

Public Access Counselor Annual Report

An Overview
of 2023

March 2024





A Message from
ILLINOIS ATTORNEY GENERAL
Kwame Raoul

The 2023 Sunshine Week report details the important work of the Office of the Public Access Counselor (PAC) in providing the public with an accessible remedy when questions arise about whether governments have complied with the Freedom of Information Act (FOIA) and the Open Meetings Act (OMA), and in advising public bodies of their obligations under these laws. As public bodies transitioned back to in-person meetings after the expiration of the last gubernatorial disaster proclamation relating to the COVID-19 pandemic, the PAC provided valuable training and written guidance on compliance with OMA. Additionally, with the expanded deployment of body-worn cameras to law enforcement agencies throughout the state, some agencies received their first FOIA requests for those recordings. The PAC's educational webinars and detailed determination letters concerning law enforcement records assisted those agencies and the public in ensuring compliance in this critical area.

Since 2010, the PAC has handled more than 55,000 matters. In 2023 alone, the PAC received over 3,800 requests for assistance from members of the public and media seeking access to records or public meetings, averaging over 310 requests per month. The PAC received approximately 740 informal written inquiries related to public meetings and responding to information requests. The majority of these inquiries were resolved informally or through determination letters. However, the PAC issued seventeen binding opinions, including eleven addressing FOIA issues and six addressing OMA issues.

The PAC's binding opinions are critical to reinforcing the law in frequently misinterpreted areas, including the subjects that public bodies are allowed to discuss in closed session, permissible restrictions on public comment, and appropriate fees for records provided in response to FOIA requests. The PAC also clarified provisions of FOIA and OMA that required further explanation, such as the procedures for approving closed session minutes and the scope of the confidentiality provision of the Juvenile Court Act. Finally, the PAC issued several binding opinions in cases where public bodies had failed to respond to FOIA requests after PAC intervention. Through these opinions, the issuance of determination letters resolving FOIA and OMA disputes, and its statewide education programming addressing common FOIA and OMA compliance questions, the PAC has enhanced openness and transparency of government operations through our state in 2023.

Kwame Raoul
Attorney General

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Complaint Statistics

In 2023, the Office of the Public Access Counselor received 3,810 formal requests for assistance pursuant to the Illinois Freedom of Information Act (FOIA), ([5 ILCS 140/1 et seq. \(West 2022\)](#)), and the Illinois Open Meetings Act (OMA), ([5 ILCS 120/1 et seq. \(West 2022\)](#)), for an average of 317 requests for review each month. In addition, PAC attorneys fielded an estimated eight to 12 questions per day through the PAC's FOIA/OMA hotline, and received approximately 740 written inquiries through the Public Access email address.

Of the formal requests received by the PAC from Jan. 1, 2023, to Dec. 31, 2023, 3,360 were related to FOIA, and 450 pertained to OMA. The requests came from every area of the state and involved all types of public bodies, from the smallest villages, libraries and school districts, to the largest cities and state agencies.

Total New Matters Before the Public Access Counselor in 2023: 3,810

Breakdown of the 3,360 Freedom of Information Act requests for review received by the PAC:

- 2,717 from members of the public
- 617 from media outlets or other organizations
- 26 from public bodies or their members

Breakdown of the 450 Open Meetings Act requests for review received by the PAC:

- 400 from members of the public
- 30 from media outlets or other organizations
- 20 from public bodies or their members

Training Seminars

In 2023, the Office of the Public Access Counselor hosted 12 webinars geared toward FOIA officers, law enforcement records managers, and elected and appointed officials. More than 2,300 individuals participated in those events. Additionally, PAC attorneys were invited to deliver educational presentations at conferences or meetings throughout the state, including at events convened by the United Counties Council of Illinois, the Illinois Municipal League, the Illinois Executive Ethics Commission, the Municipal Clerks of Illinois, the Illinois Township Attorneys Association, the Kane County Bar Association Local Government Committee, the Illinois Association of School Boards Administrative Professionals' Program, the Illinois Local Government Lawyers Association, Chicago-Kent College of Law, the Illinois Institute for Continuing Legal Education, and the Illinois Comptroller's Office. PAC attorneys also provided trainings on the challenging FOIA issues pertaining to law enforcement records to the Law Enforcement Records Managers of Illinois (LERMI), the Tri-River Police Training Region, Mobile Team Unit 16 (MTU-16) and the Illinois Law Enforcement Administrative Professionals (IL-LEAP). Finally, PAC attorneys presented trainings for FOIA officers, local elected officials and public employees at events organized by Madison County, the Kane County State's Attorney's Office and Elk Grove Village.

In addition to providing in-person and virtual trainings, PAC attorneys provide informal education to members of the public, attorneys, and public employees each day by answering questions received through the bureau's hotline, as well as by responding to written inquiries. In 2023, the PAC also updated its Frequently Asked Questions (FAQ) guides for FOIA officers, public body members, and the public, as well as the Public Access Counselor Guide. Those updated materials are all available [online](#). Finally, the Public Access Counselor also updates the required online trainings covering both FOIA and OMA each year, which are also hosted on the [website](#) of the Office of the Attorney General.

The PAC will continue to evaluate ways to create and expand programs tailored for specific units of government and public bodies that are interested in promoting transparency and openness in government. Any group or entity interested in attending or hosting a training conducted by a representative of the Attorney General's office should contact Theresa Geary at special.events@ilag.gov for more information.

Individuals Participating in PAC FOIA and OMA Training Events in 2023: 3,753

Breakdown of 38 PAC FOIA and OMA training events:

- 12 webinars hosted by the PAC
- 2,313 attendees
- 26 conferences, meetings, institutes, events, and panel presentations by invitation
- Approximately 1,440 journalists, attorneys, and government officials educated

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 2023, the Attorney General issued 17 binding opinions resolving disputes submitted to the PAC. Eleven of those opinions addressed FOIA issues, and the other six addressed OMA issues. The authority to issue binding administrative decisions has allowed the Attorney General and the PAC to clarify disputed provisions of FOIA and OMA and increase transparency. More specifically, the binding opinions issued in 2023 interpreted various exemptions to disclosure under FOIA and exceptions that permit public bodies to hold closed meetings under OMA, emphasized the duty to respond to FOIA requests in a timely manner, and clarified the obligations to provide sufficient advance notice on meeting agendas and approve closed session minutes in open session.

The PAC has also successfully resolved hundreds of disputes over the release of records and issues related to open meetings through negotiations with requesters and public bodies, and through the issuance of non-binding determination letters. When PAC attorneys can facilitate the informal resolution of a dispute or prompt a public body to respond to a FOIA request that it has overlooked, a requester may receive records in a relatively short period of time. Finally, through the issuance of determination letters and letters explaining the legal basis for the PAC's determination that no further action is necessary, the PAC educates FOIA requesters, meeting attendees, and public bodies on the requirements of FOIA and OMA.

This section of the report summarizes notable PAC binding opinions issued in 2023, and describes a few of the matters that PAC attorneys resolved through determination letters and informal resolutions in 2023. These examples highlight the PAC's work to increase the public's access to government and clarify provisions of FOIA and OMA to provide guidance to public bodies.

Binding Opinions

Ill. Att'y Gen. Pub. Acc. Op. No. 23-003, issued Mar. 14, 2023: A majority of a quorum of the members (three of seven members) of the Board of Trustees of the Stickney-Forest View Public Library District physically attended a private "meet and greet" gathering with library staff to address questions and concerns about library business. The library board did not post an agenda, provide an opportunity for public comment, or otherwise comply with the requirements of OMA for this gathering. Although there is no indication that the board intended to reach an accord on any issues at the time of this discussion, a majority of a quorum of board members nonetheless engaged in the collective inquiry phase of deliberations by gathering and exchanging information in anticipation of possibly taking future action. Accordingly, the gathering was an improper meeting subject to the requirements of OMA. This opinion reinforced that the requirements of OMA apply not only to those gatherings in which public bodies take formal actions, but also to discussions of public business for the purpose of collecting information.

Success Stories continued

Ill. Att’y Gen. Pub. Acc. Op. No. 23-004, issued Mar. 27, 2023: The Board of Education of Township High School District 214 voted to approve a severance agreement with an assistant superintendent during its Sept. 15, 2022, meeting involving a payout of more than \$183,000. The agenda for the meeting merely indicated that the board would hold a closed session under section 2(c)(1) of OMA and then potentially take action afterward. Section 2.02(c) of OMA requires public bodies to include the general subject matter of final actions on meeting agendas. Although section 2.02(c) does not require the agenda to identify the subject of possible final employment action by name, an agenda that merely notified the public that the board would consider some kind of action related to appointment, employment, compensation, discipline, performance, or dismissal of unspecified employees does not set forth the general subject matter of the severance agreement that the board approved at its meeting. At a minimum, section 2.02(c) of OMA requires public bodies to give advance notice of personnel transactions by listing on the agenda the general category of employee and general type of personnel action. The opinion concludes that the board violated section 2.02(c) of OMA.

Ill. Att’y Gen. Pub. Acc. Op. No. 23-005, issued Apr. 25, 2023: The Lyons Township High School District 204 Board of Education convened a closed session meeting pursuant to section 2(c)(6) of OMA, which permits a public body to enter closed session to discuss only “[t]he setting of a price for sale or lease of property owned by the public body.” The PAC’s review of the verbatim recording of the closed session found that the board discussed myriad subjects beyond setting a price for the property at issue. This opinion discussed the legislative intent behind section 2(c)(6) of OMA, and contrasted that section with another section of OMA that permits broader discussions when a public body is considering purchasing property. The PAC concluded that the board’s discussion of the property exceeded the permissible scope of the OMA exception, and directed the board to release the closed session verbatim recording and meeting minutes.

Ill. Att’y Gen. Pub. Acc. Op. No. 23-007, issued May 26, 2023: A member of the public submitted a request for review alleging that the City of Chicago Department of Planning and Development improperly denied his request for e-mails from calendar year 2021 pertaining to a certain property, and e-mails containing certain keywords related to the property. The department denied the request as unduly burdensome, pursuant to section 3(g) of FOIA, notifying the requester that he was required to provide the names of the employees whose accounts he wanted the department to search. The PAC determined that a public body, by virtue of employing its workforce, is generally in a better position than a member of the public to ascertain which employees would have responsive records, and that the handling of FOIA requests frequently requires public bodies to make judgment calls about the appropriate personnel to consult and the manner in which to conduct their searches. Because the absence of employee names or e-mail addresses did not render the request unduly burdensome on its face, the department did not sustain its burden of proving that the request for e-mails was unduly burdensome under section 3(g) of FOIA.

Ill. Att’y Gen. Pub. Acc. Op. No. 23-008, issued May 26, 2023: St. Clair County treated a FOIA request from the Natural Resources Defense Council, a not-for-profit organization, as a request having a “commercial purpose,” and levied a fee for personnel costs associated with its search, review, and reproduction of responsive records. The opinion found that the county failed to establish that the council’s request met the definition of having a commercial purpose, as defined in section 2(c-10) of FOIA. Because FOIA prohibits public bodies from charging personnel costs for non-commercial requests, the asserted fee was improper, and the PAC directed the county to provide the council with responsive records subject only to permissible fees for copying.

Success Stories continued

Ill. Att’y Gen. Pub. Acc. Op. No 23-010, issued July 12, 2023: A reporter requested police records relating to a fight that occurred outside of a high school in which both an adult and a minor were arrested. The Village of La Grange disclosed a copy of the adult’s arrest information sheet, arrest card, and mugshot report, but withheld the remaining law enforcement records pursuant to section 7.5(bb) of FOIA and the confidentiality provisions of the Juvenile Court Act of 1987 (JCA). The JCA requires the withholding of “juvenile law enforcement records,” which are records that identify a juvenile as an arrestee or a suspect in a crime. That law does not contain an exception for juvenile law enforcement records that also discuss criminal conduct committed by adults. The PAC concluded that the JCA did not permit disclosure of any portion of the police report to an unauthorized party, regardless of the extent to which a portion of the report identified an adult arrestee. The village’s response to the reporter did not violate FOIA, as the disclosure of the arrest records that concerned only the adult arrestee, coupled with the withholding of police reports that involved the minor arrestee, complied with the requirements of both section 2.15 of FOIA and the JCA.

Ill. Att’y Gen. Pub. Acc. Op. No. 23-013, issued Sept. 13, 2023: The Board of Education of Wheaton Warrenville Community Unit School District No. 200 interrupted a member of the public while she was providing public comment during the board’s June 14, 2023, meeting after she referenced a district hiring policy; she was not permitted to finish her comments because the board president believed that she intended to comment on a personnel matter. Under the plain language of section 2.06(g) of OMA, a public body must establish and record rules governing public comment, and may restrict public comment only pursuant to those rules. The board’s established and recorded public comment rules did not authorize the board to prohibit members of the public from publicly raising concerns about personnel issues. The board appeared to argue that its basis for restricting the comments was a past practice of reading, before the public comment portion of meetings, a limitation that instructs members of the public to refrain from publicly commenting on personnel matters. However, permitting a public body to supplement its rules governing public comment by either reading additional conditions prior to the public comment portion of its meetings, or by adding a restriction to an agenda or meeting handout, would be contrary to the plain language of section 2.06(g), which expressly requires that a public body’s rules be both “established and recorded[.]” The board was not permitted to prevent the speaker from publicly addressing the board merely on the assumption that she would discuss a personnel matter. Therefore, the board violated section 2.06(g) of OMA by limiting the speaker’s statutory right to address the members of the board.

Ill. Att’y Gen. Pub. Acc. Op. No. 23-014, issued Dec. 1, 2023: A member of the Village of Skokie Board of Trustees alleged that the board improperly voted in closed session to approve closed session meeting minutes. Section 2(e) of OMA prohibits a public body from taking final action in closed session, and that section does not contain an exception for when the final action concerns closed session meeting minutes. Although OMA permits a public body to discuss whether to approve closed session meeting minutes during a closed session, the requirement to vote publicly to approve minutes does not require the public body to reveal the content of the minutes as part of its public recitation, and thus does not compromise the confidentiality of closed session discussions. Additionally, this opinion clarifies that a vote to approve closed session meeting minutes is a final action that is separate from the legal obligation to conduct a semi-annual review of closed session minutes to determine if the minutes still require confidential treatment.

Success Stories continued

Ill. Att’y Gen. Pub. Acc. Op. No. 23-015, issued Dec. 12, 2023: The City of DeKalb denied, pursuant to section 7(1)(g), a newspaper reporter’s FOIA request for the city’s non-disclosure agreement (NDA) with Kraft Heinz concerning information related to a distribution facility that the company is planning to build. Citing federal court decisions about the federal version of FOIA’s section 7(1)(g), the city asserted that the agreement was exempt because it was furnished to the city confidentially and is the type of information about a commercial project that Kraft Heinz typically maintains confidentially. The opinion concluded that the city satisfied the first two elements of section 7(1)(g) because the NDA relates to a commercial project and contains a confidentially clause. Unlike the federal FOIA corollary, however, section 7(1)(g) of Illinois’ FOIA also requires a public body to demonstrate that disclosure of a record “would” cause competitive harm. The opinion noted that unlike certain other exemptions that only require a public body to demonstrate that disclosure of a record “could” reasonably be expected to result in the type of harm that the exemption is designed to protect, the use of the term “would” in section 7(1)(g) signifies a narrower scope and more onerous standard for a public body to satisfy its burden. The city’s non-confidential response appeared to assert that disclosure of the NDA could have caused competitive harm by revealing the city and Kraft Heinz were negotiating about the project, but the reporter only sought the NDA after Kraft Heinz issued a press release announcing its plans for the distribution center. Accordingly, the PAC determined the NDA was not exempt from disclosure and directed the city to disclose it.

Ill. Att’y Gen. Pub. Acc. Op. No. 23-016, issued Dec. 27, 2023: A member of the public alleged that the Yorkville Community Unit School District 155 Board of Education convened a closed session meeting to discuss removing the book “Just Mercy” from the curriculum for the district’s English classes. The board acknowledged discussing the book in closed session but argued that several provisions of OMA permitted that discussion because a parent had filed a grievance concerning the district’s inclusion of the book in its curriculum. The PAC’s review of the closed session verbatim recording indicated that the board debated the appropriateness of the book in the English curriculum rather than any specific employee’s job performance or actions, testimony or evidence for the purpose of adjudicating the grievance, or matters relating to individual students. The PAC directed the board to release the closed session verbatim recording and meeting minutes to the public.

Determination Letters

Ill. Att’y Gen. PAC Req. Rev. Ltr. 70498, issued Mar. 2, 2023: A journalist submitted a FOIA request for review challenging the City of Chicago Department of Finance’s partial denial of the reporter’s request seeking certain information concerning parking tickets issued by the city. The department withheld the ticket locations and license plate numbers for each vehicle ticketed, pursuant to sections 7(1)(b) and 7(1)(c) of FOIA. Upon review, the PAC determined that the department had not met its burden of establishing that the withheld information was exempt. The department subsequently disclosed the withheld information to the reporter.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 74214, issued Mar. 8, 2023: An attorney for an advocacy organization submitted a FOIA request for review after the Chicago Police Department denied her request seeking e-mails sent by the superintendent and certain commanders related to traffic stops for a three-month period. CPD denied the request pursuant to section 3(g) of FOIA, asserting that compliance with the request would be unduly burdensome because its search yielded more than 500 pages of e-mails. The attorney explained that the commanders targeted in her request supervised three districts that typically have a high number of traffic stops,

Success Stories continued

and that there was a spike in traffic stops during the specified months. The PAC determined that there was a compelling public interest in the information requested and that the scope of the request was targeted to that purpose. While recognizing that compiling and reviewing the e-mails would not be an insignificant task, the PAC concluded that CPD did not demonstrate that the burden of compliance outweighed the public interest in the requested records. CPD subsequently provided redacted copies of the e-mails to the requester.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 74217 75897, issued Sept. 12, 2023: Illinois State University denied FOIA requests by a public radio station for records concerning a donation pledge by an individual whose company had contracted with the university and other state agencies for testing services during the COVID-19 pandemic. That individual subsequently was sued by business partners who accused him of misusing company assets and indicted on unrelated criminal charges. Among the reasons for denying the request, the university asserted that the records revealed the individual’s “private information” and that their disclosure would constitute an unwarranted invasion of his personal privacy. The PAC determined that the records did not reveal annual salary, net worth or other detailed personal income information that would justify withholding them under the exemption for “private information.” The PAC also determined that there was a significant public interest in identities of individuals who donate or pledge to donate significant sums and the details of how the donation was handled by the university, and that this public interest outweighed the right to privacy in light of the totality of the circumstances surrounding the donation. After the PAC issued its letter, the university disclosed the records that the PAC determined were not exempt from disclosure.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 74483, issued Mar. 21, 2023: A member of the public submitted a FOIA request for review challenging the Chicago Board of Ethics’s denial of his request seeking records pertaining to a specific case. The board denied the request pursuant to section 7(1)(f), which permits the withholding of pre-decisional opinions and recommendations. The PAC determined that the board improperly withheld one of the responsive e-mails, including the attachment, because the communication reflected a final decision rather than preliminary deliberations. As requested by the PAC’s determination letter, the board subsequently released a copy of that communication to the requester.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 75029 75075 75082, issued May 2, 2023: Two members of the City of Galesburg City Council and another individual alleged that the city council violated OMA by improperly discussing, in closed session, employment positions and potentially conducting a salary study to determine appropriate salaries for certain employees. The PAC reviewed the closed session verbatim recording and determined that while discrete portions of the discussion were authorized by the closed session exception pertaining to employment matters, discussion of the creation of new employment positions and a comprehensive review of the compensation of employees in various categories was improper. At the PAC’s urging, the city council remedied the violation by publicly releasing the recording of the improper parts of the discussion.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 76460, issued Nov. 21, 2023: A member of the public submitted a FOIA request for review challenging the City of Urbana’s partial denial of his FOIA request seeking records pertaining to a police chief finalist who was publicly announced at a city council committee meeting. The city withheld the applications and other materials related to the candidates, including the finalist, pursuant to section 7(1)(c), asserting that it had not yet made a final hiring decision. The PAC clarified that its prior determinations

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allowing the withholding of records identifying pending or unsuccessful applicants involved situations where the applicant had not been publicly identified as seeking public employment. Consequently, the reasons for why disclosure of those application materials would constitute a clearly unwarranted invasion of personal privacy were not applicable to the police chief finalist. The PAC requested that the city disclose the police chief finalist's application materials, but concluded that the remaining candidates' materials fell within the scope of section 7(1)(c) of FOIA. The city subsequently released redacted copies of the records that the PAC determined were not exempt.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 76743, issued July 28, 2023: An attorney sought officer-worn body camera footage from an officer who entered a retail establishment and viewed surveillance camera footage of a traffic crash. The Chicago Police Department denied the request because the requester's clients were not depicted in the video. The PAC's determination letter in this matter addresses the question of whether footage is "flagged" when an individual suffered bodily harm in a traffic crash rather than from engagement with law enforcement, and concluded it is not "flagged" in that circumstance. In a matter of first impression, the letter also addresses the question of whether an "encounter" was captured on the officer's recording of the surveillance recording. Because the officer who viewed the security camera recording of the incident while inside the business was not interacting with the requester's clients at that time, and the security camera footage he reviewed did not show a law enforcement interaction, the PAC concluded that none of the disclosure provisions of the Law Enforcement Officer-Worn Body Camera Act applied, and that the department did not improperly deny the request.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 77164, issued Aug. 28, 2023: A member of the public submitted a request for review alleging that the Village of Lisle Board of Trustees violated OMA when it discussed the sale of a property during a closed meeting. OMA permits a public body to discuss in closed session setting the price for the sale or lease of property owned by the public body. The PAC's review of the closed meeting verbatim recording found that while the board did not discuss setting a price, it discussed other topics related to the sale, and therefore exceeded the scope of the exception. The determination letter requested that the board make the verbatim recording available to the public, and the board voted to do so.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 77687, issued Nov. 2, 2023: A journalist submitted an OMA request for review alleging that the Waverly Community Unit School District #6 violated section 2(e) of OMA by voting on two matters related to salaries at a meeting without sufficiently informing the public of the matters being considered or business being conducted. The PAC determined that the school board's public recitals approving "Salary A" and "Salary B" did not sufficiently identify the general subject of the matters being considered and did not identify in any way the particular transactions at issue. The board stated it subsequently held a special meeting to redo the votes out of an abundance of caution and to clarify the situation. While the PAC concluded that no further remedy was required because of that revote, the PAC advised the board that the re-votes were not unwarranted because the board needed to make a proper public recital before taking final action on the salaries.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 78156, issued Oct. 16, 2023: A member of the public submitted a FOIA request to the City of Peru seeking records of hidden or deleted comments and blocked accounts on a Facebook page, "Ken Kolowski Mayor of the City of Peru." The city responded that the Facebook page was not maintained by the city. The PAC considered the scope of the definition of "public records" in FOIA and reviewed the content

Success Stories continued

of the page. The PAC found that the page was a political page for the mayor rather than a government official page, as he had created the page during his campaign and used the page primarily to celebrate local businesses and promote local happenings in the manner of a politician rather than to perform official responsibilities. Because the page was not used to conduct public business and because it was not prepared by or for, or used by, received by, in the possession of, or under the control of the city, the requested records did not fall within the statutory definition of “public records” and therefore, were not subject to disclosure.

Ill. Att’y Gen. PAC Req. Rev. Ltr. 79328, issued Dec. 19, 2023: A member of the public submitted a FOIA request to the Kendall County IT Department seeking e-mails on its servers between the Circuit Clerk’s Office and a private entity. The PAC concluded that because the requested e-mails pertained to the transaction of the Circuit Clerk’s Office business, which is an agent of the judiciary and therefore not subject to FOIA, those e-mails were not records of a public body despite presumably being maintained on the e-mail servers of the department, which is subject to FOIA. To permit members of the public to obtain records of the judiciary merely because those records are hosted on e-mail servers managed by a shared IT department would be contrary to plain language of FOIA, which excludes the judiciary from its requirements.

Informal Resolutions

2022 PAC 74440: An investigator submitted a FOIA request for review contesting the Chicago Police Department’s denial of a request for records in a missing person’s case. After a PAC attorney conferred with both parties, the requester identified the records that were most needed at that time, and the department provided the records responsive to the narrowed request, with the understanding that additional records could be requested at a later date, if needed.

2023 PAC 75512: After receiving numerous narrowed FOIA requests from a member of the news media, the City of Chicago Department of Assets, Information & Services designated the journalist as a recurrent requester. After a PAC attorney contacted the department, it withdrew its recurrent requester designation and confirmed for this office that it would not designate members of the news media as recurrent requesters going forward, as prohibited by section 2(g) of FOIA. The department subsequently provided responsive records to the journalist.

2023 PAC 75717: A member of the public submitted a FOIA request for review alleging that the City of Loves Park improperly denied, in its entirety, her request for a certain police report pertaining to a traffic accident in which her son was injured. After intervention by the PAC, the public body issued a supplemental response containing responsive records with redactions.

2023 PAC 76057: The Illinois Department of Employment Security partially denied a reporter’s request for copies of inspection records of housing for migrant farmworkers, asserting that a state law prohibited the release of certain information, and that disclosure was prohibited under the Illinois Unemployment Insurance Act. After a PAC attorney asked the department to explain how the asserted exemption applied to the inspection records, the department furnished unredacted copies of the records to the reporter.

Success Stories continued

2023 PAC 76223: A member of the public submitted a FOIA request for review contesting the Village of Hampshire's denial of a request seeking a copy of an annexation agreement. The village had asserted that the agreement was exempt from disclosure because it was a preliminary draft. After a PAC attorney forwarded the request for review to the village and furnished the village copies of PAC binding opinions addressing section 7(1) (f) of FOIA, the village withdrew its denial and disclosed the agreement to the requester.

2023 PAC 76513: A member of the public submitted a FOIA request for review alleging that the Algonquin Police Department improperly denied, in its entirety, his request for reports concerning calls for supervision during times he was exchanging the custody of his minor child with the child's birth mother. After a PAC attorney sent a letter asking the department to explain its basis for withholding the reports in their entirety, and after further discussions with the PAC attorney, the department issued a supplemental response to the requester, disclosing the reports with limited redactions.

2023 PAC 76729: A law firm submitted a FOIA request for review alleging that the Village of Wonder Lake improperly treated a request for copies of attorney and engineering firm invoices as unduly burdensome. After a PAC attorney forwarded the request for review to the village and inquired as to the legal and factual bases for its response, the village provided the invoices to the requester.

2023 PAC 76825: The Illinois Department of Healthcare and Family Services partially denied journalists' FOIA request for certain audits of a department program. After a PAC attorney forwarded the journalists' request for review to the department, it reconsidered its partial denial and provided copies of 42 audits to the requesters.

2023 PAC 76880: A member of the public alleged that the Patoka Community Unit School District No. 100 Board of Education violated OMA by failing to post the approved minutes of a board meeting in a timely manner. After a PAC attorney forwarded the request for review to the district, it confirmed that the minutes had since been posted and that OMA's requirements for posting minutes had been reinforced with the board and the recording secretary.

2023 PAC 77430: Chicago Public Schools treated as unduly burdensome a request for dozens of Office of the Inspector General investigative reports concerning CPS that were referenced in the office's annual report. Through a series of communications with the requester and CPS, a PAC attorney brokered a mutually-agreeable resolution in which the requester agreed to narrow his request to the four reports that were identified as leading to criminal cases, and CPS agreed to disclose the reports with applicable redactions.

2023 PAC 77576: An attorney from the Cook County Public Defender's Office submitted a FOIA request for review challenging the Village of Lyons' denial, without explanation, of a request seeking the personnel file of a police officer. A PAC attorney forwarded the request for review to the village and asked it to identify the basis for its denial. After receiving the PAC's letter, the village provided the records to the requester with limited redactions.

2023 PAC 77191: A member of the public submitted an OMA request for review alleging that poor audio at City of Washington City Council meetings has been an ongoing problem that has rendered portions of meetings

inaudible. After the PAC issued guidance emphasizing that OMA requires public bodies to provide reasonable access to meetings, including taking reasonable measure to ensure the proceedings are audible to the public, the city council agreed to rent a portable sound system and upgrade its audio system pending a permanent solution.

2023 PAC 77764: A member of the public submitted a FOIA request for review alleging that the City of Chicago's Department of Human Resources provided him data that was not responsive to his request. After the PAC contacted the department seeking clarification about the department's search query and response to the requester, the department performed another search query of its database and provided the requester with a revised set of responsive data.

2023 PAC 78259: A member of the public submitted a FOIA request for review alleging that the response he received from Heartland Community College to his request for certain data and statistics was incomplete. After a PAC attorney forwarded the request for review to the college and asked it to describe the scope of its search for records, the college conducted a supplemental search and located additional records, which it furnished to the requester.

2023 PAC 78504: The Illinois State Police responded to a FOIA request seeking records about the design of concealed carry licenses, but the requester alleged that the response was incomplete. A PAC attorney communicated with the requester to elicit clarification about the specific information that the requester's client believed was missing from the response, and then communicated with ISP about the potential existence of those particular records. ISP was then able to locate additional responsive records and provide an explanation about its records that satisfied the requester and resolved her concerns.

2023 PAC 78763: A member of the public submitted a FOIA request for review contesting Deerfield Public School District 109's denial of his request for mold spore sampling data. The district had withheld the information pursuant to sections 7(1)(f) and 7(1)(v) of FOIA. In his request for review, the requester indicated he would be willing to accept a redacted set of records if the district believed the release of certain information jeopardized the security of its facilities. A PAC attorney sent a letter to the district, noting that purely factual material, such as statistics and draft statistics, is not exempt from disclosure under section 7(1)(f). After further discussion with the PAC attorney, the district disclosed the sampling data.

2023 PAC 79186: A member of the public submitted an OMA request for review challenging the practice by a committee of the Metropolitan Water Reclamation District of Greater Chicago Board of Commissioners to post its "study session" meeting times as "immediately following" the regular board meetings. The PAC sent a letter to the board asking it to address the contention that its committee was not holding meetings at "specified times," as required by section 2.01 of OMA. After receiving the PAC's correspondence and consulting with a PAC attorney, counsel for the board stated that the board and its committee will provide specific start times on notices and agendas for future study sessions.

2023 PAC 79193: A data scientist submitted a FOIA request for review alleging that the Chicago Police Department improperly asserted that it did not possess records responsive to his request for metadata of certain e-mails related to the "Spot Shoter" surveillance system. After a PAC attorney asked the department to provide a detailed description of its efforts to search for records, the department issued a supplemental response to the requester containing a responsive spreadsheet of metadata.

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 its 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?

Illinois public bodies, including among others, the executive and legislative branches of state government, counties, cities, villages, towns, townships, public educational institutions, and libraries are subject to FOIA. The judicial branch is not subject to FOIA, but court records and proceedings generally are open to the public under other Illinois laws.

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.

Who can submit a FOIA request?

Anyone. Any person, group, association, corporation, firm, partnership or organization has the right to submit a FOIA request to any state or local public body.

What is the PAC's role under FOIA?

The Attorney General's office helped pass legislation that reformed and strengthened FOIA to improve public access to government records. The law's provisions codified the PAC position within the Attorney General's office and explicitly authorized the PAC to review and determine whether a government body has violated FOIA. The law gives the PAC authority to issue binding opinions to resolve disputes, to mediate disputes, or resolve them by other means, including the issuance of non-binding determination letters.

The law also requires public bodies to appoint FOIA officers, who are required to successfully complete an annual FOIA training program prepared by the PAC.

FOIA Frequently Asked Questions

HOW TO SUBMIT 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, and 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 contact information 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 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 and a FOIA exemption does not apply, the public body must release the information.

Public bodies cannot require that the public submit FOIA requests on a specific form or in a specific format. However, public bodies 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 continued

What should I include in my FOIA request?

Your written request should include the date and your contact information 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 the public bodies.

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

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, it must release that information unless an exemption in FOIA is applicable, 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, without the requester's consent, 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; or
- 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 furnished.

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 statute. In the event a public body fails to respond within five business days, it cannot charge for reproduction costs when it does disclose 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

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

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

FEES

Can the public body charge for copies?

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

Can a public body charge for electronic copies?

Yes, but only the actual cost of the recording medium. For example, if information is provided on a flash drive, the public body may only charge the requester the actual cost incurred to purchase the flash drive. If a public body treats a FOIA request as voluminous, then it may charge certain fees based on megabytes of data provided, as detailed in the law.

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

Yes. Public bodies may choose to waive or reduce copying fees if disclosure is in the public interest. A public body may, but is not required, to grant a request for a waiver or reduction 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.

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, it must provide the records in the electronic format in which they are kept, or on paper, at the option of the requester. A public body is not required to convert records maintained in paper format into an electronic format.

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 except in certain circumstances that are applicable only to commercial requests.

FOIA Frequently Asked Questions continued

Are emails subject to FOIA?

Yes. All electronic communications that pertain to the transaction of public business (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, and on its website if it maintains a website, a brief description of the methods available to the public to submit a FOIA request, a directory designating the FOIA officer(s), the address where FOIA requests should be directed, and any fees applicable to FOIA requests.

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 information explaining how to submit 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.

WHAT TO DO IF THE PUBLIC BODY DOES NOT RESPOND OR IF YOUR FOIA REQUEST IS DENIED

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

If the public body does not respond, or properly extend the time for responding, 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 PAC or file a case in court.

What information 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

FOIA Frequently Asked Questions continued

to seek review of the issue by the PAC in the Attorney General's office, including the PAC's contact information, as well as the right to seek judicial review by filing a lawsuit.

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

First, it is important to know that FOIA includes 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 attorney-client communications. Additionally, a public body may deny a request that is 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 PAC or file a lawsuit in court.

EXEMPTIONS – RECORDS THAT A PUBLIC BODY MAY WITHHOLD FROM DISCLOSURE

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. However, 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 bears on 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 respond to the request 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 and confer with the requester when appropriate. 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.

REDACTIONS

Can a public body remove or black out information from documents it provides?

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, provide 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. Public bodies generally must allow you to inspect and obtain copies of public documents. In the rare circumstance where the public body is prohibited from copying documents for which it does not hold the copyright, the public body must allow you to inspect records.

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 their request to inspect or copy a public record has been denied, or if the public body has failed to respond. This letter or email is a formal way of asking the PAC to examine the request and the public body’s response (or lack thereof) and determine if a FOIA violation has occurred. The request must be in writing, must be signed by the requester and must include: (1) a copy of the FOIA request and (2) any responses, including denial letters, from the public body. If the public body did not respond to the request, the requester must explain that in their request for review. The Request for Review does not need to follow any particular format. If you would like to use a sample request form, however, please visit our website at IllinoisAttorneyGeneral.gov.

Is there a deadline for submitting a Request for Review?

Yes. The requester must submit a request for review to the PAC within 60 calendar days after the date of the final denial from the public body (or the date upon which a response from the body was due). Note that this time limit is counted in calendar days (i.e., including Saturdays, Sundays and holidays), not business days.

How do I contact the PAC in the Attorney General’s Office?

The PAC is a part of the Attorney General’s office and may be contacted at:

Leah Bartelt
Public Access Counselor
Office of the Attorney General
500 S. 2nd Street
Springfield, Illinois 62701
Email: public.access@ilag.gov
FOIA Hotline: 1-877-299-FOIA (1-877-299-3642)

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 in writing. The PAC may obtain information from a public body informally as part of its consideration of whether a request for review is unfounded.
- 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 do that is by issuing a non-binding determination letter. Additionally, a PAC attorney may attempt to

mediate disputes by facilitating communication between the requester and the public body and providing information about the scope of FOIA exemptions. A PAC attorney may contact you informally with questions or information. 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, it must do so 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 directs the public body to disclose 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.

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

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

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

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

The Open Meetings Act

GENERAL INFORMATION

What is OMA?

The Open Meetings Act (OMA) 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 those meetings.

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.

What is the PAC’s role under OMA?

The Attorney General’s office helped pass legislation that reformed and strengthened OMA to improve public access to government deliberations. The law’s provisions codified the PAC position within the Attorney General’s office and explicitly authorized the PAC to review and determine whether a government body has violated OMA. The law gives the PAC authority to issue binding opinions to resolve disputes, to mediate disputes, or resolve disputes by other means, including the issuance of non-binding determination letters.

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 after their election or appointment.

OMA Frequently Asked Questions

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 any 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. Therefore, a gathering of three members of a seven-member board held for the purpose of discussing public business satisfies the OMA’s definition of “meeting.”

There is an exception in the definition that requires at least a quorum, or three members, of a five-member public body, to participate in a gathering to trigger the requirements of OMA. In addition, the affirmative vote of three members is necessary for a public body with five members to adopt any motion, resolution, or ordinance, unless a greater number is otherwise required.

PUBLIC NOTICE OF A MEETING

What is public notice?

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

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

At the beginning of each calendar or fiscal year, every public body must create and make available to the public the schedule for regular meetings that year, including the dates, times, and 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 of its governing body 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. If a public body has a website maintained by its own full-time staff, it also must post on the website an agenda for each meeting of its governing body 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.

OMA Frequently Asked Questions continued

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 at a regular meeting solely to increase transparency, a public body cannot add an item to the agenda less than 48 hours before the meeting if it intends to take action on that item.

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 also may not discuss items that did not appear on the agenda for the special or emergency meeting.

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.

MEETING MINUTES

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.

OMA Frequently Asked Questions continued

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

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 (1) personal illness or disability, (2) employment purposes or the business of the public body, (3) family or other emergency, or (4) unexpected childcare obligations. If a member wants to attend the meeting by video or telephone conference, they 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. During a public health emergency, 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. Because the last gubernatorial disaster proclamation relating to the COVID-19 pandemic expired in May 2023, public bodies are not currently permitted to hold meetings pursuant to section 7(e) of OMA.

PUBLIC PARTICIPATION

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.

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.

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, but only when the public body has the authority under law to appoint or remove an occupant from 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.
- Evidence or testimony presented to a school board regarding denial of admission to school events or property, provided that the school board 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

OMA Frequently Asked Questions continued

professionals for a hospital or other health care center.

- Deliberations for decisions of the Prisoner Review Board.
- Review or discussion of applications received under the Experimental Organ Transplantation Procedures Act.
- Classification and discussion of confidential matters of the State Government Suggestion Award Board.
- Discussion of the minutes of a meeting that was lawfully closed under OMA.
- Deliberations of the State Emergency Medical Services Disciplinary Review Board.
- The operation by a municipality of a municipal utility or power agency or natural gas agency regarding contracts relating to the purchase, sale, or delivery of electricity or natural gas, or the results or conclusions of lead forecast studies.
- Meetings of a residential health care facility resident sexual assault and death review team.
- An independent team of experts meeting under Brian's Law.
- A mortality review team appointed under the Department of Juvenile Justice Mortality Review Team Act.
- Discussion of certain confidential information by an elder abuse fatality review team;
- Correspondence and records that may not be disclosed pertaining to the Public Aid Code.
- Meetings between internal or external audit committees, finance committees, and their equivalents when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews conducted in accordance with generally accepted U.S. auditing standards.
- Meetings and deliberations for decisions of the Concealed Carry Licensing Review Board under the Firearm Concealed Carry Act.
- Meetings between the Regional Transportation Authority Board and its service boards when the discussion involves review of certain employment contracts.
- Meetings or portions of meetings of the advisory committee and peer review subcommittee created under Section 320 of the Illinois Controlled Substances Act during which specific controlled substance prescriber, dispenser, or patient information is discussed.
- Meetings of the Tax Increment Financing Reform Task Force under Section 2505-800 of the Department of Revenue Law of the Civil Administrative Code of Illinois.
- Meetings of the group established to discuss Medicaid capitation rates under Section 5-30.8 of the Illinois Public Aid Code.
- Deliberations or portions of deliberations for decisions of the Illinois Gaming Board in which there is discussed any of the following: (1) personal, commercial, financial, or other information obtained from any source that is privileged, proprietary, confidential, or a trade secret; or (2) information specifically exempted from the disclosure by federal or state law.
- Deliberations for decisions of the Illinois Law Enforcement Training Standards Board, the Certification Review Panel, and the Illinois State Police Merit Board regarding certification and decertification.
- Certain meetings of the Ad Hoc Statewide Domestic Violence Fatality Review Committee of the Illinois Criminal Justice Information Authority Board under subsection (d) of Section 35 of the Domestic Violence Fatality Review Act, and meetings of regional review teams under subsection (a) of Section 75 of the Domestic Violence Fatality Review Act.
- Meetings of the Firearm Owner's Identification Card Review Board under Section 10 of the Firearm Owners Identification Card Act.

OMA Frequently Asked Questions continued

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 recite 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 the public body invites to the closed meeting. For example, witnesses giving testimony regarding a complaint against an employee may be invited to attend a meeting that is closed for purposes of discussing discipline of an employee. The public body has discretion to determine who may attend a closed meeting.

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. Any approval of closed session minutes must occur in open session. Every six months, or as soon thereafter as is reasonably practicable taking into account the nature of the public body and its meeting schedule, 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.

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 a civil action in circuit court 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 an OMA 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 may be submitted to the PAC by either electronic mail or U.S. Postal Service. 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. A request for review may be submitted to the PAC by either electronic mail or U.S. Mail.

How do I contact the PAC?

The PAC is a part of the Attorney General's office and may be contacted at:

Leah Bartelt
Public Access Counselor
Office of the Attorney General
500 S. 2nd Street
Springfield, Illinois 62701
Email: public.access@ilag.gov.
FOIA Hotline: 877-299-FOIA (877-299-3642)

OMA Frequently Asked Questions continued

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. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date not exceeding two years after the alleged violation by a person using reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.

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

When the PAC receives a written request for review from a member of the public, the PAC has seven working days to determine whether further action is warranted. If the PAC reviews the request for review and determines that further action is warranted, the PAC must forward a copy of the request for review to the public body within seven business days of receiving the request. At that time, the PAC can specify records or other documents that the public body must furnish to facilitate the PAC's further review. The public body must provide the requested records within seven business days of receiving the request from the PAC.

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

The PAC must forward a copy of the public body's answer (with any confidential information redacted) to the member of the public who requested the review of the alleged OMA violation. The requester then may, but is not required to, respond in writing to the public body's answer. If the requester decides to respond, they must do so within seven working days of receiving the public body's answer. The requester must send a copy of their 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. If the PAC decides that the alleged violations are unfounded, the PAC will inform you and the public body of that decision in writing. The PAC may obtain information from a public body informally as part of its consideration of whether a request for review is 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. This could include issuing a non-binding determination letter.
3. Issue an opinion resolving the matter. If the PAC decides to issue a binding opinion, they 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 recordings 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 certain violations of OMA. A violation of OMA is a Class C misdemeanor.

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

1. Ordering a public body to conduct an open meeting.
2. Granting an injunction against future violations by the public body.
3. Ordering the public body to make available to the public the minutes of a closed meeting.
4. Declaring null and void any final action taken at a closed meeting in violation of OMA.
5. Awarding any other relief that the court deems appropriate.

The court also may require the public body to pay the attorney's fees and costs of the person who filed the civil lawsuit alleging the OMA violation.



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ILLINOIS ATTORNEY GENERAL