

# Public Access Counselor Annual Report

An Overview  
of 2019

March 2020





A Message from  
ILLINOIS ATTORNEY GENERAL  
**Kwame Raoul**

2019 marked the first year in office for my administration, and I am proud to recognize national “Sunshine Week” by releasing our annual report detailing the work of the Public Access Counselor. The Public Access Counselor (PAC) serves the vital function of promoting transparency and openness in our government and serves thousands of people each year.

The Public Access Counselor was established in 2003 by my predecessor, Attorney General Lisa Madigan, to resolve requests for further assistance when the public and the media are denied access to public records or public meetings. In 2009, as an Illinois state senator, I worked with the Office of the Attorney General to sponsor changes in state law that codified the Public Access Counselor’s role and clearly stated high expectations of compliance by government entities. Since becoming Attorney General, I have looked for ways to further improve and expand the PAC’s operations, and I am pleased with the progress we are making.

In my first year serving the state as Attorney General, I have been able to successfully advocate for increased resources for the PAC. I want to thank those of you who expressed support for obtaining those resources from the General Assembly, as all of state government continues to face challenges to secure the funding needed to sufficiently perform vital government functions. In order to fully staff the Public Access Bureau, my office has aggressively focused on recruiting dedicated attorneys and staff to perform the important and vital functions of helping residents hold their government accountable.

Since 2010, the PAC has handled more than 42,000 matters that have been submitted by members of the public and the media. In 2019 alone, the PAC received nearly 3,600 requests for assistance from members of the public and media seeking access to records or public meetings, averaging more than 295 requests per month. Also last year, the PAC issued 13 binding opinions and closed almost 4,000 cases that had been outstanding.

I am particularly pleased to announce that in 2019, our Public Access Bureau was able to increase the amount of trainings for government officials in Illinois. More than 2,000 government officials, members of law enforcement, and members of the media and public received trainings about their responsibilities under the state’s transparency laws. In one year, our Public Access Bureau increased by 25 percent trainings that are crucial in educating public officials and public bodies about their duties to ensure the public has access to meetings and information.

While this report details the work of the PAC over the last year, I cannot ignore that Sunshine Week this year falls in the midst of the unprecedented COVID-19 pandemic. Over the past several days, many public bodies and officials across Illinois have contacted my office seeking guidance to ensure their compliance with both the Freedom of Information Act and the Open Meetings Act. The PAC will continue to serve as a resource to public bodies on these important transparency laws during this unprecedented time.

Kwame Raoul  
Attorney General

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# Complaint Statistics

In 2019, the Public Access Counselor (PAC) received 3,550 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 369 written inquiries through the Public Access email address. The Public Access Bureau also conducted 40 training sessions for members of the public, government officials, attorneys, members of the media and students.

The following is a statistical breakdown of the formal requests received by the PAC from Jan. 1, 2019, to Dec. 31, 2019. The vast majority came from members of the public. The requests came from every area of the state and involved all types of public bodies, from the smallest villages to the largest cities and state agencies.

**Total New Matters Before the Public Access Counselor in 2019: 3,550**

Breakdown of Freedom of Information Act requests:

- 3,208 total requests for review by the PAC
- 2,474 from members of the public
- 722 from media outlets or other organizations
- 12 from public bodies

Breakdown of Open Meetings Act requests:

- 342 total requests for review by the PAC
- 289 from members of the public
- 46 from media outlets or other organizations
- 7 from public bodies

Average number of requests for review filed per month: 296

# Training Seminars

In 2019, the Attorney General's Public Access Bureau increased the amount of trainings it held across the state by 25 percent compared with 2018. The bureau conducted 40 training sessions in 20 communities and educated 2,050 members of the public, government officials, members of the media, and attorneys about their rights and responsibilities under FOIA and OMA, as well as this office's interpretation of those statutes. These trainings provide an overview of both laws, guidance on what government officials must do to comply, and how the public and the media can use the laws to open government throughout Illinois. Trainings held in 2019 included FOIAFest sponsored by the Chicago Headline Club and the FOIA Fellows Public Forum moderated by NBC 5 veteran reporters.

Additionally, FOIA trainings held for law enforcement in 2019 reached capacity attendance after enrollment began, and required additional sessions to be scheduled, due to demand by the law enforcement community. The Public Access Bureau will continue to examine ways to increase the amount of trainings held across the state, in addition to creating programs tailored for specific units of government and public bodies that are interested in promoting transparency and openness in government.

In addition to holding in-person trainings, the Public Access Counselor also updates the required online training covering both FOIA and OMA each year.

Any group or entity interested in attending or hosting a training conducted by a representative of the Attorney General's Office should contact Theresa Geary at 1-866-376-7215 for more information.

## **Individuals Receiving FOIA and OMA Training the PAC in 2019: 2,050**

Breakdown of PAC trainings:

- 2,050 members of the public, media and government educated
- 25 percent increase over 2018
- 40 FOIA and OMA training sessions
- 20 communities in Illinois served as locations

# 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 2019, the PAC issued 13 binding opinions. The authority to issue binding administrative decisions has allowed the PAC to produce opinions that clarify the law and increase transparency. These binding opinions have enforced public bodies' primary duty to respond to FOIA requests, emphasized the types of information that must be disclosed, clarified a public body's burden when claiming a request is unduly burdensome, and reinforced that the exceptions in the Open Meetings Act must be construed narrowly.

The PAC has also successfully resolved hundreds of disputes over the release of records and open meetings issues through negotiations with requesters and public bodies, as well as the issuance of non-binding determinations.

Here are some examples of how matters were resolved through binding opinions, non-binding determinations and informal resolutions in 2019. These examples highlight how the PAC is working to increase the public's access to government.

## *Binding Opinions*

**Ill. Att'y Gen. Pub. Acc. Op. No. 19-001, issued Jan. 9, 2019:** An attorney representing a motorist injured in a car accident requested copies of the responding officers' body camera video recordings. The Chicago Police Department (CPD) denied that portion of the request under section 7(1)(a) of FOIA, which exempts from disclosure records that are specifically prohibited from disclosure by other state laws. The CPD argued that the Law Enforcement Officer-Worn Body Camera Act (50 ILCS 706/10-1 et seq) prohibited disclosure of the responsive recordings because they were not "flagged" under sections 10-20(b)(1) or 10-20(b)(2) of the Act. Under those sections, body camera recordings that have been flagged "due to the filing of a complaint, discharge of a firearm, use of force, arrest or detention, or resulting death or body harm" may be disclosed to certain parties. Additionally, section 10-20(b)(3) of the Act permits disclosure "to the subject of the encounter captured on the recording or to the subject's attorney, or the officer or his or her legal representative." Under principles of statutory construction, the more reasonable, harmonious construction of section 10-20(b)(3) of Act is that the subject of a recording, the officer, and their legal representatives may obtain the recording through FOIA, regardless of whether or why it has been flagged. Accordingly, the PAC directed the CPD to disclose the body camera recordings to the requester.

**Ill. Att'y Gen. Pub. Acc. Op. No. 19-002, issued Jan. 9, 2019:** A member of the public filed a request for review alleging that the Lyons School District 103 Board of Education violated OMA by enforcing an unestablished and unrecorded rule limiting the public comment portion of a meeting to 15 minutes. The board asserted that it had

## *Success Stories continued*

capped the public comment session to 15 minutes pursuant to the board's policy. The board provided the Public Access Bureau with a copy of "Board Policy 2:230" governing public comment and a handout describing, among other things, the board's general order of business at regular meetings, including the procedure for individuals to bring a matter before the board. According to the handout, the board's policy is to cap the public comment session at 15 minutes per topic, per meeting. The Public Access Counselor determined that "Board Policy 2:230" contained the board's established and recorded public comment rules, as formally adopted and incorporated into the board's policy manual, and that this policy did not provide that the public comment period can be capped at 15 minutes. Although the board stated it had relied on the handout for a decade, the PAC determined that the board had not taken action to establish or otherwise adopt the policies in the handout. Accordingly, the PAC concluded that the board violated section 2.06(g) of OMA.

**Ill. Att'y Gen. Pub. Acc. Op. No. 19-003, issued Feb. 19, 2019:** A member of the public submitted a FOIA request to the village of Ringwood seeking copies of certain records she had requested previously but did not receive. The records concerned public meetings of the village's board of trustees and its committees, as well as village newsletters. The resident submitted a request for review alleging that the village did not respond to the FOIA request. The village also did not respond to the Public Access Bureau's letters requesting an explanation of its receipt and handling of the request. The PAC concluded that the village violated section 3(d) of FOIA by failing to respond to the request within five business days.

**Ill. Att'y Gen. Pub. Acc. Op. No. 19-004, issued May 17, 2019:** A resident submitted a request for review following a public meeting at which, the Pinckneyville Community High School District 101 Board of Education failed to identify the teacher who was being issued a Notice to Remedy before taking final action on the matter. The PAC determined that in failing to identify the teacher, the board violated section 2(e) of OMA because it did not provide sufficient detail to identify a particular transaction.

**Ill. Att'y Gen. Pub. Acc. Op. No. 19-005, issued May 29, 2019:** A member of the public submitted a FOIA request to the Chicago Police Department (CPD) seeking a monthly calendar that contained a list of the officers in the extradition section, as well as their corresponding work schedule and duties for a particular day. The CPD denied the request under section 7(1)(f) of FOIA, which exempts from disclosure "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body." The PAC determined that because the withheld record contains purely factual information, it does not constitute predecisional and deliberative material within the scope of section 7(1)(f) even though the calendar is subject to revision, and directed CPD to provide a copy of the calendar.

**Ill. Att'y Gen. Pub. Acc. Op. No. 19-006, issued July 25, 2019:** An individual submitted a FOIA request for records from the village of Dolton. The village did not provide copies of records responsive to the FOIA request. Additionally, the village did not extend its time to respond to the request or deny the request in writing in whole or in part. The PAC determined that the village violated FOIA, and directed it to respond to the request.

**Ill. Att'y Gen. Pub. Acc. Op. No. 19-007, issued Sept. 23, 2019:** A FOIA request was submitted to the Chicago

## *Success Stories continued*

Department of Public Health seeking copies of the quarterly manganese reports submitted by S.H. Bell, which document the type of material, method of transportation, percent manganese, as well as the tonnage shipped, received, and stored, and throughput. The department denied the request under section 7(1)(g), which exempts from disclosure “[t]rade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested.” The PAC determined that because the department did not demonstrate that disclosing the reports would cause S.H. Bell to suffer competitive harm, the reports are not exempt under section 7(1)(g) of FOIA.

Note: S.H. Bell filed a purported administrative review action; S.H. Bell Company v. Attorney General, 2019 CH 12541 (Cook County)

**Ill. Att’y Gen. Pub. Acc. Op. No. 19-008, issued Sept. 24, 2019:** In response to a FOIA request for records related to two arrests, the Joliet Police Department redacted nearly all of the narrative portions of the reports arguing that the narratives were specifically prohibited from disclosure as discovery materials under Illinois Supreme Court Rule 415(c). The PAC determined that the rule does not apply when the requester is not seeking discovery materials in his or her own criminal case. The PAC also determined that the section 7(1)(c) exemption for personal privacy also does not exempt the narratives from disclosure because they document arrests, which are matters of legitimate public interest. In addition, the PAC found that the police department did not set forth any facts demonstrating that disclosure of the records would create a substantial likelihood that a person would be deprived of a fair trial or impartial hearing for purposes of section 7(1)(d)(iii). Further, although the department may properly redact the identities of witnesses who provided information pursuant to section 7(1)(d)(iv), the PAC found the department cannot redact information reflecting the investigative activities of officers or information provided by suspects/arrestees under police questioning pursuant to the exemption. The PAC directed the police department to disclose copies of the narratives, subject to certain redactions.

**Ill. Att’y Gen. Pub. Acc. Op. No. 19-009, issued Oct. 1, 2019:** The City of Rushville City Council, at the mayor’s insistence, prohibited a person from commenting at its meeting because she was not a city resident. The PAC determined the city council violated section 2.06(g) of OMA because it did not have an established and recorded rule prohibiting non-residents from addressing the council. The PAC also determined that such a rule would not be permissible under OMA.

**Ill. Att’y Gen. Pub. Acc. Op. No. 19-010, issued Oct. 29, 2019:** A member of the public filed a request for review after the Waukegan Police Department denied his FOIA request that sought copies of body camera recordings of an incident involving the death of an arrestee. The PAC determined that the police department did not set forth sufficient facts to support withholding the recordings under the exemptions it cited: sections 7(1)(a), 7(1)(d)(i), 7(1)(d)(iii), 7(1)(d)(vi), or 7(1)(d)(vii). The PAC also said that because the body camera recordings involved the death of an arrestee and were flagged under the Law Enforcement Officer-Worn Body Camera Act, they are subject to disclosure unless exempted under FOIA.

Note: The Waukegan Police Department filed an administrative review action challenging this opinion, City of Waukegan v. Attorney General, 19 CH 13932 (Cook County).

## *Success Stories continued*

**Ill. Att’y Gen. Pub. Acc. Op. No. 19-011, issued Oct. 30, 2019:** The Cook County Assessor’s Office did not provide copies of records responsive to a FOIA request, extend its time to respond to a FOIA request, or deny the request in writing in whole or in part. The attorney who filed the FOIA request submitted a request for review because the Assessor’s Office did not respond. The PAC concluded that the Assessor’s Office had violated FOIA, and directed it to respond to the FOIA request.

**Ill. Att’y Gen. Pub. Acc. Op. No. 19-012, issued Nov. 13, 2019:** The city of Newton City Council only vaguely identified a matter scheduled for final action on a meeting agenda by listing a numbered ordinance and a section number of an unidentified document. The PAC determined that because the agenda item did not identify the general subject matter of the council’s final action to increase application fees for permits, the council violated section 2.02(c) of OMA.

**Ill. Att’y Gen. Pub. Acc. Op. No. 19-013, issued Dec. 31, 2019:** After receiving a FOIA request seeking a recording of a gathering of city officials, the city of Bunker Hill destroyed the recording. The PAC determined that by failing to preserve the recording after receipt of the request, the city violated FOIA.

### *Determination Letters*

**Ill. Att’y Gen. PAC Req. Rev. Ltr. 31777, issued Feb. 14, 2019:** A member of the public submitted a request for review alleging that the Madison County Treasurer’s response to a FOIA request for certain emails sent to and from the treasurer was incomplete. In its response, the treasurer’s office did not inform the requester that it was redacting or withholding any information or provide a reason for the partial denial of records, which does not comport with the requirements of sections 9(a) and 9(b) of FOIA. The treasurer’s office informed the PAC that private email addresses and emails protected by the attorney-client privilege were redacted. The PAC determined that the treasurer’s office did not meet its burden of demonstrating that (1) the redacted email addresses were exempt from disclosure under section 7(1)(b) of FOIA, or (2) the withheld records were exempt from disclosure under section 7(1)(m) of FOIA. Upon receiving the PAC’s determination, and after further mediation, the treasurer’s office provided the requester with the requested records with only one email address redacted.

**Ill. Att’y Gen. PAC Req. Rev. Ltr. 55445, issued June 13, 2019; Ill. Att’y Gen. PAC Req. Rev. Ltr. 57116, issued June 13, 2019:** A reporter for The News-Gazette in Champaign submitted a request for review challenging the University of Illinois’ denial of a FOIA request for a 2018 report from the university’s investigation into sexual harassment and misconduct at its police department. Separately, a reporter from Illinois Public Media submitted a request for review challenging the university’s denial of a FOIA request for reports from its Office of Diversity, Equity and Access concerning allegations of racial discrimination. The university denied both requests on the basis that the reports were exempt pursuant to section 7(1)(n) of FOIA because they were created as part of an adjudicatory process. The PAC analyzed the university’s process for investigating complaints of harassment and concluded that the records at issue were created as part of an investigatory process, and were preliminary to, but separate from, a possible adjudication of discipline for the employees described in the reports. The PAC concluded that the responsive reports were not exempt because they did not relate to any disciplinary proceedings. Upon receiving the PAC’s determinations, the university provided the responsive reports.

## *Success Stories continued*

**Ill. Att’y Gen. PAC Req. Rev. Ltr. 55498, 55499, 55597, 55643, 56175, issued Aug. 15, 2019:** Members of the public and news media submitted requests for review involving the city of Evanston’s denials of similar FOIA requests seeking copies of documentation concerning financial contributions made by donors for the demolition of a local city landmark. Despite having previously made the names of donors publicly available through a memorandum of understanding, the city argued that disclosing the donation amounts made by individuals was an infringement of the privacy rights of the donors. The PAC concluded that, unlike projects in the private sector, individuals funding a public project have lesser privacy interests surrounding their involvement in that project. Further, section 2.5 of FOIA clearly states that records relating to the receipt of public funds are public records. As a result of the PAC’s determination, the city provided copies of the requested records.

**Ill. Att’y Gen. PAC Req. Rev. Ltrs. 55642, 55739, issued April 11, 2019; Ill. Att’y Gen. PAC Req. Rev. Ltr. 55782, issued April 16, 2019; Ill. Att’y Gen. PAC Req. Rev. Ltr. 57385, issued Sept. 6, 2019:** A union chapter president and a news director with Tri States Public Radio submitted requests for review alleging that the Western Illinois University Board of Trustees held improper closed session discussions at several board meetings held in 2018. The PAC reviewed the verbatim recordings of the closed sessions and determined that during portions of the meetings, the board discussed matters outside the scope of the exceptions cited to enter into closed sessions. The board subsequently voted to release portions of the audio recordings from the closed session meetings and posted the recordings on the university website.

**Ill. Att’y Gen. PAC Req. Rev. Ltr. 56040, issued Feb. 6, 2019:** A member of the public submitted a request for review alleging, among other things, that the Tazewell County Sheriff’s Office improperly denied his FOIA request for video of an alleged assault and injury the individual suffered while in custody. The office denied the records on the basis that the records related to the security of a detention facility, pursuant to section 7(1)(e) of FOIA. The PAC reviewed the responsive videos and agreed that some were properly withheld. The videos of the incident, however, were from a single camera angle and did not provide information about the location of additional cameras or reveal staffing levels of the jail. The PAC also determined that the videos merely showed a brief incident involving the requester and it was not apparent from viewing the videos how their disclosure would jeopardize jail security. Upon receiving the determination, the sheriff’s office provided the requested records.

**Ill. Att’y Gen. PAC Req. Rev. Ltr. 56436, issued May 7, 2019:** The New York Times submitted a request for review alleging that the city of Chicago’s Office of Emergency Management and Communications (OEMC) improperly denied a FOIA request for copies of data recorded by ShotSpotter gunshot detection sensors. The OEMC denied the request for latitude and longitude coordinates of the gunshot incidents pursuant to sections 7(1)(b) and 7(1)(c) of FOIA, asserting that the information could be used to identify individual residences and that disclosure would violate the privacy rights of the victims of gun violence. The PAC determined that the coordinates were not exempt pursuant to section 7(1)(b) because not all of the coordinates revealed residential addresses, and the OEMC compiled the coordinates without attribution to any person. The PAC also determined that the coordinates were not exempt pursuant to section 7(1)(c), noting that the latitude and longitude information did not identify individuals who suffered injuries or were otherwise directly impacted by gun violence, and therefore the public interest in the records outweighed any personal privacy interests inherent in

## *Success Stories continued*

the coordinate information. Upon receiving the PAC's determination, the OEMC provided the information.

**Ill. Att'y Gen. PAC Req. Rev. Ltr. 56441, issued March 4, 2019:** A member of the public submitted a request for review alleging that the Centralia Police Department had improperly withheld video footage of an officer-involved traffic crash at Centralia High School. The department withheld the footage pursuant to sections 7(1)(a) and 7(1)(c) of FOIA, citing the federal Family Education Rights and Privacy Act (FERPA). The PAC found that the FERPA did not specifically prohibit the disclosure of the footage, and it could be redacted to protect the personal privacy of the student involved in the crash. The Department complied with the PAC's determination by disclosing redacted footage.

**Ill. Att'y Gen. PAC Req. Rev. Ltr. 56846, issued March 25, 2019:** A reporter for St. Louis Public Radio submitted a request for review alleging that the city of Belleville improperly withheld correspondence to or from the city's mayor concerning the employment status of the former president of a private university, who had resigned after being placed on administrative leave, and with whom which the city had a development agreement. The city asserted that the records were not "public records" subject to the requirements of FOIA. The city also asserted that the records were exempt under the section 7(1)(c) because disclosure would constitute an unwarranted invasion of personal privacy. The PAC determined that the records at issue were public records because they pertained to public business of the city. Additionally, only portions of the records contained highly personal information, and that information could be redacted. The city subsequently provided copies of the records to the reporter in accordance with the determination.

**Ill. Att'y Gen. PAC Req. Rev. Ltr. 56913, issued March 15, 2019:** A member of the public submitted a request for review alleging that Madison County improperly denied a FOIA request for a certain individual's education history and complaints made against that individual by other employees. The county denied the records pursuant to sections 7(1)(c) and 7.5(q) of FOIA. The PAC determined that the personnel records withheld did not pertain to disciplinary reports, letters of reprimand, other records documenting disciplinary action, or performance evaluations. The PAC the county did not sustain its burden of demonstrating that the records were exempt from disclosure under section 7.5(q). The PAC also determined that the county improperly withheld all the investigation and complaint records, as well as the employee's application history, under section 7(1)(c), because the records directly bear upon the employee's public duties. Upon receiving the determination, the county provided the requested records, subject to certain redactions under section 7 of FOIA.

**Ill. Att'y Gen. PAC Req. Rev. Ltr. 57245, issued April 29, 2019:** A reporter for the Lake County News-Sun submitted a request for review alleging that the Waukegan Community Unit School District No. 60 Board of Education violated OMA at its March 4, 2019, closed meeting by improperly discussing matters related to the arrest of one of its employees. The board asserted that the discussions were permissible under the section 2(c)(1) exception, as the board discussed the performance of the employee in question and other specific employees in managing communications with the board related to the arrest. The PAC determined that the board's discussions of employee performance were authorized by the exception. The PAC also concluded that the board had detailed discussions in closed session about the conduct and performance of specific board members that were not within the scope of the section 2(c)(1) or section 2(c)(3) exceptions, as the board argued in its response to the PAC, because the board did not have the power to remove a school board member. The board, at the PAC's request, provided the reporter with a copy of the portions of the verbatim recording of the closed session deemed

## *Success Stories continued*

improper.

**Ill. Att’y Gen. PAC Req. Rev. Ltr. 57946, issued Aug. 12, 2019:** A reporter for WICS Newschannel 20 submitted a FOIA request for review alleging that the Department of Children and Family Services had improperly withheld the names of certain licensees whose licenses were revoked, suspended, or relinquished, or whose licenses were under review during a specified year. The department asserted that a section of the Children and Family Services Act and its implementing regulations, along with the fact that the inspector general had not divulged the names of the licensees in its report, allowed the department to withhold the names. The PAC issued a determination letter concluding that the denial under section 7(1)(a) of FOIA was improper with respect to individuals whose licenses were revoked or suspended. The PAC found the implementing regulations expressly stated that the final administrative action with respect to the license shall be public information. As a result of the PAC’s determination, the department provided a document with those names disclosed.

### ***Informal Resolutions***

**2018 PAC 56176:** An attorney submitted a request for review of Community School District 300’s denial of a FOIA request for records pertaining to a fatal accident. The victim was a teacher who fell down a staircase in the school, and the attorney for her spouse and estate submitted a request seeking the accident report and video footage of the staircase. The school district initially denied the records, but after PAC spoke with the school district’s legal counsel about why the asserted exemptions appeared not to apply, the school district reversed its position and provided copies of the responsive report and video footage.

**2019 PAC 56568:** A reporter for the Chicago Tribune submitted a request for review contesting the partial denial of a FOIA request for audio recordings of calls from a residential treatment center for a well-being check on a person who was found dead of suicide the following day. DuPage County Public Safety Communications (DU-COMM) initially redacted portions of a responsive recording to protect the decedent’s personal privacy. After the PAC contacted DU-COMM and explained that a decedent no longer has the right to privacy, DU-COMM agreed to provide the requester with a copy of the recording without redacting information.

**2019 PAC 57040:** A contributing writer for Catholic World Report submitted a request for review contesting the Adams County sheriff’s denial of a FOIA request for suicide note from 1991 on the basis of the decedent’s personal privacy. The requester explained that the public interest in the request was to verify a tip that the decedent had committed suicide allegedly as a result of being molested by a priest and no one believing him. The PAC contacted the requester to determine whether the decedent’s close family members objected to disclosure, and the requester reported that the family did want to know if the suicide note referenced abuse. Subsequently, the sheriff’s office reversed its denial and provided the requester with a copy of the note.

**2019 PAC 57281:** A member of the public submitted a request for review contesting the denial of a request an Illinois State Police (ISP) investigation report concerning a police shooting death. The PAC sent the ISP a copy of the request seeking an explanation for its denial, and the ISP maintained that its denial was proper. After continued discussion with the PAC, the ISP withdrew its denial and provided a copy of the report.

**2019 PAC 57282:** A member of the public submitted a request for review alleging that the Illinois Department

## *Success Stories continued*

of Human Services improperly withheld, under section 7(1)(n) of FOIA, records of union grievances concerning the requester's employment. After receiving the PAC's initial letter of inquiry, which asked the department to clarify whether the withheld records related to the investigation of complaints against the identified person or the adjudication of an employee grievance, the department provided the records.

**2019 PAC 57331:** A freelance reporter submitted a request for review contesting the Illinois Department of Agriculture's denial of her request for documentation explaining the reasons for denials of medical cannabis cultivation license applications submitted by verified women, minority, veteran, or disabled-owned businesses. The requester offered to accept a spreadsheet indicating the number cannabis companies that were denied cultivation licenses in each category. After the PAC worked with the parties, the department agreed to provide a spreadsheet that provided the information.

**2019 PAC 57663:** An attorney submitted a request for review alleging that the Chicago Police Department (CPD) had improperly denied a request for body camera footage of CPD officers' response to a motor vehicle accident in which his client was injured. The CPD denied the request pursuant to section 7(1)(a) of FOIA, citing section 10-20 of the Law Enforcement Officer Worn Body Camera Act (Body Camera Act). The PAC contacted the CPD requesting an explanation for its denial and referenced a prior binding opinion the PAC issued Jan. 9, 2019 to the CPD, Ill. Att'y Gen. Pub. Acc. Op. No. 19-001, which had rejected the argument that body camera footage must be "flagged" to be subject to disclosure. The CPD reconsidered its position and provided the footage.

**2019 PAC 59415:** An attorney submitted a FOIA request to the city of Chicago's Department of Law seeking information pertaining to the Personal Property Lease Transaction Tax Ruling #12. The attorney filed a request for review because, although the city provided some records, it redacted portions of settlement agreements concerning its voluntary disclosure program under section 7(1)(g) of FOIA as trade secrets and commercial or financial information. The PAC's initial letter of inquiry asked the department to provide documentation that the redacted information was furnished to the department under a claim that it was proprietary, privileged, or confidential and to explain how its disclosure would cause competitive harm to those that provided the information. After receiving the PAC's inquiry letter, the department reconsidered its position and provided the records.

**2019 PAC 59627:** A reporter for Chicago One Media submitted a FOIA request to the Cook County State's Attorney's office seeking records showing the meaning of acronyms used in fact sheets and felony review reports. The State's Attorney's office asserted that it did not possess records responsive to the reporter's request. After intervention by the PAC, the office acknowledged that it possessed a listing of abbreviations and provided the list.

**2019 PAC 61318:** A reporter for WBEZ Chicago Public Media submitted a request for review alleging the Policemen's Annuity and Benefit Fund of Chicago had declined to substantively respond to a FOIA request seeking records about an individual with a case pending before the Benefit Fund's board until the board rendered a final decision. After the PAC sent a letter asking the Benefit Fund to explain its receipt and handling of the FOIA, the Benefit Fund released records, including a transcript of a hearing before the board, which satisfied the

# The Freedom of Information Act

request.

## 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 ask a public body for a copy of its records on a specific subject, and the public body must provide those records, unless there is an exemption in the statute that protects those records from disclosure.

### **Who is subject to FOIA?**

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

### **Who can file a FOIA request?**

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

## HOW TO 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. Describe the information you are seeking with sufficient detail so that the public body can find the requested records. Providing as much information as possible in your request on the subject matter may expedite the public body's search process.

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

# FOIA Frequently Asked Questions

Public bodies cannot require that the public submit FOIA requests on a specific form or in a specific format. Public bodies, however, can require that FOIA requests be submitted in writing.

Public bodies must accept requests by mail, personal delivery, fax, email, or other means available to the public body. Public bodies may accept oral FOIA requests but are not required to do so.

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

## **What should I include in my FOIA request?**

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

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

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

## **To whom do I submit a FOIA request?**

FOIA requests should be submitted to the public body's designated FOIA officer. Every public body must prominently display at its office and make available certain information, including the name(s) of its FOIA officer(s). In addition, the public body must display and make available:

- Information on how to submit a FOIA request.
- A brief description of the office, including its purpose, budget and number of employees. Any public body that has a website must also post this information on its website.

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

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

## FOIA Frequently Asked Questions continued

### **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 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.

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

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

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

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

- The requested information is stored at a different location.
- The request requires the collection of a substantial number of documents.
- The request requires an extensive search.
- The requested records have not been located and require additional effort to find.
- 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.

## *FOIA Frequently Asked Questions continued*

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

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

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

Aside from the potential outcome that a court ultimately could impose a civil penalty of between \$2,500 and \$5,000 per violation, public bodies have an additional incentive to respond within the time limits set forth. In the event a public body fails to respond within five business days, it cannot charge for reproduction costs when it does produce the document or treat the request as unduly burdensome.

### **Can I enter into an agreement with the public body to extend the deadline to respond?**

Yes, but the agreement must be in writing.

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

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

## **FEES**

### **Can the public body charge for copies?**

Yes, but the fees are limited. For black-and-white letter or legal-sized 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 for the actual cost of the recording medium. For example, if information is produced on CDs, the public body may only charge the actual cost of purchasing the CDs. If a public body treats a FOIA request as voluminous, then it may charge certain fees based on megabytes of data provided, as detailed in the law.

### **Is it possible for a public body to waive the copying fees?**

Yes. Public bodies may waive or reduce copying fees if disclosure is in the public interest. A waiver or reduction may be available if:

- The request is for information on the health, safety, and welfare or the legal rights of the general public.

## *FOIA Frequently Asked Questions continued*

- 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.

#### **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

## *FOIA Frequently Asked Questions continued*

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

### **WHAT TO DO IF THE PUBLIC BODY DOES NOT RESPOND**

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

If the public body does not respond to your request within five business days after receiving it, then 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, 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?**

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 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 a

## *FOIA Frequently Asked Questions continued*

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 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:

Sarah Pratt  
Public Access Counselor  
Office of the Attorney General  
500 S. 2nd Street  
Springfield, Illinois 62701  
Email: [publicaccess@atg.state.il.us](mailto:publicaccess@atg.state.il.us)  
FOIA Hotline: 1-877-299-FOIA (1-877-299-3642)

The Request for Review does not need to follow any particular format. If you would like to use a sample request form, however, please visit our website at [IllinoisAttorneyGeneral.gov](http://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.

## *FOIA Frequently Asked Questions continued*

### **Can the PAC issue advisory opinions to public bodies?**

Yes. The PAC may assist any public body by issuing an advisory opinion to provide guidance on how to comply with FOIA. The public body may request an advisory opinion to obtain guidance on FOIA compliance. The request must contain sufficient accurate facts from which a determination can be made. The PAC may request additional information from the public body to facilitate the review. A public body that relies in good faith on an advisory opinion of the PAC is not liable for penalties in a subsequent lawsuit, so long as the facts upon which the opinion is based have been fully disclosed to the PAC. If compliance concerns a FOIA request that may be the subject of a Request for Review, the PAC may provide general advice but will not issue an advisory opinion.

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

No. You can file a FOIA lawsuit in court after you receive a denial from the public body or after the PAC concludes a review of the matter. If the PAC decides to issue a binding opinion and you disagree with the opinion of the PAC, you can appeal the PAC's decision to 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 it to court, the court must give deference to the PAC's opinion and can only overturn it if it is clearly erroneous. If you decide not to seek assistance from the PAC and instead go straight to court, the public body has the burden to show that its denial was correct through clear and convincing evidence.

## **EXEMPTIONS – RECORDS THAT A PUBLIC BODY MAY WITHHOLD FROM DISCLOSURE**

### **What is considered a “public record?”**

“Public records” are defined in FOIA as “all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.” Given this broad definition, FOIA is intended to cover any document, regardless of form, that pertains to government business.

FOIA Frequently Asked Questions continued

### **Does “public record” include electronic information?**

Yes. FOIA defines public records to include electronic documents and communications. When a person requests

## *FOIA Frequently Asked Questions continued*

a record that is maintained in an electronic format, the public body must provide it in the electronic format specified by the request, if that is feasible for the public body. If it is not feasible, the public body must present the information in the format in which it is maintained by the public body or in a paper format at the option of the requester. The public body may charge a fee for the actual cost of purchasing the recording medium, such as a CD, but may not charge a fee for its search for or review of the information.

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

FOIA has a presumption that all information is public, unless the public body proves otherwise. But there are several exceptions to public disclosure that include but are not limited to:

- Private information is exempt from disclosure under FOIA. FOIA defines “private information” as “unique identifiers, including a person’s social security number, driver’s license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses.” Under FOIA, “private information also includes home addresses and personal license plate numbers, except as otherwise provided by law or when compiled without possibility of attribution to any person.”
- Personal information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the person who is the subject of the information. Under FOIA, the “unwarranted invasion of personal privacy” means the “disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject’s right to privacy outweighs any legitimate public interest in obtaining the information.” Disclosing information that relates to the public duties of public employees is not considered an invasion of personal privacy.
- Law enforcement records that, if disclosed, would interfere with a pending or reasonably contemplated proceeding or that would disclose the identity of a confidential source.
- Information that, if disclosed, might endanger anyone’s life or physical safety.
- Preliminary drafts or notes in which opinions are expressed or policies are formulated, unless the record is publicly cited and identified by the head of the public body.
- Business trade secrets or commercial or financial information that is proprietary, privileged or confidential and that, if disclosed, would cause competitive harm to the person or business.
- Proposals and bids for any contract, until a final selection is made.
- Requests that are “unduly burdensome.” (See next question).

### **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.

## *FOIA Frequently Asked Questions continued*

### **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.

### **REDACTIONS**

#### **Can a public body remove or black out information from produced documents?**

Yes, if a record contains information that is exempt from disclosure under FOIA, a public body can remove or black out that exempt information from the public records. This is called “redaction.” The public body must, however, produce the remaining information.

### **OTHER FOIA QUESTIONS**

#### **Does a request for a copy of an ordinance require a FOIA request?**

No. Ordinances are public documents that should be immediately available to the public without a FOIA request.

#### **Can a public body allow you to inspect but not copy public documents?**

No. They must allow you to inspect and obtain copies of public documents.

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

Yes, a public body can ask the Attorney General’s PAC for guidance on how to comply with FOIA. For example, if a public body expects to receive FOIA requests for a certain record or category of records that it maintains and is not certain if those records must be disclosed under FOIA, the public body may contact the Public Access Bureau through the FOIA hotline (1-877-299-3642) or by email ([publicaccess@atg.state.il.us](mailto:publicaccess@atg.state.il.us)) for assistance. A public body may also ask the PAC for an advisory opinion regarding whether the record(s) must be disclosed under FOIA or fall under a FOIA exemption. The Attorney General’s PAC is not required by law to issue an advisory opinion in response to a request.

To ask for an advisory opinion from the Attorney General’s PAC, the head of the public body or its attorney must send a written request to the PAC. The request must contain sufficient accurate facts for the PAC to make a determination. The PAC may request additional information from the public body to assist in the review of the issue.

## *FOIA Frequently Asked Questions continued*

### **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 require the affirmative vote of three members is necessary to adopt any motion, resolution, or ordinance, unless a greater number is otherwise required.

## *OMA Frequently Asked Questions continued*

### **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.

## *OMA Frequently Asked Questions continued*

### **CLOSED MEETINGS – NOT OPEN TO THE PUBLIC**

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

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

- The appointment, employment, compensation, discipline, performance or dismissal of 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.

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.

### **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.

## *OMA Frequently Asked Questions continued*

### **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.

## **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

## *OMA Frequently Asked Questions continued*

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.

### **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 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.

## *OMA Frequently Asked Questions continued*

2. Work informally to resolve the dispute. The PAC can decide to work informally to try to resolve the dispute between the member of the public and the public body.
3. Issue an opinion resolving the matter. If the PAC decides to issue a binding opinion, she must issue the opinion within 60 days after receiving all the documents necessary to make a determination of the issues raised in the Request for Review. Under OMA, the PAC may extend this time by up to 21 business days by sending a written notice to the requester and the public body.

### **What kind of information can the PAC request as 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.

# How to Submit a Request for Review

## 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:

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

To submit a request for review by electronic mail, please email the request to [publicaccess@atg.state.il.us](mailto:publicaccess@atg.state.il.us).

The Request for Review does not need to follow any particular format. If you would like to use a sample request form, however, please visit our website at [IllinoisAttorneyGeneral.gov](http://IllinoisAttorneyGeneral.gov).



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