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ATTORNEY GENERAL RAOUL ISSUES 2020 PUBLIC ACCESS REPORT DURING SUNSHINE WEEK

Public Access Bureau Handled Nearly 3,600 New Matters, Issued New Guidance in 2020

Chicago — In recognition of Sunshine Week, Attorney General Kwame Raoul released the Public Access Counselor Annual Report with details of a sampling of nearly 3,600 new matters received in 2020. The Public Access Counselor (PAC) works to increase transparency in Illinois government by resolving disputes regarding public bodies' compliance with the state's Freedom of Information Act (FOIA) and Open Meetings Act (OMA). [The 2020 report](#) also describes the ways in which the PAC found new ways to advise and support public bodies during the COVID-19 pandemic.

Since the PAC's creation under state law in 2010, members of the public and the media have submitted 45,531 matters to the PAC for review, and approximately 96.5 percent of those matters have been closed. Last year, the PAC received 3,575 formal requests for assistance pursuant to FOIA and OMA – an average of nearly 298 new matters per month. Additionally, in response to the pandemic, the PAC issued updated FOIA and OMA guidance for public bodies and transitioned to virtual trainings for government officials.

"The pandemic has brought uncertainty to so many aspects of daily life, and it is important that uncertainty not extend to government operations," Raoul said. "Now more than ever, the people of Illinois need confidence in all levels of government, and the PAC's annual report underscores my commitment to facilitating the transparency and accountability that is critical to reassuring Illinois residents."

The Public Access Counselor's determinations have created new and important legal guidance in Illinois to enforce the disclosure of records and foster increased transparency in government. They have successfully clarified the law, especially on issues that have not been addressed by courts.

In addition to analyzing and resolving disputes through binding and non-binding opinions, the PAC conducts trainings that inform government officials about their duties under FOIA and OMA, and fields thousands of phone calls on its hotline (1-877-299-FOIA) to help public bodies, the public, and the media understand the open records and open meetings laws.

Because of mitigations put in place to prevent the spread of COVID-19, the Public Access Bureau was unable to conduct in-person training for most of the year. The Public Access Bureau transitioned to online trainings and hosted 10 remote sessions in 2020 that were attended by more than 800 people.

The Public Access Bureau also provided new guidance for public bodies meeting virtually in light of the COVID-19 pandemic. The pandemic and limitations on in-person gatherings resulted in the Illinois General Assembly amending the Open Meetings Act, and the changes went into effect June 12, 2020. The amended law 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 conditions are met. Additional information about the changes is available online.

2020 Public Access Bureau Activities

- 3,194 Freedom of Information Act requests:

- 2,529 from members of the public,
- 635 from the media or other organizations, and
- 30 from public bodies.
- 381 Open Meetings Act requests:
 - 333 from members of the public,
 - 39 from the media or other organizations, and
 - 9 from public bodies.

In 2020, the PAC issued 10 binding opinions, decisions that are enforceable in court and create legal guidance concerning Illinois' government transparency laws. Among the notable matters that resulted in binding opinions last year were the following:

- **No. 20-003, issued May 8, 2020:** The Chicago Tribune sent the Illinois Department of Agriculture a FOIA request seeking all applications for adult-use cannabis cultivation center licenses, and the department provided redacted copies of the applications. Because FOIA does not exempt the business addresses, owners' names, principal officers and board members of cannabis businesses, the PAC determined that the department improperly redacted that information. The PAC also determined that birth dates of adult-use cultivation centers' principal officers and board members are exempt under FOIA because disclosure would constitute an unwarranted invasion of personal privacy.
- **No. 20-005, issued July 7, 2020:** The Winnebago County Sheriff's office denied a request from a member of the media who was seeking copies of the police dashboard camera video, dispatch audio and written critique of a Feb. 8, 2016, police chase and fatal crash. The sheriff's office argued that due to a pending civil lawsuit in which a jury trial was demanded, disclosure of the records would deprive the sheriff's office and county of the right to a fair trial or adjudication. The PAC determined the sheriff's office did not provide facts to illustrate specifically how disclosure of the records would create a substantial likelihood that a person would be deprived of a fair trial or impartial hearing. The PAC also found that the sheriff's office did not illustrate that a trial or adjudication was pending or truly imminent.

The PAC also helps resolve transparency issues between government bodies and members of the public through the use of non-binding determinations and informal negotiations. Here are some examples of such resolutions:

- **Req. Rev. Ltr. 64794, issued Nov. 16, 2020:** A reporter for the Chicago Tribune submitted a request for review alleging that the city of Chicago's Office of the Mayor improperly redacted certain emails sent or received by Mayor Lori Lightfoot. The PAC determined that while some of the emails were exempt from disclosure, the mayor's office did not prove by clear and convincing evidence that certain emails consisted of inter- or intra-agency, pre-decisional and deliberative material or attorney-client privileged communications. The mayor's office disclosed the correspondence upon receiving the PAC's determination. One of the released emails, about a bet on the 2019 Chicago Teachers' Union strike, drew broad public interest.
- **Req. Rev. Ltr. 64040, issued Dec. 31, 2020:** A member of the media submitted a request for review contesting the city of Bloomington Police Department's denial of a FOIA request seeking body camera footage of a certain police call. The department denied the request, citing the Law Enforcement Officer-Worn Body Camera Act (Body Camera Act). The department asserted that the

footage was not "flagged," and the requester was not the subject of the encounter captured in the footage. The requester contended that one of the subjects of the encounter had emailed a letter to the department chief and others, which constituted a complaint; therefore, the footage should have been flagged. The PAC concluded that the department did not demonstrate that the Body Camera Act prohibited disclosure of the footage. The PAC determined that the letter, at a minimum, was an informal complaint about the manner in which the department responded to a police call. The city subsequently provided the requester with a copy of the body camera footage.

More information about Illinois' sunshine laws, as well as a copy of the report that includes frequently asked questions can be found on [Raoul's website](#). For assistance from the Public Access Bureau, contact the hotline at 1-877-299-FOIA (3642), or send an email to publicaccess@atg.state.il.us.