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MADIGAN ISSUES 2017 PUBLIC ACCESS REPORT DURING SUNSHINE WEEK

Public Access Bureau Received Nearly 3,900 New Matters in 2017 & Issued 15 Binding Opinions

Chicago — In recognition of Sunshine Week, Attorney General Lisa Madigan today released the Public Access Counselor's [annual report](#) detailing nearly 3,900 new matters received in 2017. The Public Access Counselor (PAC) works to increase transparency in Illinois government by resolving disputes regarding public bodies' compliance with the state's Freedom of Information Act (FOIA) and Open Meetings Act (OMA).

Since its creation in 2010, more than 35,000 matters have been submitted to the PAC for assistance by members of the public and the media, and 92 percent of those matters have been closed. Last year, the PAC received 3,888 formal requests for assistance pursuant to FOIA and OMA – or an average of more than 320 new matters per month.

"As Attorney General, I created the position of Public Access Counselor to increase government transparency in Illinois," Madigan said. "The Public Access Counselor has helped tens of thousands of people obtain information from governments. I am proud of the office's success in strengthening the sunshine laws and giving people access to information about how their tax dollars are spent and their government operates."

Since becoming Attorney General, Madigan has worked to make government more open and accessible to the people of Illinois. After taking office in 2003, Madigan created the position of Public Access Counselor in the Attorney General's Office to resolve requests for help from the public and the media when they are denied access to public records or public meetings.

For many years, the PAC's work to increase access to government in Illinois was constrained by inadequate laws. In 2010, Madigan led an effort with advocates to reform and strengthen the Illinois Freedom of Information Act (FOIA), which established the role of the PAC under the law and allowed it to enforce its decisions regarding the disclosure of public records or open meetings complaints.

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

Among its significant decisions, the PAC helped raise awareness that electronic records sent or received on personal devices can be public records when they pertain to the transaction of public business. The PAC has also required public bodies to broadly disclose records that relate to how taxpayer money is spent and to public employees' qualifications for their government positions. The PAC's determinations have also encouraged public bodies to provide clearer information on their meeting agendas and adopt reasonable rules designed to accommodate the public's right to speak at public meetings.

In addition to analyzing and resolving disputes through binding and non-binding opinions, the PAC also maintains a hotline (1-877-299-FOIA) to provide information and informal advice regarding the release of public records and the public's access to government meetings.

2017 Public Access Bureau Activities

The Public Access Bureau received 3,888 new matters in 2017:

- 3,515 requests for review came from those who were denied records under FOIA:

- 2,933 from members of the public,
- 567 from the media or other organizations, and
- 15 from public bodies.
- 373 requests for review raised issues under OMA:
 - 306 from members of the public,
 - 58 from the media or other organizations, and
 - 9 from public bodies.

In 2017, the PAC issued 15 binding opinions, which serve to create legal guidance and enforce rulings in court in Illinois to increase transparency in government.

Among the notable matters that resulted in binding opinions last year were the following:

- **No. 17-001, issued March 14, 2017, concerning a pending criminal investigation:** An attorney sought a copy of a police report from a traffic crash from the Illinois State Police (ISP). ISP denied the request pursuant to section 7(1)(d) (i) of FOIA, asserting that disclosure would interfere with a pending review of whether to file criminal charges. The PAC concluded that ISP violated FOIA because its explanation was conclusory and did not detail how disclosure of the records would interfere with a pending or contemplated law enforcement proceeding as required.
- **No. 17-004, issued June 6, 2017, concerning imminent litigation:** The McLean County State's Attorney complained that the Bloomington City Council improperly used the litigation exception found in section 2(c)(11) of OMA to discuss its continued participation in an intergovernmental agreement with the town of Normal in closed session. The city justified the closed session by arguing that litigation about the 30-year-old agreement was probable. The PAC concluded the closed session discussion concerned the agreement itself – rather than the strategies, positions, theories, or consequences of any probable or imminent litigation. The city filed an administrative review action appealing the decision that is pending in Sangamon County.
- **No. 17-011, issued Aug. 14, 2017, concerning privacy of recordings:** The Will County Sheriff's Office denied a reporter's request for copies of two 911 calls made from a home where a child was later found deceased. The sheriff's office argued that voice recordings are a form of "private information" that are exempt from disclosure under section 7(1)(b) of FOIA. The PAC rejected that argument and concluded it would be improper to construe FOIA as exempting all voice recordings in the possession of public bodies. The sheriff's office also argued that section 7(1)(d)(vii) of FOIA exempted disclosure because it could compromise an ongoing investigation. The PAC concluded the sheriff's office failed to demonstrate that disclosure of the limited information in the recordings would obstruct an ongoing investigation and directed the recordings be disclosed. The sheriff's office has filed an administrative review action appealing the decision, which is pending in Sangamon County.

Among the non-binding determinations issued in 2017, the PAC addressed the meaning of the Law Enforcement Officer-Worn Body Camera Act:

III. Att'y Gen. PAC Req. Rev. Ltr. 46719, issued August 16, 2017: A member of the public submitted a Request for Review alleging that the City of Bloomington had improperly withheld a body camera recording of an encounter he had with a police officer concerning his business. The City had redacted the recording pursuant to section 7.5(bb) of FOIA, which exempts certain recordings made under the Law Enforcement Officer-Worn Body Camera Act (Body Camera Act). The City asserted that only recordings that were "flagged" in accordance with the Body Camera Act could be released to the subject of the encounter captured on the recording. The PAC found that the Body Camera Act did not require a recording to be "flagged" to be subject to disclosure under FOIA. The City requested that the PAC reconsider its determination in this Request for Review, which the PAC declined. The City complied with the PAC's determination by providing the requester with the body camera recording.

More information about Illinois' sunshine laws can be found at Madigan's [website](#). For assistance from the Public Access Bureau, contact the hotline at 1-877-299-FOIA (3642) or send an email to publicaccess@atg.state.il.us.



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