



March 13, 2014

MADIGAN RECOGNIZES SUNSHINE WEEK, DETAILS 2013 REQUESTS TO PUBLIC ACCESS BUREAU

Chicago — In recognition of Sunshine Week, Attorney General Lisa Madigan today released the [Public Access Bureau's annual report](#) detailing the more than 3,400 new matters the Bureau received in 2013. The Public Access Bureau monitors compliance with the state's Freedom of Information Act (FOIA) and Open Meetings Act (OMA), working to foster transparency and openness in Illinois government.

"I am encouraged by the progress that has been made in the years since the state's stronger sunshine laws went into effect," Madigan said. "And as the demand for our assistance remains high, we continue to expand our enforcement work and educate the public about the rights and responsibilities of public agencies in an effort to create a new standard for transparency in Illinois government."

In 2013, the Public Access Bureau received 3,426 formal requests for assistance pursuant to FOIA and OMA. The vast majority of the requests came from members of the public. The requests came from every area of the state, and involved all types of public bodies – from small villages to large cities and state agencies.

In addition to formal requests, in 2013 the Public Access Bureau fielded up to 50 questions every day through the FOIA hotline and received more than 300 general inquiries via email. The Public Access Bureau also conducted 35 training sessions for members of the public, government officials, members of the media and students.

In 2013, the Public Access Bureau again increased the number of binding opinions issued. The authority to issue binding administrative decisions was an important component of the 2010 overhaul of the state's transparency laws and has allowed the Bureau to issue opinions that clarify the law and increase disclosure. The Public Access Bureau has also helped thousands of members of the public, media organizations and advocacy groups resolve disputes over records and open meetings through informal mediation with public bodies that has led to increased disclosure of government information.

2013 Public Access Bureau Activities

In 2013, the Public Access Bureau received 3,426 new matters. Last year's numbers once again show that members of the public, rather than media representatives, are the most prolific users of Illinois' sunshine laws.

3,426 total new matters received by the Public Access Bureau:

- 3,039 requests for review from those who were denied records under FOIA:
 - 2,503 from members of the public,
 - 493 from the media, and
 - 43 from public bodies.
- 387 requests for review regarding OMA violations:
 - 273 from members of the public,
 - 99 from the media, and
 - 15 from public bodies.

2013 Success Stories of Illinois' Sunshine Laws

The members of the public, media and government agencies can seek guidance from the Public Access Bureau as to whether documents should be disclosed under FOIA and guidelines for conducting open meetings according to OMA. "Requests for review" submitted by the

public and the media regarding a public body's FOIA denials or potential OMA violations can lead to either informal or binding decisions to resolve questions over public access to government documents or meetings.

Madigan highlighted some of the Public Access Bureau's binding opinions and informal mediation results that have helped to increase the public's access to their government:

- **III. Att'y Gen. Pub. Acc. Op. No. 13-011, issued June 11, 2013** – WMBD Channel 31 News submitted a FOIA request to the City of Bloomington seeking records concerning a traffic accident involving the Bloomington Assistant Police Chief, and all records concerning an internal investigation related to that incident. The City provided records but redacted significant information under section 7(1)(n), which exempts from disclosure records relating to a public body's adjudication of employee grievances or disciplinary cases. The binding opinion concluded that section 7(1)(n) of FOIA should be read narrowly and does not apply in the absence of an actual adjudication. In this instance, the City never held a formal disciplinary hearing. The City complied with the opinion and disclosed the records to WMBD Channel 31 News and other media outlets that submitted similar requests.
- **III. Att'y Gen. Pub. Acc. Op. No. 13-014, issued September 5, 2013** – A member of the public alleged that the Board of Trustees of the Broadlands-Longview Fire Protection District violated OMA by holding a special meeting at its attorney's law office, which was located outside of the District. This meeting was held at 9:00 a.m. on a weekday, approximately 26 miles from the Board of Trustees' regular meeting place. The binding opinion concluded that the meeting was not "convenient to the public" as required by section 2.01 of OMA. In particular, the opinion reasoned the meeting time and location likely discouraged members of the public from attending, when more publicly accessible alternative locations were available.
- **III. Att'y Gen. Pub. Acc. Op. No. 13-016, issued September 24, 2013** – A reporter for the *Kane County Chronicle* submitted a Request for Review alleging that the Board of Education of Geneva Community Unit School District No. 304 violated OMA by voting to recommend the dismissal of an employee without identifying that employee. Section 2(e) of OMA requires that final action be preceded by a public recital of the nature of the matter being considered and other information to inform the public of the business being conducted. The Board contended that the employee's privacy interest justified withholding the employee's identity. The binding opinion, however, concluded that the public is entitled to information concerning the performance of public employees, and that the Board's failure to identify the employee deprived the public of any meaningful information concerning the impact of its decision to recommend termination.
- **III. Att'y Gen. PAC Req. Rev. Ltr. 25171, issued December 11, 2013** – The Medill Watchdog, a student journalism program at Northwestern University, sought from the Village of Forest Park incident reports and records of 9-1-1 calls and calls for service reports concerning violence and victimization of individuals under 21 years old at Riveredge Hospital, a psychiatric facility. The Village denied those records under section 7(1)(c) of FOIA, which exempts information that would constitute an unwarranted invasion of personal privacy if disclosed. The Public Access Bureau determined that redactions of names and identifying information would protect the patients' privacy interest, and that the strong public interest in information regarding the adequacy of services provided to individuals with mental health issues, especially minors, necessitated disclosure of the records. The Village complied with the determination and disclosed the records.
- **III. Att'y Gen. PAC Req. Rev. Ltr. 21461, issued January 28, 2013** – *The Register-Mail* newspaper in Galesburg submitted a FOIA request to Knox County seeking records concerning settlement agreements for lawsuits alleging sexual harassment by the Knox County State's Attorney. The County responded that it did not possess any responsive records. Following consultations with the Public Access Bureau, the County provided the Public Access Bureau with copies of three settlement agreements covered by confidentiality clauses. The Public Access Bureau determined that because the General Assembly intended section 2.20 of FOIA to require the disclosure of all settlement agreements to which a public body is a party, the confidentiality clauses did not provide a valid basis for withholding the records. The County subsequently disclosed the settlement agreements.

Madigan also highlighted a 2013 court ruling upholding a binding Public Access Bureau opinion that will have a significant impact on how public bodies treat online and mobile communications in FOIA requests:

In *City of Champaign v. Madigan*, a reporter for the Champaign News-Gazette filed a FOIA request seeking copies of electronic communications sent by members of the Champaign City Council during work sessions and City Council meetings. The request encompassed communications on City Council members' personal electronic devices and personal e-mail and Twitter accounts. The City provided records from the City's electronic equipment, but asserted that communications exchanged on privately owned equipment are not public records subject to disclosure under FOIA. The Attorney General issued a binding opinion finding that text messages and e-mails sent

on City Council members' personal electronic devices during meetings which pertain to the transaction of public business constitute public records in the City's possession. The City filed a lawsuit in circuit court to overturn that binding opinion. The circuit court affirmed the Attorney General's binding opinion. The City then appealed that ruling to the 4th District Appellate Court, which affirmed the circuit court's decision upholding the binding opinion. The court stated that "it is not unreasonable to conclude communications 'pertaining to the transaction of public business,' which are sent to and received by city council members' personal electronic devices during a meeting are in the possession of the public body."

Sunshine Week was founded by the American Society of News Editors and is recognized annually every March. More information about Illinois' sunshine laws can be found at Attorney General Madigan's [website](#). Anyone seeking assistance from the Public Access Bureau can contact the hotline at 1-877-299-FOIA (3642) or send an email to publicaccess@atg.state.il.us.

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