or confidential and that, if disclosed, would cause competitive harm to the person or business.
- Proposals and bids for any contract, until a final selection is made.
- Requests that are "unduly burdensome." (See next question.)

What does "unduly burdensome" mean?

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

What is a "clearly unwarranted invasion of personal privacy"?

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

COMMERCIAL REQUESTS

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

A commercial request is 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, scientific or academic institutions are not considered commercial information requests.



FOIA Frequently Asked Questions continued

Are commercial information requests treated differently?

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

Can the public body charge fees for copies of the information?

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

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

Yes. In 2011, the legislature amended FOIA to allow public bodies to charge up to \$10 for each hour spent by personnel in searching for and retrieving a requested record for a commercial request, except that public bodies cannot charge for the first 8 hours. A public body may also charge the actual cost of retrieving and transporting public records from an off-site storage facility maintained by a third-party storage company under contract with the public body. If a public body imposes such fees, it must provide the requester with an accounting of all fees, costs, and personnel hours charged.

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



e-mail (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.

What binding opinions did the PAC issue in 2011?

PUBLIC ACCESS OPINION 11-001: Section 2.15 of FOIA requires the disclosure of arrest reports.

PUBLIC ACCESS OPINION 11-002: The Chicago Police Department must disclose the number of police officers assigned to each district.

PUBLIC ACCESS OPINION 11-003: A subsequent FOIA request seeking the same information as a prior request may not be deemed "unduly burdensome," unless the public body has either previously disclosed the requested records or properly denied the request.

PUBLIC ACCESS OPINION 11-004: Under section 2.20 of FOIA, settlement agreements entered into by an intergovernmental risk management association or self-insurance pool on behalf of a public body are subject to disclosure. Section 7(1)(s) of FOIA does not exempt from disclosure the amount of funds expended to settle a claim.

PUBLIC ACCESS OPINION 11-005: Nerve conduction velocity test results obtained with respect to workers' compensation claims are not exempt from disclosure.

PUBLIC ACCESS OPINION 11-006: Electronic records relating to the transaction of public business are "public records" subject to disclosure under section 2(c) of FOIA notwithstanding that they are generated on public officials' private equipment or maintained on personal electronic accounts.

PUBLIC ACCESS OPINION 11-007: Classification as a "recurrent requester" under Section 2(g) of FOIA.



The Open Meetings Act

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

The law's groundbreaking provisions worked to codify the Public Access Counselor (PAC) position within the Attorney General's Office—which Madigan created in 2004 to help members of the public, the media and government bodies resolve disputes under the sunshine laws and ensure access to government information—and explicitly authorize the PAC to review and determine whether a government body has violated the OMA. The law gives the PAC authority to subpoena needed information, issue advisory opinions to guide government bodies, issue binding opinions to resolve disputes, and sue to enforce the binding opinions.

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

The law also requires public bodies to appoint OMA designees who are required to successfully complete annual OMA training prepared by the PAC. In addition, effective January 1, 2012, all elected or appointed members of a public body subject to OMA must complete the electronic training developed by the Attorney General's PAC once during their terms of election or appointment.

To increase awareness about the public's rights and the responsibilities of public officials under OMA, we prepared the following Frequently Asked Questions (FAQs).

OMA Frequently Asked Questions



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

WHO'S WHO UNDER OMA

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

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

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

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

GENERAL INFORMATION



What is the Open Meetings Act (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 the Freedom of Information Act (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 includes all committees, subcommittees and subsidiary bodies of public bodies. Examples of “public bodies” include everything from park district boards to city councils to civic commissions. “Public bodies” includes, but is not limited to, any entity that is supported in whole or in part by tax revenue or which expends tax revenue.

PUBLIC MEETING

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

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



PUBLIC NOTICE OF A MEETING

What is public notice?

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

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

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

If the public body changes this 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.

The public body must post an agenda (see below) for the particular meeting at the principal office of the public body, at the location of the meeting, and on the public body's Web site (if it has a Web site maintained by its own full-time staff) at least 48 hours in advance of the meeting.

MEETING AGENDA

What is an agenda?

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

Can the agenda be changed?

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

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

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



TIME AND LOCATION OF A MEETING

When and where must an open public meeting be held?

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

RECORDING OF A MEETING

May a member of the public record an open meeting?

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

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

Yes. The minutes must include:

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

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

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

CLOSED MEETINGS – NOT OPEN TO THE PUBLIC

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

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

- the appointment, employment, compensation, discipline, performance, or dismissal of a specific employee or legal counsel for the public body;
- collective negotiating matters or deliberations concerning salary schedules for one or more classes of employees;
- discipline or removal of an occupant of a public office or appointment of an individual to fill a vacant public office;
- evidence or testimony received in a hearing, provided that the body is a quasi-adjudicative body and prepares and makes available for public inspection a written decision setting forth its determinative reasoning;
- the purchase or lease of real property by the public body;



OMA Frequently Asked Questions continued

- the setting of a price for sale or lease of property owned by the public body;
- the sale or purchase of securities, investments, or investment contracts;
- security procedures;
- student disciplinary cases;
- the placement of individual students in special education programs and other matters relating to individual students;
- pending or probable litigation against, affecting or on behalf of the public body;
- the establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act;
- conciliation of complaints of discrimination in the sale or rental of housing;
- ongoing, prior or future criminal investigations, when discussed by public bodies with criminal investigatory responsibilities;
- professional ethics or performance when discussed by an advisory body to a licensing or regulatory agency;
- discussions regarding self-evaluation, practices and procedures or professional ethics with representatives of statewide associations;
- the recruitment, credentialing, discipline or formal peer review of physicians or other health care professionals for a hospital or other health care center;
- deliberations for decisions of the Prisoner Review Board;
- review or discussion of applications received under the Experimental Organ Transplantation Procedures Act;
- classification and discussion of confidential matters of the State Government Suggestion Award Board;
- discussion of the minutes of a meeting that was lawfully closed under OMA;
- deliberations of the State Emergency Medical Services Disciplinary Review Board;
- 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; and
- meetings of a residential health care facility resident sexual assault and death review team.

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 the Open Meetings Act 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 which 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.



OMA Frequently Asked Questions continued

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. 5 ILCS 120/7(c). If a quorum of the members of the public body is physically present, then a majority of the public body may allow a member to attend by video or telephone conference if the member is prevented from physically attending because of: (1) personal illness or disability; (2) employment purposes or the business of the public body; or (3) a 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 Public Access Counselor at the Office of the Attorney General, or you can bring a civil action in circuit court against the public body.

What is a Request for Review?

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

Is there a deadline for submitting a Request for Review?

Yes. A person seeking review of an issue by the PAC must send the Request for Review to the PAC within 60 calendar days after the date of the alleged OMA violation.

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

When the PAC receives a written Request for Review from a member of the public, the PAC has seven working days to determine whether further action is warranted. 5 ILCS120.3.5(b).



OMA Frequently Asked Questions continued

If the Public Access Counselor reviews the Request for Review and determines that further action is warranted, she must forward a copy of the Request for Review to the public body within 7 business days of receiving the request. At that time, the PAC can specify records or other documents that the public body must furnish to facilitate the PAC's review. The public body must provide the requested records within 7 business days of receiving the request from the PAC.

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

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

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

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

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 the Open Meetings Act?

Criminal Penalties: Under the law, a state's attorney may bring a criminal action for a violation of the Open Meetings Act. 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.

How do I contact the Public Access Counselor?

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

Sarah Pratt
Acting Public Access Counselor
Public Access Bureau
500 S. 2nd Street
Springfield, Illinois 62706
E-mail: publicaccess@atg.state.il.us
FOIA Hotline: 1-877-299-FOIA (1-877-299-3642)

How to Submit a Request for Review



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

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

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

A Request for Review must be submitted to the PAC within 60 calendar days after the denial of the FOIA request or the conduct that is alleged to have violated OMA. 5 ILCS 140/9.5(a); 5 ILCS 120/3.5(a).

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

Sarah Pratt
Acting Public Access Counselor
Office of the Attorney General
500 S. 2nd Street
Springfield, Illinois 62706

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

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

**Office of Illinois Attorney General Lisa Madigan
Public Access Bureau
500 S. Second Street
Springfield, Illinois 62706
1-877-299-FOIA (1-877-299-3642)
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This material is available in alternate format upon request.