

# Public Access Counselor Annual Report

An Overview  
of 2020

March 2021





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

2020 presented unprecedented challenges for most, including government entities faced with adapting operations to continue serving the public while also protecting employees and adhering to mandates in place to mitigate the spread of COVID-19. My priority as Attorney General, was and continues to be ensuring the residents of Illinois receive uninterrupted services, as many of our office's core responsibilities are more important than ever. Among those, are the Public Access Counselor's (PAC) work promoting transparency and openness in our government.

I am proud of the work the PAC did to advise public bodies of their transparency obligations, as well as its transition from offering in-person to virtual trainings for Illinois government officials. The 2020 Sunshine Week report details the PAC's work in an unprecedented year.

During 2020, the PAC's guidance was particularly important as public bodies attempted to navigate providing the public with access to virtual public meetings and access to public records despite many public employees working from home. The PAC received nearly 580 informal written inquiries related to convening public meetings and responding to information requests. In response, the PAC evaluated transparency laws and the governor's executive orders to issue updated guidance, which is available on the Attorney General's website. Since 2010, the PAC has handled more than 45,000 matters. In 2020 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 nearly 300 requests per month. Also last year, the PAC issued 10 binding opinions and closed almost 3,700 cases that had been outstanding.

Even during the pandemic, the PAC continued to offer trainings that help government officials understand and comply with the obligations under state transparency laws. In a normal year, the Public Access Bureau trains thousands of government officials, members of law enforcement, and members of the media and public. In 2019, the bureau increased trainings by 25 percent; however, the pandemic's limits on in-person gatherings dramatically impacted the bureau's ability to hold trainings throughout Illinois. The bureau was still able to undertake trainings attended by more than 1,200 individuals, and I am particularly proud of its pivot to virtual trainings that were attended by several hundred Illinois residents.

The pandemic has brought uncertainty to so many aspects of daily life, and it is important that uncertainty not extend to government operations. Now more than ever, the people of Illinois need confidence in all levels of government, and my office is committed to facilitating the transparency and accountability that is critical to reassuring Illinois residents.

Kwame Raoul  
Attorney General

# Table of Contents

1.	Complaint Statistics.....	4
2.	Training Seminars.....	5
3.	Success Stories: Binding Opinions, Non-Binding Determinations & Informal Resolutions.....	6
4.	The Freedom of Information Act.....	12
5.	FOIA Frequently Asked Questions.....	13
6.	The Open Meetings Act.....	22
7.	OMA Frequently Asked Questions.....	23

# Complaint Statistics

In 2020, the Public Access Counselor (PAC) received 3,575 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 579 written inquiries through the Public Access email address. The Public Access Bureau also conducted 18 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, 2020, to Dec. 31, 2020. 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 2020: 3,575**

Breakdown of Freedom of Information Act requests:

- 3,194 total requests for review by the PAC
- 2,529 from members of the public
- 635 from media outlets or other organizations
- 30 from public bodies

Breakdown of Open Meetings Act requests:

- 381 total requests for review by the PAC
- 333 from members of the public
- 39 from media outlets or other organizations
- 9 from public bodies

Average number of requests for review filed per month: 298

# Training Seminars

In 2020, the Attorney General's Public Access Bureau conducted six in-person training sessions in January and February before the COVID-19 pandemic's restrictions on gatherings forced the cancelation or postponement of in-person training for the remainder of the year. The Public Access Bureau was able to successfully transition to virtual Webex trainings and hosted 10 remote sessions in 2020, attended by more than 800 individuals. Additionally, the Public Access Bureau was invited to present virtual trainings for a law school class and the University of Illinois Extension.

The Public Access Bureau will continue to examine ways to increase the number 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 updates the required online training covering both FOIA and OMA each year. In 2020, the Public Access Counselor also posted online guidance to help public bodies meet FOIA and OMA obligations during the pandemic, as public bodies' FOIA staff worked remotely and public meetings were limited in order to mediate the spread of COVID-19.

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 From the PAC in 2020: 1,234

Breakdown of PAC trainings:

- 1,234 members of the public, media and government educated
- 18 FOIA and OMA training sessions

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

There are three main ways by which the PAC can respond to a request for review:

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

In 2020, the PAC issued 10 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 2020. These examples highlight the PAC's work to increase the public's access to government.

## ***Binding Opinions***

***Ill. Att'y Gen. Pub. Acc. Op. No. 20-001, issued Feb. 10, 2020:*** The Village of Sauk Village Board of Trustees violated OMA by failing to approve the minutes of its Sept. 10, 2019 regular meeting; its Sept. 10, 2019 special meeting; and its Sept. 17, 2019 committee of the whole meeting. Minutes were not approved until more than 30 days after each meeting and after the board had held its second subsequent regular meeting. The PAC found that because the board did not approve the three sets of minutes in a timely manner, it violated section 2.06(b) of OMA.

***Ill. Att'y Gen. Pub. Acc. Op. No. 20-003, issued May 8, 2020:*** The Chicago Tribune sent the Illinois Department of Agriculture a FOIA request seeking all applications for adult-use cultivation center licenses, and the department provided redacted copies of the applications. Section 55-30(a) of the Cannabis and Regulation Tax Act states that information provided by cannabis businesses to the Department of Agriculture and certain other state agencies is "subject to the provisions and limitations contained in the Freedom of Information Act." Because FOIA does not exempt the business addresses, owners' names, principal officers and board members of cannabis businesses, the PAC determined that the department improperly redacted that information. Although another statute prohibits disclosure of applications for medical cannabis cultivation center licenses, that prohibition does not apply to applications for adult-use cultivation center licenses under the Cannabis Regulation and Tax Act. The PAC also determined that birth dates of adult-use cultivation centers' principal officers and board members are exempt under section 7(1)(c) of FOIA because disclosure would constitute an unwarranted invasion of personal privacy.

***Ill. Att'y Gen. Pub. Acc. Op. No. 20-004, issued June 2, 2020:*** In a closed session portion of a meeting, the South

## Success Stories continued

Loop Elementary School's Local School Council primarily discussed the process for evaluating an employee, including the score calculation process and the timing of certain steps, rather than the actual performance or evaluation scores of the employee.

The PAC determined that by holding this discussion in a closed meeting, the council violated Section 2(c)(1) of OMA, which authorizes closed session discussions of the appointment, employment, compensation, discipline, performance or dismissal of specific employees of a public body.

**Ill. Att'y Gen. Pub. Acc. Op. No. 20-005, issued July 7, 2020:** The Winnebago County Sheriff's office denied a request from a member of the media who was seeking copies of the police dashboard camera video, dispatch audio and written critique of a Feb. 8, 2016, police chase and fatal crash. The sheriff's office withheld the records pursuant to section 7(1)(d)(iii) of FOIA, which exempts from disclosure law enforcement records to the extent that disclosure would "create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing[.]" The sheriff's office argued that due to a pending civil lawsuit in which a jury trial was demanded, disclosure of the records would deprive the sheriff's office and county of the right to a fair trial or adjudication. The PAC determined the sheriff's office did not provide facts to illustrate specifically how disclosure of the records would create a substantial likelihood that a person would be deprived of a fair trial or impartial hearing. The PAC also found that the sheriff's office did not illustrate that a trial or adjudication was pending or truly imminent. Accordingly, the sheriff's office failed to sustain its burden of demonstrating that the records are exempt from disclosure pursuant to section 7(1)(d)(iii).

*Note: The sheriff's office filed an administrative review action: Gary Caruana v. Attorney General, 20 CH 05334 (Cook County).*

**Ill. Att'y Gen. Pub. Acc. Op. No. 20-007, issued Nov. 24, 2020:** A member of the public alleged that the Village of Roanoke Board of Trustees muted a discussion during the open session portion of a meeting, which was held remotely and livestreamed via Zoom. The board confirmed that it briefly muted a discussion or "sidebar" between the mayor and village clerk during the meeting but contended that section 7(e) did not prohibit brief sidebars. Because members of the public could not contemporaneously hear the muted discussion and because section 7(e)(4) does not provide an exception for sidebars, the PAC concluded that the board violated section 7(e)(4). The PAC's opinion directed the board to make the muted portion public.

**Ill. Att'y Gen. Pub. Acc. Op. No. 20-008, issued Dec. 21, 2020:** The Ogle County Sheriff's office denied a FOIA request submitted by a member of the public who was seeking a police report involving the alleged sexual assault of a minor. The sheriff's office argued that, pursuant to section 7(1)(a) of FOIA, it was prohibited from disclosing records involving juveniles. The requester represents the father of the minor named in the police report in a civil matter. The withheld police reports do not fall within the scope of the Juvenile Court Act's confidentiality provisions because the minor was a victim, not a suspect; therefore, the records do not qualify as "juvenile law enforcement records." Accordingly, the PAC found that the sheriff's office violated FOIA by denying the request.

**Ill. Att'y Gen. Pub. Acc. Op. No. 20-009, issued Dec. 29, 2020:** The Danville Police Department withheld three arrest reports, despite the requirement in section 2.15(a) of FOIA that certain basic information about an arrest must be disclosed within 72 hours of the arrest. The department did not demonstrate that any of the exceptions

## *Success Stories continued*

in section 2.15(c) of FOIA apply. The department's explanation for denying the corresponding field case report pursuant to section 7(1)(d)(i) of FOIA was conclusory. The department's statement that prosecution was pending did not explain how or why disclosure of the records would interfere with law enforcement proceedings. The PAC concluded that the department violated FOIA by withholding the records.

### ***Determination Letters***

***Ill. Att'y Gen. PAC Req. Rev. Ltr. 57241, issued May 14, 2020:*** A member of the public submitted a request for review contesting the city of Urbana Police Department's (UPD) denial of a FOIA request seeking records pertaining to a missing person case. The department denied the request pursuant to section 7(1)(d)(i), asserting that it was actively investigating the case, and disclosure of the records would interfere with the investigation. Based on a review of the responsive records and the department's response, the PAC determined that the release of records containing the UPD's interviews with individuals concerning the missing person and circumstances of the disappearance would interfere with its investigation. However, the PAC determined the city did not illustrate how disclosure of the remaining records documenting certain police activities would have adverse consequences for the investigation. Upon receiving the determination, the city released the portion of the records that the PAC determined did not fall within the scope of the 7(1)(d)(i) exemption.

***Ill. Att'y Gen. PAC Req. Rev. Ltr. 59235, issued May 29, 2020:*** The then-editor of the Northwest Herald submitted a request for review alleging that the Marengo Community High School District No. 154 Board of Education failed to adequately identify the general subject matter of certain final action items on its meeting agenda as required by section 2.02(c) of OMA. In addition, the request for review alleged that the meeting's minutes did not sufficiently reflect the extent of the board's open session discussion of certain items. Upon receiving the request for review, the board acknowledged that it had failed to properly list on the agenda the general subject matter of the items in question and would include greater detail on future meeting agendas. Even before receiving PAC's determination letter, the board also acknowledged that it failed to include summaries of discussions of certain items in the meeting minutes. The board thereafter amended the minutes in question and stated that, going forward, it would more carefully document open session discussions in meeting minutes.

***Ill. Att'y Gen. PAC Req. Rev. Ltr. 59939, issued Jan. 16, 2020:*** A lead organizer for the Chicago Teachers Union submitted a request for review alleging that the LEARN Charter School Network failed to provide a timely response to a three-part FOIA request. After the requester submitted a request for review, LEARN provided the requester with records responsive to parts two and three of the FOIA request. The PAC issued a determination concluding that LEARN violated section 3(d) of FOIA by failing to either provide records responsive to part one of the request or by denying that portion of the request. Following the issuance of this determination, LEARN furnished the records in question.

***Ill. Att'y Gen. PAC Req. Rev. Ltr 61343, issued Feb. 25, 2020:*** A Village of Capron Board of Trustees member submitted a request for review alleging that a conference call held by several board members constituted an improper meeting. The PAC reviewed the verbatim recordings of the conference call and determined that the board violated OMA because a quorum of members discussed public business outside of a properly noticed meeting. After receiving PAC's determination letter, the board voted to release an audio recording of the call and entered a summary of the events into official meeting minutes.

## *Success Stories continued*

***Ill. Att’y Gen. PAC Req. Rev. Ltr. 61776, issued Nov. 18, 2020:*** A member of the public submitted a request for review contesting the Will County Sheriff’s Office’s denial of a FOIA request seeking a copy of radio traffic pertaining to a specific incident. The sheriff’s office asserted sections 7(1)(b), 7(1)(c), and 7(1)(d)(iv) of FOIA in its denial. The PAC determined that the sheriff’s office did not demonstrate how disclosure of the radio traffic would constitute an unwarranted invasion of personal privacy, or reveal the identities of any victims or other individuals involved in the incident. Based on a review of the recording, the PAC determined that the radio traffic pertained to the dispatch of officers to the scene. Upon receiving the determination, the sheriff’s office released a copy of the radio traffic.

***Ill. Att’y Gen. PAC Req. Rev. Ltr. 63233, issued June 23, 2020:*** An attorney submitted a request for review alleging that the Forest Preserve District of Cook County improperly denied a FOIA request for a 911 call recording. The district contended that the recording was exempt pursuant to section 7(1)(d-5) of FOIA because it was the property of the Cook County Sheriff’s Office. The requester disagreed, pointing out that the relevant incident report stated the district possessed a copy of the recording. In its response to the PAC’s initial inquiry, the district acknowledged that it possessed a copy of the recording. However, the district stated it had previously requested and obtained the recording from the sheriff’s office, and language on the request form prohibited it from disclosing the record. The PAC determined that the sheriff’s office’s audio request form did not prohibit release of the recording in response to a FOIA request, and because the district possessed a copy of the recording, section 7(1)(d-5) was inapplicable. Upon receiving the PAC’s determination, the district provided a copy of the record.

***Ill. Att’y Gen. PAC Req. Rev. Ltr. 64040, issued Dec. 31, 2020:*** A member of the media submitted a request for review contesting the city of Bloomington Police Department’s denial of a FOIA request seeking body camera footage of a certain police call. The department denied the request pursuant to section 7(1)(a) of FOIA and cited the Law Enforcement Officer-Worn Body Camera Act (Body Camera Act). The department asserted that the footage was not “flagged,” and the requester was not the subject of the encounter captured in the footage. The requester contended that one of the subjects of the encounter had emailed a letter to the department chief and others, which constituted a complaint; therefore, the footage should have been flagged. After reviewing the information submitted by the parties, including the letter and video at issue, the PAC concluded that the department did not demonstrate that the Body Camera Act prohibited disclosure of the footage. The PAC determined that the letter, at a minimum, was an informal complaint about the manner in which the department responded to a police call. The city subsequently provided the requester with a copy of the body camera footage.

***Ill. Att’y Gen. PAC Req. Rev. Ltr. 64794, issued Nov. 16, 2020:*** A reporter for the Chicago Tribune submitted a request for review alleging that the city of Chicago’s Office of the Mayor improperly redacted certain emails sent or received by Mayor Lori Lightfoot. The PAC determined that while some of the emails were exempt from disclosure, the mayor’s office did not prove by clear and convincing evidence that certain emails consisted of inter- or intra-agency, pre-decisional and deliberative material within the scope of section 7(1)(f), or attorney-client privileged communications within the scope of section 7(1)(m). The mayor’s office disclosed the correspondence upon receiving the PAC’s determination. One of the released emails, about a bet on the 2019 Chicago Teachers’ Union strike, drew broad public interest.

## *Success Stories continued*

### ***Informal Resolutions***

**2019 PAC 59999:** A member of the public submitted a request for review contesting the city of Wilmington Police Department's assertion that it possessed no records responsive to a FOIA request concerning a specific incident. After the PAC facilitated communications between the department's legal counsel, the requester, and the requester's attorney, the police department was able to identify responsive records and subsequently furnished them to the requester.

**2020 PAC 61686:** An attorney submitted a request for review of the Chicago Police Department's (CPD) denial of a FOIA request seeking records pertaining to a police misconduct complaint filed by the attorney's client. The CPD initially withheld the records on the basis of the complainant's personal privacy. The FOIA request included a written release signed by the attorney's client consenting to the disclosure of records containing information concerning himself, and indicating that the records should be provided to his attorney. The PAC's initial inquiry sought the CPD's explanation of its denial, considering that the personal privacy exemption does not apply when the subject of a record consents to disclosure in writing, and the CPD provided the records in response.

**2020 PAC 62227:** A member of the public submitted a request for review contesting the McHenry County Department of Health's denial of a FOIA request seeking the zip codes of individuals testing positive for COVID-19. The department initially asserted that the Health Insurance Portability and Accountability Act (HIPAA) and the Health Statistics Act required the department to withhold the requested zip codes. After the PAC sent a letter asking the department to explain the denial, the department issued a supplemental response informing the requester that the data was now available on its website, which satisfied the request.

**2020 PAC 62584:** A member of the public submitted a request for review contesting Granite City's denial of a FOIA request seeking the personnel file of a city employee. The PAC sent an initial letter of inquiry, asking the city to explain the legal basis for withholding the file. When the city explained that it was relying on a case that held that personnel files were exempt from disclosure, a Public Access Bureau attorney contacted the city's attorney and clarified that the FOIA statute had been amended since that case was published, and public employees' personnel files were no longer exempt from disclosure in their entirety. The city reconsidered its denial, and provided the requester with a redacted copy of the personnel file.

**2020 PAC 62812:** A member of the public submitted a FOIA request to the Cook County Board of Review seeking copies of the board's analysis/evidence sheets for tax appeals related to specific types of residential properties in an identified neighborhood. The Board of Review responded to the requester by asserting that the request was unduly burdensome because it did not include addresses or PIN numbers for the specified properties. After an attorney from the Cook County State's Attorney's office explained in writing to the PAC and the requester the reason street addresses or PIN numbers were needed for the Board of Review to search its records, the requester agreed to submit a new FOIA request listing PIN numbers. The Board of Review responded to the new request and provided the records.

**2020 PAC 64827:** An attorney for a union submitted a request for review alleging the village of Skokie improperly denied a FOIA request seeking the disciplinary matrix applicable to patrol officers employed in the village's police department. The village denied the request under section 7(1)(p) of FOIA. After receiving the

## *Success Stories continued*

PAC's initial letter of inquiry, the village elected to disclose the responsive records.

**2020 PAC 61262:** A reporter from the Invisible Institute submitted a request for review challenging the village of Summit's partial denial, pursuant to sections 7(1)(f) and 7(1)(n), of a FOIA request for documents related to complaints against police officers. After receiving PAC's initial letter of inquiry asking the village to explain the legal and factual bases for its partial denial, the village reconsidered its position and disclosed the additional responsive records with only minimal redactions.

**2020 PAC 61685:** A reporter for Eater submitted a request for review of the Chicago Department of Public Health's response to a FOIA request seeking certain restaurant inspection data from 2000 to 2019. The department initially responded saying it did not possess a record responsive to the request, and directed the reporter to a website to review the department's food inspection records since Jan. 1, 2010. After receiving PAC's initial letter of inquiry, the department provided an explanation of the data it possessed and detailed instructions on how to search and download that information from the department's website. The reporter informed the PAC that he was satisfied by the supplemental response.

**2020 PAC 62540:** A member of the public submitted a request for review challenging the redactions that the Chicago Police Department (CPD) made to arrest videos responsive to a FOIA request. After receiving the PAC's initial letter of inquiry asking the CPD to provide a legal and factual basis for its redactions, the CPD disclosed copies of the videos with fewer redactions. The requester informed the PAC that he was satisfied by the supplemental response.

**2020 PAC 62542:** An attorney filed a request for review challenging the completeness of Arlington Heights School District 25's response to a FOIA request for copies of certain legal bills and insurance policies. After the PAC worked with the parties, the school district issued a supplemental response in which it disclosed additional records containing the requested billing and policy information.

**2020 PAC 63334:** A reporter from Patch submitted a request for review challenging the city of Evanston's contention that it would be unduly burdensome to comply with his FOIA request seeking records regarding long-term care facilities' requests for personal protective equipment requested from the city. After receiving the PAC's initial letter of inquiry asking the city to explain how the burden of complying with the request outweighed the public interest in the information, the city disclosed 213 responsive records.

**2020 PAC 64696:** An attorney submitted a request for review of the Aurora Police Department's denial of his FOIA request seeking information pertaining to the department's gang database. The original request broadly included the gang database itself, for which the department asserted a variety of exemptions. The PAC communicated with the requester and ascertained that he would consider the matter resolved if the department provided the criteria used when including individuals in the gang database. The PAC brought this proposal to the department, which agreed, and provided the criteria, satisfying the requester's concerns.

**2020 PAC 63399:** A township trustee submitted a FOIA request to DuPage Township seeking copies of certain senior newsletters. The township informed the trustee that it did not possess the records. The trustee submitted a request for review to the PAC contesting the township's response. After the PAC's intervention, the township provided the requester with copies of newsletters that had been saved in draft form.

# The Freedom of Information Act

## GENERAL INFORMATION

### What is the Freedom of Information Act?

The Freedom of Information Act (FOIA), is a state statute that provides the public with the right to access government documents and records. The premise behind FOIA is that the public has a right to know what their government is doing. The law provides that a person can request a copy of a public body's records on a specific subject, and the public body must provide those records, unless there is an exemption in the statute that protects those records from disclosure.

### Who is subject to FOIA?

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

### Who can file a FOIA request?

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

## HOW TO FILE A FOIA REQUEST

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

If you would like to obtain information from a public body, you should begin by writing down a list of the information you are seeking. Then prepare a letter or email to that public body's office. If you are not sure to whom to address the letter, contact the public body's main office, and request the contact information for the FOIA officer.

It is helpful if your correspondence includes your name, your address, the date and a daytime phone number so that the public body can contact you if they have any questions. Be sure to describe the information you are seeking with sufficient detail so that the public body can find the requested records. Providing as much information as possible in your request on the subject matter may expedite the public body's search process.

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

Public bodies cannot require that the public submit FOIA requests on a specific form or in a specific format. Public bodies, however, can require that FOIA requests be submitted in writing. Public bodies must accept requests by mail, personal delivery, fax, email, or other means available to the public body. Public bodies may accept oral FOIA requests but are not required to do so. Each public body must develop and make available upon request a list of documents that it will immediately provide to a requester. Each public body must maintain a reasonably current list of all types or categories of records under its control, and the list should be reasonably detailed to aid persons in obtaining access to public records. This list must be available for inspection and copying.

# FOIA Frequently Asked Questions

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

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

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

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

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

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

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

## **Is electronic information considered to be a public record?**

Yes. FOIA defines public records to include electronic documents and communications. When a person requests a record that is maintained in an electronic format, the public body must provide it in the electronic format specified by the request if that is feasible. If it is not feasible, the public body must present the information in the format in which it is maintained or in a paper format at the option of the requester. The public body may charge a fee for the actual cost of purchasing the recording medium, such as a CD, but it cannot charge a fee for its search for or review of the information.

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

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

## FOIA Frequently Asked Questions continued

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

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

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

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

### **When does the five business day time period start?**

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

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

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

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

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

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

Yes, but the agreement must be in writing.

## *FOIA Frequently Asked Questions continued*

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

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

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

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

## **FEES**

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

Yes, but the fees are limited. For black-and-white letter or legal-sized paper (8 1/2 x 11 or 8 1/2 x 14), the first 50 pages are free, and any additional pages can cost no more than 15 cents per page. For color copies or abnormally-sized copies, the public body can charge the actual cost of copying.

### **Can a public body charge for electronic copies?**

Yes, but only 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.
- The requester intends to disseminate the information.
- No personal or commercial benefit will be received from document disclosure.

## **GETTING INFORMATION IN ELECTRONIC FORMAT**

### **Can I request the documents in electronic form?**

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

## *FOIA Frequently Asked Questions continued*

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

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

### **Are emails subject to FOIA?**

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

## **FOIA OFFICERS**

### **What is a “FOIA officer?”**

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

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

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

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

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

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

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

## **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 response from the body was due).

### **Is there a deadline for submitting a Request for Review?**

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

## *FOIA Frequently Asked Questions continued*

limit is counted in calendar days (i.e., including Saturdays, Sundays, and holidays), not business days.

### **How do I contact the PAC in the Attorney General's Office?**

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

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.

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

Yes. The PAC may assist any public body by issuing an advisory opinion to provide guidance on how to comply with FOIA. The public body may request an advisory opinion to obtain guidance on FOIA compliance. The request must contain sufficient accurate facts from which a determination can be made. The PAC may request

## *FOIA Frequently Asked Questions continued*

additional information from the public body to facilitate the review. A public body that relies in good faith on an advisory opinion of the PAC is not liable for penalties in a subsequent lawsuit, so long as the facts upon which the opinion is based have been fully disclosed to the PAC. If compliance concerns a FOIA request that may be the subject of a Request for Review, the PAC may provide general advice but will not issue an advisory opinion.

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

No. You can file a FOIA lawsuit in court after you receive a denial from the public body or after the PAC concludes a review of the matter. If the PAC decides to issue a binding opinion and you disagree with the opinion 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.

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

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

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

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

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

**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.

## **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.

### **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.

## **PUBLIC NOTICE OF A MEETING**

### **What is public notice?**

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

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

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

If the public body changes the regular meeting schedule, it must give 10 calendar days' notice of the change by publicizing the change in the newspaper and by posting information concerning the schedule change at the principal office of the public body. Newspaper publication is not required for rescheduling a single meeting.

The public body must post an agenda (see below) for each particular meeting at the principal office of the public body, at the location of the meeting and on the public body's website (if it has a website maintained by its own full-time staff ) at least 48 hours in advance of the meeting. If a notice or agenda is not continuously available for the full 48-hour period due to actions outside of the control of the public body, then the lack of availability does not invalidate any meeting or action taken at a meeting.

## **MEETING AGENDA**

### **What is an agenda?**

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

### **Can the agenda be changed?**

Although a public body may remove an agenda item that it determines will not be addressed or add a new topic for discussion solely to increase transparency, a public body cannot add an item to the agenda on which action will be taken less than 48 hours before the meeting.

### **Can the public body take action on items not on the agenda of regular meetings?**

No. While the public body can discuss items that are not on the agenda of a regular meeting, the public body cannot take action or make any decision with regard to items or topics not on the agenda of a regular meeting. It is important to note that at a special or emergency meeting, unlike a regular meeting, a public body may not discuss items that did not appear on the agenda for the special or emergency meeting.

## *OMA Frequently Asked Questions continued*

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

Yes. OMA requires that public bodies give members of the public an opportunity to address public officials at public meetings. The procedure for public comment is governed by rules established and recorded by the public body. The primary purpose of adopting rules governing public comment is to accommodate the public's statutory right to address the public body while ensuring that the public body can maintain order and decorum at its meetings.

### **TIME AND LOCATION OF A MEETING**

#### **When and where must an open public meeting be held?**

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

### **RECORDING OF A MEETING**

#### **May a member of the public record an open meeting?**

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

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

Yes. The minutes must include:

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

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

A public body must make minutes of the meeting available for public inspection and post them on the public body's website (if it has a website maintained by full-time staff) within seven calendar days after the minutes are approved by the public body. Typically, the minutes are approved at the next meeting.

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

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

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

- The appointment, employment, compensation, discipline, performance or dismissal of specific employees, specific individuals who serve as independent contractors in a park, recreational, or educational setting, or specific volunteers of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee, a specific individual who serves as an independent contractor in a park, recreational, or educational setting, or a volunteer of the public body or against legal counsel for the public body to determine its validity. However, a meeting to consider an increase in compensation to a specific employee of a public body that is subject to the Local Government Wage Increase Transparency Act may not be closed and shall be open to the public and posted and held in accordance with this Act.
- Collective negotiating matters or deliberations concerning salary schedules for one or more classes of employees.
- Discipline or removal of an occupant of a public office or appointment of an individual to fill a vacant public office.
- Evidence or testimony received in a hearing, provided that the body is a quasi-adjudicative body and prepares and makes available for public inspection a written decision setting forth its determinative reasoning.
- The purchase or lease of real property by the public body.
- The setting of a price for sale or lease of property owned by the public body.
- The sale or purchase of securities, investments or investment contracts.
- Security procedures.
- Student disciplinary cases.
- The placement of individual students in special education programs and other matters relating to individual students.
- Pending or probable litigation against, affecting, or on behalf of the public body.
- The establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act.
- Ongoing, prior or future criminal investigations, when discussed by public bodies with criminal investigatory responsibilities.
- Conciliation of complaints of discrimination in the sale or rental of housing.
- Professional ethics or performance when discussed by an advisory body to a licensing or regulatory agency.
- Discussions regarding self-evaluation, practices, and procedures or professional ethics with representatives of statewide associations.
- The recruitment, credentialing, discipline, or formal peer review of physicians or other health care professionals for a hospital or other health care center.
- Deliberations for decisions of the Prisoner Review Board.
- Review or discussion of applications received under the Experimental Organ Transplantation Procedures Act.

## OMA Frequently Asked Questions continued

- Classification and discussion of confidential matters of the State Government Suggestion Award Board.
- Discussion of the minutes of a meeting that was lawfully closed under OMA.
- Deliberations of the State Emergency Medical Services Disciplinary Review Board.
- The operation by a municipality of a municipal utility or power agency or natural gas agency regarding contracts relating to the purchase, sale, or delivery of electricity or natural gas, or the results or conclusions of lead forecast studies.
- Meetings of a residential health care facility resident sexual assault and death review team.
- An independent team of experts meeting under Brian's Law.
- A mortality review team appointed under the Department of Juvenile Justice Mortality Review Team Act.
- Discussion of certain confidential information by an elder abuse fatality review team;
- Correspondence and records that may not be disclosed pertaining to the Public Aid Code.
- Meetings between internal or external audit committees, finance committees, and their equivalents when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews conducted in accordance with generally accepted U.S. auditing standards.
- Meetings and deliberations for decisions of the Concealed Carry Licensing Review Board under the Firearm Concealed Carry Act.
- Meetings between the Regional Transportation Authority Board and its service boards when the discussion involves review of certain employment contracts.
- Meetings or portions of meetings of the advisory committee and peer review subcommittee created under Section 320 of the Illinois Controlled Substances Act during which specific controlled substance prescriber, dispenser, or patient information is discussed.
- Meetings of the Tax Increment Financing Reform Task Force under Section 2505-800 of the Department of Revenue Law of the Civil Administrative Code of Illinois.
- Meetings of the group established to discuss Medicaid capitation rates under Section 5-30.8 of the Illinois Public Aid Code.
- Deliberations or portions of deliberations for decisions of the Illinois Gaming Board in which there is discussed any of the following: (1) personal, commercial, financial, or other information obtained from any source that is privileged, proprietary, confidential, or a trade secret; or (2) information specifically exempted from the disclosure by federal or state law.

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.

**Who can attend a “closed” meeting?**

Members of the public body and others who are directly involved in the matter that is the basis for the closed meeting may attend the meeting. For example, witnesses giving testimony regarding a complaint against an employee may attend a meeting that is closed for purposes of discussing discipline of an employee.

**Can a public body take binding action in a closed session?**

No. A public body may not take any final action in a closed meeting.

**How must a public body record a closed meeting?**

A public body must make a verbatim record, audio or video, of any closed meeting and take minutes of the meeting. Semi-annually, the public body must meet to review the minutes of any closed meetings that occurred and determine whether the minutes of those closed meetings need to remain confidential. If they determine that it is no longer necessary to have the minutes remain confidential, they must make the minutes available to the public.

**ATTENDING A MEETING BY PHONE OR VIDEO CONFERENCE**

**Can a member of a public body attend a meeting by telephone or video conference and not in person?**

A member of a public body may attend a meeting by telephone or video conference only in accordance with and to the extent allowed by the rules of the public body. If a quorum of the members of the public body is physically present, then a majority of the public body may allow a member to attend by video or telephone conference if the member is prevented from physically attending because of:

- Personal illness or disability.
- Employment purposes or the business of the public body.
- Family or other emergency.

If a member wants to attend the meeting by video or telephone conference, he or she must notify the recording secretary or clerk of the public body before the meeting, unless advance notice is impractical.

The COVID-19 pandemic and limitations on in-person gatherings resulted in the Illinois General Assembly amending the Open Meetings Act, effective June 12, 2020. Notwithstanding the limits on remote attendance described above, the new section 7(e) of OMA allows a public body to hold an open or closed meeting by audio or video conference without the physical presence of a quorum of the members during a public health emergency, as long as several enumerated conditions are met. Meetings must still be open to the public to attend and comment, either remotely or in person, depending on the circumstances. Section 7(e) can be found [here](#).

## *OMA Frequently Asked Questions continued*

**IF YOU BELIEVE THAT A PUBLIC BODY HAS VIOLATED THE OPEN MEETINGS ACT, YOU CAN TAKE ACTION. HERE IS WHAT YOU NEED TO KNOW.**

### **What can I do if I think a public body has violated OMA?**

Within 60 calendar days from when the alleged violation occurred, you can file a request for review with the PAC at the Office of the Attorney General, or you can bring a civil action in circuit court against the public body. If facts concerning an OMA violation are not discovered within the 60-day period, but are discovered up to two years after the alleged violation by a person using reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation. In addition, if you timely file a request for review and the PAC resolves the matter by means other than a binding opinion, you may file suit within 60 days of the decision by the PAC.

### **What is a Request for Review?**

A request for review is correspondence sent to the PAC that lays out the basis for an alleged violation of OMA. The request must be made in writing, must be signed by the requester, and must include a summary of the facts supporting the allegation.

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

If a member of the public believes that a public body has violated OMA in the way that it conducted, or failed to conduct, a public meeting, then the member of the public may submit a request for review to the PAC.

An OMA Request for Review must be made in writing, be signed by the requester, and include a summary of the facts supporting the allegation. A request for review must be submitted to the PAC within 60 calendar days after the conduct that is alleged to have violated OMA. If the facts concerning an OMA violation are not discovered within the 60-day period but are discovered up to two years after the alleged violation by a person using reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.

A request for review may be submitted to the PAC by either electronic mail or U.S. Mail.

To submit a request for review by U.S. Mail, please address it to:

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).

## *OMA Frequently Asked Questions continued*

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).

### **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.
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.

## *OMA Frequently Asked Questions continued*

### **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.



**KWAME RAOUL**  
ILLINOIS ATTORNEY GENERAL