



2005

Public Access Counselor Annual Report



A Message from
ILLINOIS ATTORNEY GENERAL
LISA MADIGAN



Open and honest government is the cornerstone of American democracy, and it can only be achieved through the free exchange of information between the government and its citizens.

In Illinois, two critical tools exist to help citizens obtain the facts about their government: the Freedom of Information Act (FOIA), 5 ILCS 140, and the Open Meetings Act (OMA), 5 ILCS 120. These laws exemplify the fundamental principal that citizens have a right to be informed about the workings of their government and that public bodies exist to help conduct the people's business.

To ensure that citizens and government representatives understand and adhere to these laws, I created a Public Access and Opinions Division and appointed Illinois' first Public Access Counselor to handle disputes that arise under these Acts. Michael Luke, an attorney with 25 years of experience, is chief of the Division. Terry Mutchler, a former investigative reporter for the Associated Press and private practice attorney, serves as Public Access Counselor.

The Public Access Counselor's role is to ensure that public bodies understand the requirements of these laws, government business is conducted openly, and the public has access to the governmental information to which they are entitled. My office also serves as a resource for government officials, citizens, and members of the media when questions or disputes arise. As part of our mission, we have held training sessions around the state to address open government issues.

As detailed in the following pages, the Public Access Counselor handled 1,011 cases specifically dealing with open government in the first year. Most of the 1,011 complaints and concerns addressed to the Public Access Counselor were from citizens. In addition, our office conducted more than 75 statewide trainings for citizens, government officials, and members of the media.

We will continue to provide these valuable services to Illinois citizens to ensure that when it comes to open government, the public is not short-changed.

Sincerely,

A handwritten signature in black ink that reads "Lisa Madigan". The signature is written in a cursive, flowing style.

Lisa Madigan
Illinois Attorney General

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Complaint Statistics

In its debut year, the Public Access Counselor, as part of the Public Access and Opinions Division, handled 1,011 cases specifically dealing with the Freedom of Information Act, 5 ILCS 140, and the Illinois Open Meetings Act, 5 ILCS 120. This Division also conducted more than 75 statewide trainings for citizens, government officials, members of the media, and students.

The following is a statistical breakdown of complaints that have come into our Office from December 20, 2004, the date that the Public Access Counselor position was created, through December 31, 2005. Most of the 1,011 complaints and concerns addressed to the Public Access Counselor in the first 54 weeks came from citizens. The complaints came from every area of the state, and no one area had a cluster of complaints related to either of these Acts.

TOTAL FREEDOM OF INFORMATION ACT CASES: 686

- 548 from Citizens
- 72 from members of the Media
- 66 from Government Officials

Further FOIA Breakdown

- o 295 were written FOIA requests for internal documents of the Office of Attorney General
 - 268 from Citizens
 - 27 from the Media
- o 261 were written FOIA-assist requests in which the Office of Attorney General was asked to help obtain documents from public bodies
 - 234 from Citizens
 - 27 from the Media
- o 130 were FOIA telephone inquiries
 - 66 from Government Officials
 - 46 from Citizens
 - 18 from the Media



TOTAL OPEN MEETINGS ACT CASES: 325

- 225 from Citizens
- 79 from Government Officials
- 21 from the Media

Further OMA Breakdown

- o 208 were written complaints
 - 191 from Citizens
 - 17 from the Media
- o 117 were OMA telephone inquiries
 - 79 from Government Officials
 - 34 from Citizens
 - 4 from the Media



Training Seminars

Training Seminars

The Office of Attorney General conducted 75 statewide trainings to provide citizens, government officials, and members of the media with a practical understanding of these Acts. Each training provided an overview of the history of the Acts, what a government official must do to be in compliance with the Acts, and how citizens can use these Acts to participate in open government throughout Illinois. At the end of each training, Attorney General staff answered questions and addressed concerns related to specific open government situations.

Trainings were conducted throughout Illinois for the following:

- Township Officials of Illinois
- Illinois Municipal League
- Illinois Bar Association
- State's Attorneys
- Illinois Press Association
- County Boards
- School Districts
- City Councils
- Village Boards
- Citizens' Groups
- University Classes
- State Agencies
- Municipal Clerks
- Commissions
- Advisory Bodies
- Press Secretaries of State Agencies

FOIA Case Examples



The following are some examples of how the Attorney General's Office has intervened in disputes arising under the Freedom of Information Act (FOIA).

Freedom of Information Act Cases

- Westville, Vermilion County - A citizen contacted us after the Village of Westville charged the citizen \$100 in attorney's fees simply for processing a request for information pursuant to the Freedom of Information Act. The Act permits a public body to charge "the actual cost of reproduction" for copies; no other charges can be imposed. The Office of Attorney General intervened and the Village rescinded the fee.
- Payson, Adams County - A union member contacted our Office after the Payson Community Unit #1 School District would not honor his FOIA request for information and instead had a local architectural company respond on its behalf, charging the requestor approximately \$400 to obtain the public records. Our Office intervened and informed the public body of its responsibility to respond to a FOIA request. The requestor received his documents from the school district at a cost of less than \$5.
- Springfield, Sangamon County - A citizen and The State Journal-Register attempted to obtain a report under FOIA that the City was required to file with the EEOC. The City denied both the newspaper's and a local attorney's requests for the report. The newspaper contacted us. In response, we contacted the City and expressed our view that the document was a public record as defined under FOIA. The City released the document to the public.
- Springfield, Sangamon County - A former employee of the City filed numerous FOIA requests with the City over the last 18 years. The City complied with the requests. The former employee filed a subsequent FOIA request with the City seeking additional documents. The City complied properly with the request and set a date with the citizen to review the documents. The citizen arrived 90 minutes late for the meeting, and when he was told another date would have to be arranged, became belligerent and was arrested and removed from the building. He complained to our Office alleging the City violated the Act. Our Office informed the ex-employee that the City complied properly.
- Wood Dale, DuPage County - A reporter for The Daily Herald filed a FOIA request seeking a copy of a settlement agreement. The City of Wood Dale denied the request indicating that the settlement agreement was a "preliminary draft" even though the Council voted 6-1 to approve the agreement. They also denied the request stating that members of the Council agreed among themselves to keep the document confidential. The Office of Attorney General intervened and the document was released, in accordance with the Act.



- Oswego, Kendall County - A citizen complained to our Office that the East Aurora School District refused to comply with a FOIA request seeking a copy of the Minutes from a closed-door session. Our Office informed the citizen that under the Act, copies of confidential minutes of a closed session are not available.
- El Paso, Woodford County - A citizen filed a FOIA request seeking salary information of a city employee. For months, the Clerk repeatedly ignored the citizen's request for this information and indicated that he was seeking to find a way under the Act to deny the information to the citizen. Our Office intervened and the Clerk ultimately provided the information to the citizen.
- Collinsville, Madison County - A citizen complained that the City and its local Library Board were ignoring two of his requests. Our Office intervened and discovered that the citizen had filed several hundred FOIA requests in a several month period. Our Office informed that citizen that the Act is not designed to interrupt the duly undertaken tasks of a public body.
- Belleville, St. Clair County - A citizen filed a FOIA request seeking a copy of a 911 emergency tape from the Emergency Telephone System of St. Clair County based on a call she made to 911 when her son collapsed. The public body denied her request. Our Office intervened and the tape was subsequently released.
- Edwardsville, Madison County - A labor union filed a FOIA request with Edwardsville School District Unit #7 seeking copies of contracts that the District had entered into with a bus company. The District denied the request indicating that the contracts were a trade secret containing proprietary and confidential information. Our Office intervened and pursuant to the Freedom of Information Act and the Illinois Constitution, the city released the documents.
- Ladd, Bureau County - A citizen filed a FOIA request with the Illinois State Police seeking a police report concerning the police response to an incident at a nursing home in which her father subsequently died. Her request was initially denied as an unwarranted invasion of personal privacy. Our Office intervened and the document was released, pursuant to the Act.

Open Meetings Act Case Examples



The following are some examples of how the Attorney General's Office has intervened in disputes arising under the Open Meetings Act (OMA).

Open Meetings Act Cases

- Chicago, Cook County - A member of the media and a citizen contacted our Office after a majority of a quorum of the Illinois Commerce Commission (ICC) was seen having a private lunch with representatives of People's Energy, which has matters pending before the Commission. The meeting of the majority of the quorum of the public body to discuss public business was a violation of the Act. Our Office investigated the matter and directed the ICC to cease such activities and also to repeal an internal rule governing their behavior in light of the Public Utilities Act.
- Pekin, Tazewell County - The Pekin City Council planned to hold a meeting to discuss the future of the City and its goals. The Mayor asked members of the media not to attend in order to promote a more frank discussion, and initially the media agreed as long as the Mayor agreed to provide a summary of the meeting to them. He also indicated that if a member of the public attended the meeting, he would adjourn the meeting. Having the public attend, he reasoned, would change the room dynamic and potentially prevent members from speaking frankly. Our Office intervened, and the Mayor decided to permit the public and the media to attend.
- Wasco, Kane County - Several citizens contacted our Office when the Wasco Sanitary District adopted an ordinance that would require members of the public to do three things if they wanted to tape a public meeting: 1) provide a 10-day advance notice of the intent to tape a meeting, 2) agree in writing to provide a complete copy of the tape to the public body, and 3) pay in advance a court reporters' fee to transcribe at a cost estimated to be several hundred dollars. Because of its significant restriction's of taping, this ordinance violated the Open Meetings Act, which states that a citizen has the right to tape a public meeting. In conjunction with the Kane County State's Attorney's Office, our Office intervened and the public body rescinded the Ordinance.
- Peoria, Peoria County - The Peoria Journal Star contacted us after members of Community School District #156 entered a closed-door session and voted to grant a 5.5 percent pay raise. We investigated the matter and determined that the Board had violated the Open Meetings Act. The Board later rescinded the improper vote and took another vote in a public meeting granting a 3.2 percent pay raise.
- Lockport, Will County - A concerned group of citizens contacted us after an item on the Plan Commission's agenda - a proposal related to Wal-Mart - drew several hundred people to its meeting. Because the meeting room could not accommodate the crowd, the Commission properly tabled the item to another date and location to accommodate the public. However, when the public left, the public body improperly remained in the room to discuss the issue without the public present. This came to the public's attention because a member of the public body flipped a switch, believing that it turned off the microphones in the room. Instead, the switch turned on



the local cable television network, and the network broadcast the public body's continued discussion of the matter. Citizens complained to our Office. Our Office contacted the Board, which acknowledged the violation. In response to this problem, our Office offered to train the Board on the requirements of the Act and the Board accepted.

- City of Chicago, Cook County - A member of the media contacted our Office alleging that the Board of Directors of METRA violated the Open Meetings Act by granting raises during a closed session. Our Office intervened in the matter and the Board subsequently took corrective action, voting on the raises in open session.
- West Frankfort, Franklin County - Citizens complained to our Office when the West Frankfort Planning Commission announced that it would conduct Committee meetings in private homes of board members. Our Office intervened, indicating that holding public meetings in private homes would be inconsistent with the public policy provisions of the Act. The Commission decided to continue conducting meetings at City Hall.
- City of Chicago, Cook County - A citizen complained that the Chicago City Council was not properly posting the notice and agenda of its meetings and Council committee meetings. Our Office worked in conjunction with the Cook County State's Attorney to ensure full compliance.
- Westchester, Suburban Cook County - A trustee of the Village of Westchester contacted our Office after trustees were advised that they could be sanctioned for speaking about matters raised in a closed-door session. Our Office intervened and informed the Board that the Illinois courts have long held that a public body member cannot be sanctioned for disclosing matters raised in a closed session.
- New Lenox, Will County - The Lincoln-Way School Board called a special, closed-door meeting to talk about the performance of a public official, who also was an elected member of the School Board. Our Office intervened and the closed-door session, which would have been in violation of the Act, was cancelled.
- Eureka, Woodford County - A member of the Eureka City Council contacted our Office alleging that the Council was violating the Open Meetings Act by voting in closed-door sessions. Our Office reviewed the matter and intervened, and the public body subsequently corrected the violations by voting on the matters in open session.
- Murphysboro, Jackson County - A member of the media complained when a Committee of the City Council went into closed session to discuss eliminating the Canine Unit of the local Police Department, improperly invoking the personnel exception of the Act. Our Office contacted the Committee regarding this violation of the Open Meetings Act and the violation was corrected.

Division Chief and Public Access Counselor



Michael J. Luke, Chief of the Public Access and Opinions Division of the Attorney General's Office is a lawyer with over 25 years of experience in government and private practice. Mr. Luke also serves as the ethics officer for the Office of the Attorney General.

Public Access Counselor Terry Mutchler is a lawyer with experience in private practice and as a law clerk for former Illinois Supreme Court Chief Justice Benjamin K. Miller and the Executive Office of the President during the Clinton Administration. Prior to becoming a lawyer, Ms. Mutchler was an investigative journalist for the Associated Press in Pennsylvania, New Jersey, Alaska, and Illinois.



LISA MADIGAN
ILLINOIS ATTORNEY GENERAL