

# Public Access Counselor Annual Report

An Overview  
of 2022

March 2023





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

During 2022, we were all able to return to routines that more closely resembled life prior to the COVID-19 pandemic. The Public Access Counselor (PAC) was also able to return to some pre-pandemic operations by increasing the number of in-person training seminars on the Freedom of Information Act (FOIA) and the Open Meetings Act (OMA). However, because the transition to remote trainings necessitated by the pandemic allowed the PAC to expand its reach, the PAC has continued to offer virtual trainings, allowing the office to educate even more individuals about government's obligations to operate transparently. The 2022 Sunshine Week report details the PAC's important work in these areas.

Since 2010, the PAC has handled more than 52,000 matters. In 2022 alone, the PAC received over 3,300 requests for assistance from members of the public and media seeking access to records or public meetings, averaging over 280 requests per month. The majority of these requests were resolved informally or through determination letters. However, the PAC issued 14 binding opinions, including eight addressing FOIA issues and six addressing OMA issues. The PAC also received approximately 450 informal written inquiries related to convening public meetings and responding to information requests.

The PAC's binding opinions are critical to reinforcing the law in frequently misunderstood areas, including the extent to which information in complaints about employee misconduct are subject to disclosure, and the obligation to adequately identify subjects of final action on meeting agendas. This guidance ensures that Illinois government remains open and accessible to the public. In the year ahead, the PAC will continue to enhance openness and transparency of government operations at all levels of government.

Kwame Raoul  
Attorney General

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# Complaint Statistics

In 2022, the Public Access Counselor (PAC) received 3,366 formal requests for assistance pursuant to the Illinois Freedom of Information Act (FOIA), ([5 ILCS 140/1 et seq. \(West 2020\)](#)), and the Illinois Open Meetings Act (OMA), ([5 ILCS 120/1 et seq. \(West 2020\)](#)), for an average of 280 requests for review each month. In addition, the Public Access Bureau fielded an estimated 12 to 18 questions per day through the PAC's FOIA/OMA hotline, and received approximately 450 written inquiries through the Public Access email address.

Of the formal requests received by the PAC from Jan. 1, 2022, to Dec. 31, 2022, 3,024 were related to FOIA, and 342 pertained to OMA. The requests came from every area of the state and involved all types of public bodies, from the smallest villages to the largest cities and state agencies.

## **Total New Matters Before the Public Access Counselor in 2022: 3,366**

Breakdown of the 3,024 Freedom of Information Act requests for review received by the PAC:

- 2,395 from members of the public
- 592 from media outlets or other organization
- 37 from public bodies

Breakdown of the 342 Open Meetings Act requests for review received by the PAC:

- 288 from members of the public
- 38 from media outlets or other organizations
- 16 from public bodies

# Training Seminars

In 2022, the Public Access Bureau continued to host or participate in both remote and in-person training seminars on FOIA and OMA. The Public Access Bureau hosted 14 webinars geared toward government FOIA officers and elected and appointed officials, and more than 2,500 individuals participated in those events. Additionally, the Public Access Bureau was invited to deliver trainings at conferences held by the Illinois County Treasurers' Association, the Illinois Association of School Boards Administrative Professionals' Program, the Illinois Council of School Attorneys, the Illinois Law Enforcement Administrative Professionals (IL-LEAP), the Illinois Association of County Veterans Assistance Commissions, and at the Illinois Municipal Clerks Institute, Illinois Municipal Treasurers Institute, and the Illinois Community College Trustees Association Governance Leadership Institute. Finally, Public Access Bureau attorneys presented trainings on FOIA and OMA for FOIA officers, local elected officials, and members of the public, at events convened by the DeKalb County State's Attorney's Office and the cities of Elmhurst and Wood Dale.

The Public Access Bureau will continue to examine opportunities to increase the number of trainings held across the state. The bureau will also 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. The Public Access Counselor also updates the required online trainings covering both FOIA and OMA each year, which are available on the website of the Office of the Attorney General.

In addition to providing in-person and virtual trainings, attorneys in the Public Access Bureau 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.

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](mailto:special.events@ilag.gov) for more information.

## **Individuals Participating in PAC FOIA and OMA Training Events in 2022: 3,600**

Breakdown of 31 PAC FOIA and OMA training events:

- 14 webinars hosted by the PAC
- 2,536 attendees
  
- 17 conferences, institutes, events, and panel presentations by invitation
- Nearly 1,100 members of the public, journalists, 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 2022, the Attorney General issued 14 binding opinions resolving disputes submitted to the PAC. Eight 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 2022 emphasized the notice procedures of public bodies holding remote meetings during a public health emergency, interpreted various exemptions to disclosure under FOIA and exceptions for closed meetings under OMA, and applied the definition of “public record” in FOIA to disputed documents.

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 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 non-binding 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.

Here are some examples of how matters were resolved through binding opinions, non-binding determinations and informal resolutions in 2022. These examples highlight the PAC’s work to increase the public’s access to government.

## **Binding Opinions**

**Ill. Att’y Gen. Pub. Acc. Op. No. 22-002, issued Feb. 10, 2022:** The Village of Melrose Park Police Department denied in its entirety a FOIA request submitted by CAASE, a legal aid organization, on behalf of a client who had reported a sexual assault to the department. The request sought all records regarding the department’s investigation. The department argued that the records relating to the investigation were exempt from disclosure, but failed to demonstrate to the PAC that it was conducting administrative enforcement proceedings or that its investigation of the report was ongoing. The PAC therefore concluded that the department improperly withheld the responsive records under sections 7(1)(d)(ii) and 7(1)(d)(vii) of FOIA.

**Ill. Att’y Gen. Pub. Acc. Op. No. 22-003, issued Feb. 10, 2022:** A member of the public alleged that the City of Sumner’s city council violated OMA in connection with a meeting held by video conference. The agenda for that meeting stated it was a “Zoom Meeting,” but did not provide the meeting link or any other means of accessing the meeting remotely. A member of the public who wanted to attend the meeting had to ask for the meeting link, which the city council did not provide until the meeting had begun and the city council had already conducted some public business. The PAC determined that section 7(e) of OMA, which sets forth the requirements for



## *Success Stories continued*

holding meetings remotely during a public health emergency, requires a public body to publicly post, prior to a meeting held by audio or video conference, the call-in number or internet link that will allow the public to access the meeting.

***Ill. Att’y Gen. Pub. Acc. Op. No. 22-004, issued March 11, 2022:*** A reporter submitted a request for review alleging that the Village of Mount Prospect Police Department improperly redacted most of an e-mail that its police chief sent to department employees during his final day in office. The village maintained that e-mail concerned the police chief’s private affairs and, therefore, was not a public record under FOIA. However, because the e-mail directly concerned department policies and procedures and the conduct of employees, the e-mail pertained to the transaction of public business and met FOIA’s definition of “public records.” Alternatively, the village argued that the e-mail was exempt from disclosure because disclosure would cause an unwarranted invasion of personal privacy and because it was “pre-decisional.” The PAC rejected those arguments as well, as the e-mail had a direct bearing on the public duties of public employees and was not part of the give-and-take of any decision-making process.

***Ill. Att’y Gen. Pub. Acc. Op. No. 22-005, issued March 24, 2022:*** The City of Chicago Department of Human Resources denied two parts of a FOIA request submitted by a reporter on behalf of CBS Chicago. Those parts sought copies of any complaints of racism, discrimination, and harassment involving city employees at a streets and sanitation facility. Because the records discussed alleged employee misconduct, the PAC determined that the records could not be withheld under section 7(1)(c) of FOIA, which expressly provides that information that bears directly on the public duties of public employees does not constitute an invasion of personal privacy. The department also asserted that the withheld complaints were exempt pre-decisional records. The complaints were factual in nature, however, and the department did not demonstrate how disclosure of the complaints would provide insight into its decision-making process. Therefore, the records were not exempt from disclosure pursuant to section 7(1)(f). However, the portions of the complaints that displayed the identities of the complainants, witnesses, and other third parties are highly personal, and some of the complainants’ statements contained details that were graphic or salacious in nature or concerned family or private lives. The privacy interests of those individuals outweighed the public interest in that particular information; thus, that information fell within the scope of section 7(1)(c) and could be redacted from the records.

***Ill. Att’y Gen. Pub. Acc. Op. No. 22-006, issued May 6, 2022:*** A member of the public alleged that the Board of Education of Community Consolidated School District No. 93 violated OMA when it decided to change the masking guidelines in its COVID-19 Layered Mitigation Reduction Plan without providing notice of that final action on the meeting agenda. The PAC construed the request for review as alleging that the board violated section 2.02(c) of OMA, which provides that “[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting.” The board’s response to the PAC acknowledged that the board discussed the Reduction Plan at a meeting, reached a consensus to change the masking guidelines by making masks optional rather than required, and directed the superintendent to implement that change, even though the Reduction Plan did not appear on the meeting agenda. However, the board argued that it was not required to provide advance notice because the board did not vote on the matter, and therefore did not take “final action.” The PAC construed relevant case law to support the proposition that public bodies must hold votes in open session to properly take final action pursuant to OMA,

## *Success Stories continued*

and that implementing a decision without providing advance notice violates section 2.02(c) even if a formal vote is not held. After the issuance of this binding opinion, the district filed a Complaint for Administrative Review against the Attorney General. The Circuit Court of Cook County upheld the binding opinion. *Bd. of Ed. of Comm. Consol. Sch. Dist. 93 v. Off. of the Att’y Gen. of Ill., 22-CH-5558*, Circuit Court of Cook County (Memorandum and Order, Nov. 14, 2022).

***Ill. Att’y Gen. Pub. Acc. Op. No. 22-008, issued June 30, 2022:*** The Shelby County Board Farm Committee voted at a public meeting to borrow money for crop expenses and hire a certain individual to obtain crop insurance. An individual filed a request for review with the PAC alleging that the committee violated OMA because it did not include the general subject matter of those actions on the meeting agenda. The committee’s agenda contained an item stating, “Discussion and vote on recommendation to the County Board regarding farming options for the County Farm[.]” The PAC interpreted section 2.02(c) of OMA and determined that the agenda item did not identify the general subject matters of the committee’s final actions. The PAC’s opinion provides guidance to public bodies on the scope of OMA’s agenda requirement; the goal of that important provision is to ensure that the public has sufficient advance notice of the matters upon which their public bodies may take action.

***Ill. Att’y Gen. Pub. Acc. Op. No. 22-010, issued July 12, 2022:*** A journalist alleged that the Board of Education of Du Quoin Community Unit School District Number 300 violated OMA in connection with the three closed sessions held during a special meeting. In one of those closed sessions, the board considered the awarding of a student transportation bid and discussed various issues relating to the bidders with the board’s attorney. The board contended that this discussion fell within the scope of the closed session exceptions in OMA that permit discussions of “anticipated litigation” and “criminal litigation.” The PAC reviewed the verbatim recording of the closed session, which revealed that (1) the board did not have a reasonable basis to believe that litigation was probable or imminent; (2) that the board’s discussion did not concern the strategies, posture, theories or consequences of any probable or pending litigation; and (3) that its discussion did not concern a criminal investigation. Accordingly, the discussion held during this closed session did not fall within the scope of either section 2(c)(11) or 2(c)(14) of OMA. The board’s discussions during the two other closed sessions, however, were permissible discussions of specific employees. Finally, the PAC concluded that during the open session of its meeting, the board failed to recite to the public the exception that authorized the closing of the meeting.

***Ill. Att’y Gen. Pub. Acc. Op. No. 22-011, issued July 25, 2022:*** The Village of Chatham denied a FOIA request for the application materials submitted by applicants seeking appointment to fill a vacancy on the village’s Board of Trustees. The PAC concluded that the application materials were public records that pertain to public business because the village president received the materials on his village issued-email account and used the materials to assist him in fulfilling his statutory duty of appointing an individual to the board. The PAC also determined that the application materials were not exempt under FOIA. Disclosure of the applications would not cause an unwarranted invasion of personal privacy to the applicants that were not selected because applications for appointment to complete the term of an elected position are inherently public in nature. Additionally, the records do not fall within the scope of the deliberative process exemption because the content of the records would not reveal the village president’s opinions concerning the applicants, reflect the give-and-take of his deliberations, or provide insight into how he formulated action concerning the appointment process.



## *Success Stories continued*

***Ill. Att’y Gen. Pub. Acc. Op. No. 22-012, issued Sept. 30, 2022:*** The Board of Education of Decatur School District 61 held ongoing discussions in closed session over 16 meetings to discuss various aspects of building a new school with \$76 million in COVID-19 relief funds. The board asserted that all of those discussions were authorized by the OMA exception that permits discussions of “[t]he purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired.” The PAC reviewed the verbatim recordings from the closed session meetings, and concluded that section 2(c)(5) only authorized the board’s discussions directly concerning the relative merits of the particular properties under consideration for acquisition. Discussions concerning whether to build a school, funding, and necessary legislative changes exceeded the scope of that limited exception.

***Ill. Att’y Gen. Pub. Acc. Op. No. 22-013, issued Nov. 22, 2022:*** The City of Chicago Department of Law denied a reporter’s request for a letter to the city from an attorney on behalf of clients, citing Federal Rule of Evidence 408 and Illinois Rule of Evidence 408. The department’s primary argument was that the letter reflected settlement negotiations that are privileged in all contexts. In response to the PAC, the department also cited several other federal and state rules in support of its denial. The PAC concluded that the letter was not covered by the rules of evidence and discovery upon which the department relied. Moreover, even if the letter did reflect settlement negotiations, rules of evidence are intended to restrict the trier of fact from considering certain evidence – such rules have no relevance to the general public’s right to access records under FOIA. Likewise, discovery rules only are applicable to judicial proceedings and do not apply to whether members of the public or the media can obtain records under FOIA.

### ***Determination Letters***

***Ill. Att’y Gen. PAC Req. Rev. Ltr. 70085, issued May 10, 2022:*** A member of the public submitted a request for review alleging that Madison County improperly denied her request for certain e-mail records by failing to conduct a reasonable search for the records. The county had responded to the FOIA request by stating that it had no responsive records. The PAC determined that the county violated FOIA by failing to cooperate with the PAC, and as a result failed to meet its burden of demonstrating that it conducted a reasonable search for the records requested. Upon receiving the determination, the county conducted an additional search, located responsive records, explained that its prior search yielded no results due to a technical error, and provided the requester with redacted records.

***Ill. Att’y Gen. PAC Req. Rev. Ltr. 70125, issued Mar. 18, 2022:*** A member of the public submitted an OMA request for review questioning whether the agenda for a meeting of the Village of Hillside Board of Trustees was posted in a timely manner. Section 2.02(a) of OMA requires a public body to post its meeting agenda “at least 48 hours in advance of the holding of the meeting.” The request for review presented the legal question of whether the section required the agenda to be posted for 48 business hours before the meeting. The PAC compared this section with other provisions of OMA setting forth various deadlines, and concluded that section 2.02(a) does not require an agenda to be posted 48 business hours before a meeting. The PAC’s determination provides important guidance to public bodies seeking to comply with OMA’s agenda posting requirements.

## *Success Stories continued*

**Ill. Att’y Gen. PAC Req. Rev. Ltr. 70212, issued Oct. 13, 2022:** A journalist submitted a request for review challenging the partial denial by the City of Chicago’s Office of Emergency Management and Communications (OEMC) of his request for a certain slide deck concerning an emergency preparedness workshop. The OEMC had redacted information pursuant to sections 7(1)(f) and 7(1)(v) of FOIA. Upon review, the PAC determined that the OEMC may properly withhold some information in the deck, but that other specific information should be disclosed. The OEMC subsequently disclosed to the reporter a less redacted version of the deck consistent with the PAC’s determination.

**Ill. Att’y Gen. PAC Req. Rev. Ltr. 72263, issued Oct. 28, 2022:** A member of the public alleged that the Downstate Local Records Commission violated section 7(e)(4) of OMA by failing to provide information on its May 3, 2022 and June 7, 2022 meeting agendas describing how to access the commission’s virtual meetings on those dates. In its response to the PAC, the commission explained that members of the public could have attended those meetings in person. In its determination, the PAC noted that the in-person option was not clear from the agendas or the commission’s website. The PAC suggested that the commission clarify its future agendas as to how members of the public may attend meetings and if it wishes to permit members of the public to attend meetings remotely, the commission should provide instructions on its agendas explaining how to access those remote meetings. The PAC’s subsequent review of the commission’s agendas confirmed that it now routinely provides dial-in information and a weblink for members of the public to use to attend its virtual meetings.

**Ill. Att’y Gen. PAC Req. Rev. Ltr. 72733, issued Oct. 7, 2022:** A member of the public submitted an OMA complaint alleging that the Board of Education of Community Unit School District 200 improperly discussed whether to ban a book in closed session. The board argued that the closed session discussion was allowed under the OMA exception permitting closed session discussion about specific employees of the public body because the discussion concerned whether school librarians appropriately placed the book in the high school libraries. The PAC’s review of the closed session verbatim recording found that while the discussion touched on the process for resolving complaints about media selected by staff members, the board deliberated at length on the contents of the book, whether or not it should remove the book from the library, and the logistics of voting on the matter in open session. Following the PAC’s determination that the closed session discussion was improper, the board released the closed session minutes and verbatim recording. When the complainant then asked the PAC to review previous closed sessions of the board where the same issue may have occurred, the PAC communicated with the board and secured its disclosure of all other closed session minutes and verbatim recordings from book banning discussions.

**Ill. Att’y Gen. PAC Req. Rev. Ltr. 72831, issued Nov. 2, 2022:** A member of the public submitted a request for review contesting redactions made by the Village of Downers Grove to a police report provided in response to his FOIA request. The PAC determined that the village had properly redacted certain private information, but had improperly redacted portions of statements describing the incident, as this narrative information neither identified a witness nor invaded the privacy of any individual. Following the PAC’s determination, the village furnished a new copy of the report to the requester without the impermissible redactions.

## *Success Stories continued*

**Ill. Att’y Gen. PAC Req. Rev. Ltr. 73290, issued Sept. 20, 2022:** The DuPage County Clerk’s Office denied a FOIA request for “cast vote records,” which are the digital equivalent of the ballots cast. In an issue of first impression in Illinois, the PAC determined that cast vote records are exempt from disclosure pursuant to the Election Code, which limits access to ballots and sets forth procedures for maintaining strict control over ballot materials to ensure fair and orderly election contests or discovery recounts of ballots pursuant to a court order.

### ***Informal Resolutions***

**2021 PAC 68884:** The City of Springfield denied a journalist’s FOIA request for a copy of a recording from an officer-worn body camera. After receiving the PAC’s initial letter of inquiry, which questioned whether the recording was subject to disclosure under the Law Enforcement Officer-Worn Body Camera Act because it concerned the filing of a complaint against police, the city reconsidered its position and disclosed a copy of the recording.

**2022 PAC 69618:** A member of the public submitted a request for review contesting the Village of Hillside’s partial denial of a FOIA request seeking lists of crimes that occurred in the village during a specified period of time. For each incident, the village had redacted information, including the report number, the police officer assigned to the incident, and the location of the incident. After the PAC intervened, the village reconsidered its response and provided unredacted copies of the responsive records to the requester.

**2022 PAC 69752:** A member of the public submitted a four-part FOIA request to the Village of La Grange seeking records relating to an incident involving a police officer. The village had withheld records responsive to two parts of the request. After the PAC forwarded the request for review to the village, it reconsidered its partial denial and provided the withheld records to the requester.

**2022 PAC 70024:** An attorney submitted a request for review contesting the Homewood Police Department’s denial of a FOIA request seeking copies of officer-worn body camera footage related to an accident involving the attorney’s client. After a PAC attorney contacted the department to discuss the denial, the department indicated that it was unaware the attorney requested the recording on behalf of the client, and subsequently released the recording to the attorney.

**2022 PAC 70341:** The Illinois State Board of Education denied a newspaper reporter’s request for a copy of a subpoena, claiming that a state law prohibited its release and that disclosure would be an unwarranted invasion of personal privacy. After the PAC asked the board to explain how the asserted exemptions applied to the subpoena, the board furnished an unredacted copy of the subpoena to the reporter.

**2022 PAC 70493, 72763:** An attorney submitted two requests for review contesting the Rock Island Police Department’s withholding of two traffic crash reports under the Juvenile Court Act. PAC attorneys contacted the department and discussed the scope of the confidentiality provision of the Juvenile Court Act. Following those discussions, the department disclosed copies of the reports to the requester with permissible redactions.

## *Success Stories continued*

**2022 PAC 70585, 71284:** An Effingham County Board member filed two requests for review alleging that the board and one of its committees held improper closed session discussions concerning an ambulance contract. After the PAC sent initial letters of inquiry to the board asking it to explain how any exceptions listed in section 2(c) of OMA applied to the closed session discussions, the board acknowledged its errors and later voted to disclose the verbatim recordings of the relevant portions of three closed session meetings.

**2022 PAC 70827:** A member of the public submitted a request for review alleging that the Carpentersville Police Department improperly withheld in its entirety a request for a copy of an incident report. The department relied on the confidentiality provision in the Juvenile Court Act in denying the request. The requester asserted to the PAC that she was a person entitled under the Juvenile Court Act to obtain the report, and after a PAC attorney forwarded the relevant information to the department, it provided the requestor with a redacted copy of the report

**2022 PAC 70907:** A member of the public submitted a request for review contesting the City of Elgin's withholding of officer-worn body camera footage responsive to their request. After the PAC forwarded a copy of a binding opinion interpreting the Law Enforcement Officer-Worn Body Camera Act, the city reconsidered its response and provided copies of the responsive video recordings to the requester.

**2022 PAC 71297:** The Chicago Fire Department asserted that a FOIA request seeking complaints filed by an alderman's office against department employees was unduly burdensome. After a PAC attorney worked with the requester to narrow the parameters of his request, the department conducted a search for the records, located responsive records, and furnished those records to the requester.

**2022 PAC 72470, 72471:** An attorney representing several Adams County residents submitted requests for review alleging that the Adams County Board and its Finance and Executive Committees improperly discussed elected officials' salaries in closed session. After a PAC attorney discussed the scope of the applicable OMA closed session exception with the Adams County State's Attorney's office, the board made available copies of the closed session verbatim recordings.

**2022 PAC 72511:** A member of the media submitted a request for review contesting the Illinois State Police's denial of a FOIA request seeking copies of records in connection with the death of an identified person. ISP contended that it could not release the records before the local state's attorney's office reviewed the records and concluded its criminal proceedings. A PAC attorney notified ISP that the requester had provided documentation showing that the state's attorney's office had concluded its review of the matter at issue, and ISP furnished the records at issue.

**2022 PAC 72595:** A member of the public submitted a request for review contesting the Village of Spring Grove's response to a 57-part FOIA request. After a PAC attorney contacted the requester, he explained that he was seeking review of the withholding of only an affidavit. The village indicated to the PAC attorney that the FOIA request was unclear and that it had not understood that the requester was seeking a copy of the affidavit. With the clarification from the PAC attorney, the village provided the affidavit at issue to the requester, thereby resolving the dispute.

## *Success Stories continued*

**2022 PAC 72676:** A member of the public submitted a request for review alleging that the DeWitt County treasurer had not provided a complete response to a FOIA request seeking copies of records relating to taxes or other assessments levied against an identified property. The PAC forwarded the request for review to the treasurer, and the treasurer provided additional records to the requester's satisfaction.

**2022 PAC 72716:** A member of the public submitted a request for review alleging that the Village of Kincaid Board of Trustees violated OMA when it failed to post meeting minutes to its website within 10 days after approval. After the PAC forwarded the request for review to the board, the village updated its website and stated that the village clerk had set a calendar reminder to ensure the timely posting of minutes in the future.

**2022 PAC 72834:** A member of the public submitted a request for review alleging that the Chicago Police Department improperly denied as unduly burdensome a request for records concerning an incident from over 60 years ago. Upon receiving PAC's letter of further inquiry, the department agreed to conduct a supplemental search for records and ultimately located and furnished to the requester the responsive information.

**2022 PAC 72939:** The City of Oak Forest Police Pension Fund denied an attorney's FOIA request for a transcript of a disability hearing. A PAC attorney confirmed that the requester served as the legal representative of the subject of the hearing and conveyed that information to the pension fund, which then opted to provide the transcript to the attorney, resolving the dispute.

**2022 PAC 73390:** A mother whose daughter suffered lead poisoning from an apartment the family was living in submitted a FOIA request to the Kane County Health Department seeking all information concerning lead testing in the apartment. The department denied the request in its entirety under Section 7 of the Lead Poisoning Prevention Act. After communications with the PAC about a provision of the Lead Poisoning Prevention Act permitting disclosure to certain individuals, the department reconsidered and provided the requester with copies of responsive records.

**2022 PAC 73539:** A member of the news media submitted a request for review alleging that Chicago Public Schools improperly withheld records concerning threat assessment team members for various Chicago schools. After a PAC attorney intervened to provide clarification about the nature of the records requested, the district provided the requester with responsive records.

**2022 PAC 73606:** In response to a FOIA request, Southern Illinois University withheld the identities of certain donors to its forestry department. The PAC requested that the university provide information supporting its denial, and the university acknowledged that the PAC had previously determined that the names of individuals who make donations are usually not exempt from disclosure under FOIA. In light of that prior determination, the university released the requested information without the necessity of another PAC determination on the same legal question.

**2022 PAC 74001:** A member of the public submitted a request for review challenging the Chicago Department of Transportation's denial of a FOIA request seeking traffic studies on a specified roadway. The department initially withheld the records, citing an exemption for preliminary drafts. After the PAC asked the department to explain the basis for its denial and the applicability of the cited exemption, the department furnished the responsive traffic study.

**2022 PAC 74494:** A member of the public submitted a request for review contesting Metra's denial of a FOIA request seeking a progress schedule for a bridge replacement. Metra initially denied the request, asserting that the schedule was exempt from disclosure as a preliminary draft. After the PAC forwarded the request for review to Metra and facilitated communications between the parties, Metra disclosed the schedule to the requester.



# 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.

### Who can submit a FOIA request?

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

## 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. 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.

## *The Freedom of Information Act continued*

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

# FOIA Frequently Asked Questions

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

Your written request should include 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 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.

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

No, the public body cannot deny the request just because you called the document by a different name. You do not need to describe the document specifically and accurately by the same name the public body uses. As long as the public body understands what you are requesting, they must release that information 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 extend that time period for an additional five business days from the original due date if:

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

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

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

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

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

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

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

Aside from the potential outcome that a court ultimately could impose a civil penalty of between \$2,500 and \$5,000 per violation, public bodies have an additional incentive to respond within the time limits set forth in the 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.

#### **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 (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, the name(s) of its FOIA officer(s) with information about the FOIA office and how to submit a FOIA request.

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

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

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

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

If the public body does not respond, 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 Attorney General’s PAC or file a case in court.

### **WHAT TO DO IF YOUR FOIA REQUEST IS DENIED**

#### **What must the public body include in a denial?**

The denial must be in writing and must reference a specific legal reason under FOIA to justify withholding the record. If the denial is challenged in court, the public body has the burden of proving by clear and convincing evidence that the information is exempt from disclosure. The denial must also inform the requester of the right



## *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 court case.

### **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 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.

#### **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 relates to the public duties of public employees is not considered an invasion of personal privacy.
- Law enforcement records that, if disclosed, would interfere with a pending or reasonably contemplated proceeding or that would disclose the identity of a confidential source.
- Information that, if disclosed, might endanger anyone's life or physical safety.

## FOIA Frequently Asked Questions continued

- 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.

### What is a “clearly unwarranted invasion of personal privacy?”

FOIA contains an exemption for records that, if disclosed, would result in a “clearly unwarranted invasion of personal privacy.” An “unwarranted invasion of personal privacy” means the “disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject’s right to privacy outweighs any legitimate public interest in obtaining the information.” Under FOIA, disclosing information that relates to the public duties of public employees is not considered an invasion of personal privacy.

## REDACTIONS

### Can a public body remove or black out information from 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.

## *FOIA Frequently Asked Questions continued*

### **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.

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

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

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

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

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

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

#### **What does the PAC do with my Request for Review?**

The PAC will review your request and do one of the following:

- Review the issues in your FOIA dispute and determine that no further action is necessary. If the PAC decides that the alleged violations are unfounded, the PAC will inform you and the public body of that decision in writing.
- 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 orders the public body to produce records, the public body may appeal the opinion to the circuit court. If the public body does not appeal the opinion and fails to disclose the records as ordered by the opinion, the Attorney General's office may sue the public body to enforce the opinion. If the opinion concludes that the records fall within a FOIA exemption and need not be disclosed, the requester may appeal the opinion to the circuit court.

#### **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.

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

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

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

# The Open Meetings Act

The Attorney General's office helped pass legislation that reformed and strengthened the Open Meetings Act (OMA) to improve public access to government deliberations.

The law's provisions codified the PAC position within the Attorney General's office and explicitly authorize the PAC to review and determine whether a government body has violated OMA. The law gives the PAC authority to issue advisory opinions to guide government bodies, subpoena needed information, issue binding opinions to resolve disputes, and sue to enforce the binding opinions.

By creating the PAC with binding opinion authority to fight for an open and accountable government, this law has put Illinois at the forefront nationally and has given taxpayers greater ability to know what their government is doing.

The law also requires public bodies to appoint OMA designees who are required to successfully complete an annual OMA training program prepared by the PAC. In addition, all elected or appointed members of a public body subject to OMA must complete a training program authorized under the law once after their election or appointment.

# OMA Frequently Asked Questions

## GENERAL INFORMATION

### What is OMA?

The Open Meetings Act is a state law that requires that meetings of public bodies be open to the public except in certain specific, limited situations (discussed in more detail below) where the law authorizes the public body to close a meeting. OMA also provides that the public must be given advance notice of the time, place and subject matter of meetings of public bodies.

### What is the difference between FOIA and OMA?

FOIA applies when a member of the public is seeking access to public records. OMA is intended to ensure that the actions of public bodies are conducted in the open, through public meetings, and that the public is able to observe the deliberations behind those actions.

### What type of “public body” is covered by OMA?

The “public bodies” covered by OMA include all legislative, executive, administrative or advisory bodies of:

- The state.
- Counties.
- Townships, cities, villages, or incorporated towns.
- School districts.
- Municipal corporations.

Public bodies also include all committees, subcommittees, and other subsidiary bodies of public bodies. Examples of public bodies include everything from park district boards to city councils. Public bodies include, but are not limited to, any entity that is supported in whole or in part by tax revenue or which expends tax revenue.

## PUBLIC MEETING

### What is a “meeting?” How many members of the public body have to be present before OMA requirements apply?

A “meeting” under OMA is 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 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.



## *OMA Frequently Asked Questions continued*

### **PUBLIC NOTICE OF A MEETING**

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

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

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

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

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

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

### **MEETING AGENDA**

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

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

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

Although a public body may remove an agenda item that it determines will not be addressed or add a new topic for discussion solely to increase transparency, a public body cannot add an item to the agenda 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.

## *OMA Frequently Asked Questions continued*

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

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

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

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

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

### **RECORDING OF A MEETING**

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

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

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

Yes. The minutes must include:

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

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

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

## *OMA Frequently Asked Questions continued*

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

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

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

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

## *OMA Frequently Asked Questions continued*

- 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.
- Meetings of the 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.

*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.*

## *OMA Frequently Asked Questions continued*

### **How can a public body “close” a public meeting?**

If a public body wants to hold a closed meeting or wants to close a portion of an open meeting, the public body must vote to close the meeting by a majority vote of a quorum present in an open meeting. The public body must also cite the specific exemption in OMA that applies and allows the closure of the meeting.

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

Members of the public body and others who are directly involved in the matter that is the basis for the closed meeting may attend the meeting. For example, witnesses giving testimony regarding a complaint against an employee may attend a meeting that is closed for purposes of discussing discipline of an employee. 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. Semi-annually, the public body must meet to review the minutes of any closed meetings that occurred and determine whether the minutes of those closed meetings need to remain confidential. If they determine that it is no longer necessary to have the minutes remain confidential, they must make the minutes available to the public.

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

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

A member of a public body may attend a meeting by telephone or video conference only in accordance with and to the extent allowed by the rules of the public body. If a quorum of the members of the public body is physically present, then a majority of the public body may allow a member to attend by video or telephone conference if the member is prevented from physically attending because of (1) personal illness or disability, (2) employment purposes or the business of the public body, or (3) family or other emergency.

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. Notwithstanding the limits on remote attendance described above, the new section 7(e) of OMA allows a public body to hold an open or closed meeting by audio or video conference without the physical presence of a quorum of the members during a public health

## *OMA Frequently Asked Questions continued*

emergency, as long as several enumerated conditions are met. Meetings must still be open to the public to attend and comment, either remotely or in person, depending on the circumstances.

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

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

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

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

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

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

If a member of the public believes that a public body has violated OMA in the way that it conducted, or failed to conduct, a public meeting, then the member of the public may submit a request for review to the PAC. An OMA request for review must be made in writing, be signed by the requester, and include a summary of the facts supporting the allegation. A request for review may be submitted to the PAC by either electronic mail or U.S. Postal Service.

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

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

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

To submit a request for review by electronic mail, please email the request to [public.access@ilag.gov](mailto:public.access@ilag.gov).



## *OMA Frequently Asked Questions continued*

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

### **Is there a deadline for submitting a request for review?**

Yes. A person seeking review of an issue by the PAC must send the request for review to the PAC within 60 calendar days after the date of the alleged OMA violation. As of Aug. 19, 2015, if facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date not exceeding two years after the alleged violation by a person using reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.

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

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

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

No.

### **Can I bring my own OMA action in court?**

Yes.

### **What are the penalties that a public body may incur if it violates OMA?**

**Criminal Penalties:** Under the law, a state's attorney may bring a criminal action for a violation of OMA. A violation of OMA is a Class C misdemeanor, which is punishable by up to 30 days in jail and a fine of up to \$1,000.

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

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

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



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