

## **Illinois Freedom of Information Act Frequently Asked Questions By the Public**

The Illinois Freedom of Information Act (FOIA) is designed to ensure that Illinois residents can obtain information about their government. In 2009, Attorney General Lisa Madigan worked with legislators and a diverse group of individuals and organizations to strengthen FOIA and hold government more accountable. On January 1, 2010, key changes to the Freedom of Information Act took effect to provide Illinois residents with a more open and accountable government. These Frequently Asked Questions describe the FOIA provisions that went into effect on January 1, 2010.

### **WHO'S WHO UNDER FOIA**

**Public Access Counselor (PAC)** – is an attorney in the Attorney General's office whose responsibility is to ensure compliance with FOIA. The Public Access Counselor is part of the Public Access Bureau in the Attorney General's office, which includes several Assistant Attorneys General and professional support staff members working to respond to FOIA and Open Meetings Act issues raised by the public and government officials. Working under the direction and supervision of the Attorney General, the PAC has the authority to review requests for documents under FOIA and determine whether those documents should have been produced under FOIA. The PAC also has the authority to determine whether a public body has violated the Open Meetings Act. As part of this public access work, the Attorney General has subpoena power, may issue advisory opinions to guide public bodies, may issue binding opinions in FOIA disputes and may sue to enforce binding opinions.

**Public Body** – is defined in FOIA as “all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof and a School Finance Authority created under Article 1E of the School Code.” FOIA provides that a “[p]ublic body’ does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act.”

**FOIA Officer** – is a person appointed by the “public body.” 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 one or more FOIA officers who must complete an electronic training developed by the Attorney General's PAC. Training must be completed annually. The Attorney General's office has made the electronic training available to all FOIA officers.

**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.” A few examples of public records available under FOIA are: orders; rules; reports or studies; contracts; names, titles and salaries of public employees; and the voting records of public bodies. Information can be available in electronic as well as paper format.

## GENERAL INFORMATION

What is FOIA? The Freedom of Information Act (FOIA) is a state statute that provides the public the right to access government documents and records. The premise behind FOIA is that the public has a right to know what the government is doing. The law provides that a person can ask a public body for a copy of its 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 (for example: records containing information concerning trade secrets or personal privacy).

Who is subject to FOIA? Public bodies are subject to FOIA. The judiciary is not subject to FOIA, but court records and proceedings generally are open to the public.

Who can file 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, including any city, township or county office.

## HOW TO MAKE A FOIA REQUEST

### **I need information from a public body but I am not quite 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 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.

Your letter should include your name, your address, the date and a daytime phone number so that the public body can contact you if they have any questions. 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 in your request 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 is being requested, they must release that information, even if the requester does not call it by the same name the public body uses.

Public bodies cannot require that the public submit FOIA requests on a specific form or in a specific format. Public bodies, however, can require that FOIA requests be submitted in writing. Public bodies must accept requests by mail, personal delivery, fax, e-mail, or other means available to the public body. Public bodies may accept oral FOIA requests but are not required to do so.

Additionally, each public body must develop and make available upon request a list of documents that the public body will immediately provide to a requester. Each public body also must maintain a reasonably current list of all types or categories of records under its control, and the list should be reasonably detailed in order to aid persons in obtaining access to public records. This list must be available for inspection and copying.

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

On your written request, include your name, address, the date and a daytime phone number so that the public body can contact you if they have any questions. Provide as much information as possible on the subject matter. This will help expedite the search process.

**Can a public body require that a FOIA request must be submitted on a certain form or in a certain format?**

No. Public bodies can require that FOIA requests be submitted in writing, but they must accept requests by mail, personal delivery, fax, e-mail, or other means available. While public bodies may offer a form for FOIA requests, they cannot require that you use a specific form to make your request. Public bodies may accept oral FOIA requests but are not required to do so.

**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 available certain information, 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; and
- 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 that website.

**How do I know who within a public body should receive my FOIA request?**

Each public body must prominently display and make available upon request a directory designating the FOIA officer(s) for that body and the address where FOIA requests should be sent. This information must also be posted on the public body's website, if it has one.

**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, even if you do not call it by the same name the public body uses. How many days does the public body have to respond to my FOIA request? A public body must respond to a FOIA request within 5 business days after the public body receives the request. Day 1 of the 5-day timeline is the first business day after the request is received by the public body. The date that the request was received by the public body does not count as "Day 1." That time period may be extended for an additional 5 business days from the date of the original due date if:

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

If additional time is needed, the public body must notify the requester in writing within 5 business days after the receipt of the request of the statutory reasons for the extension and when the requested information will be produced.

**When does the 5 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 5 business day time period.

**What is the incentive for a public body to respond to my request within 5 business days (or 10 business days if extended)?**

Aside from the potential 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 event a public body fails to respond within 5 business days, it cannot charge for reproduction costs at a later time or treat the request as unduly burdensome.

**Can I make an agreement with the public body to extend the deadline to respond?**

Yes, but the agreement must be in writing. The agreement will also relieve the public body of having to comply with other legal deadlines in FOIA.

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

No, except to determine if the request is for commercial reasons. See below for more details on commercial requests.

**FEES**

**Can the public body charge for copies?**

Yes, but the fees are limited. For black and white, letter or legal sized copies (8 ½ x 11 or 8 ½ x 14), the first 50 pages are free, and any additional pages can cost no more than 15 cents a page. For color copies or abnormal size 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 produced on CDs, the public body may only charge the actual cost of purchasing the CDs.

Is it possible for a public body to waive the copying fees? Yes. Public bodies may waive or reduce copying fees if disclosure is in the public interest. A waiver or reduction may be available if:

- The request is for information on the health, safety and welfare or the legal rights of the general public;
- There is an intent to disseminate the information; or
- No personal or commercial benefit will be received from document disclosure.

**GETTING INFORMATION IN AN ELECTRONIC FORMAT**

**Can I request the documents in electronic form?**

Yes, and the public body must provide you those electronic documents in your requested format, if that is feasible for the public body. If that format is not available to the public body, they must provide the documents in the electronic format in which they are kept or in 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.

### **Are e-mails 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 developed by the Attorney General’s PAC. Training 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 certain information, including the name(s) of its FOIA officer(s). In addition, the office must display:

- Information regarding how to submit a FOIA; and
- 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.

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

Contact the Attorney General’s Public Access Counselor at 877-299-3642. The public body must 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.

## **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 to your request within 5 business days after receiving it, then their 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 reference a specific legal reason under FOIA to justify the non-disclosure. A 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 to seek review of the issue by the Public Access Counselor (PAC) in the Attorney General’s office, with 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?**

You can either file a Request for Review with the Attorney General’s PAC or file a lawsuit in court.

### *How to File a Request for Review with the Public Access Counselor (PAC)*

### **First, what is a Request for Review?**

A Request for Review is a letter that a requester may submit to the PAC if they believe that the public body has not followed FOIA. This letter is a formal way of asking the PAC to take a look at 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 a

copy of the FOIA request for access to records and any responses from the public body. It must be submitted within 60 calendar days of the public body's final response (or date upon which the response was due).

**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 the response was due).

**How do I contact the Public Access Counselor in the Attorney General's Office?**

The Public Access Counselor is a part of the Public Access Bureau in the Attorney General's Office. Here is her contact information:

Sarah Pratt  
Public Access Counselor  
Public Access Bureau  
500 S. 2nd Street  
Springfield, Illinois 62706  
E-mail: [SPratt@atg.state.il.us](mailto:SPratt@atg.state.il.us)  
FOIA Hotline: 1-877-299-FOIA (1-877-299-3642)

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

The PAC will review your request and will do one of three things:

1. Decide that no further action is necessary. If the PAC decides that the alleged violation is unfounded and no further action is necessary, the PAC will inform you and the public body of that decision.
2. Request more information from the public body. If more information is needed to review the issue, the PAC may, within 7 working days after receiving the Request for Review, send a copy of the Request to the public body and ask for any records the PAC needs to complete the review. The public body has 7 working days to provide the requested information. The Attorney General, through the PAC, has the authority to issue a subpoena if the public body fails to fully respond.
3. The PAC may also try to resolve your FOIA dispute with the public body through mediation or other informal efforts.

**When will the PAC issue a final decision?**

If the PAC decides to issue a binding opinion, the PAC will issue that opinion within 60 calendar days after receiving the Request for Review from the Requester. The PAC may extend the 60-day time period by 30 working days by sending a written notice to the requester and the public body. This written notice must include the reasons for the extension.

**What are the different possible outcomes of a Request for Review by the PAC?**

There are multiple ways the PAC may respond to a Request for Review:

- Work to resolve your FOIA dispute with the public body. (5 ILCS 140/9.5(f)) The PAC may choose to mediate the dispute or resolve the matter by means other than the issuance of a binding opinion. The PAC's decision to decline to issue a binding opinion is not reviewable.
- Review the issues in your FOIA dispute and determine that no further action is necessary. (5 ILCS 140/9.5(c)) If the PAC decides that the alleged violations of FOIA are unfounded, the PAC will advise the requester and the public body of that decision. The PAC will not conduct any further review.
- Issue a binding opinion to resolve the FOIA dispute. (5 ILCS 140/9.5(f)) 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, the PAC must issue that opinion within 60 calendar days after receiving the Request for Review. If the 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, you may appeal the opinion to the circuit court.

### **Can the PAC issue Advisory Opinions to Public Bodies?**

Yes. The PAC may assist any public body by issuing an advisory opinion to provide guidance on how to comply with FOIA. (5 ILCS 140/9.5(h)) The public body may request an advisory opinion to obtain guidance on FOIA compliance. The request must contain sufficient accurate facts from which a determination can be made. The PAC may request additional information from the public body to facilitate the review. A public body that relies in good faith on an advisory opinion of the PAC is not liable for penalties in a subsequent lawsuit, so long as the facts upon which the opinion is based have been fully disclosed to the PAC.

### **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 opinions of the PAC, you can appeal the PAC's decision to the 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 go ahead and file a lawsuit without waiting for the PAC's decision, the PAC will immediately stop working on your Request for Review 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 it to 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.

## **EXEMPTIONS – RECORDS THAT ARE NOT PUBLIC**

### **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.” (5 ILCS 140/2(c)) Given this broad definition, FOIA is intended to cover any document, regardless of form, that pertains to government business.

### **Does “public record” include electronic information?**

Yes. FOIA defines public records to include electronic documents 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 for the public body. If it is not feasible, the public body must present the information in the format in which it is maintained by the public body 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 the CD, but may not charge a fee for its search for or review of the information.

### **What kind of information can I not get access to?**

The FOIA law has a presumption that all information is public, unless the public body proves otherwise. There are several exceptions to public disclosure that include but are not limited to:

- Private information, which is defined 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 e-mail 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.
- 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 disclosure 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 produce the information 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. 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.

## **COMMERCIAL REQUESTS**

### **What is a request for information made for a commercial purpose?**

A commercial request is when the requester seeks to use part or all of the public records for sale, resale, or solicitation or advertisement for sales or services. Requests by the news media, not-for-profit organizations, scientific or academic institutions are not considered commercial information requests.

**Are commercial information requests treated differently?**

Yes. A public body has 21 business days to respond to a request for information that is made for a commercial purpose. The public body can either: (1) provide the requested records; (2) advise when the records will be provided and the costs; (3) deny the request (if it falls under an exception); or (4) advise the requester that the request is unduly burdensome.

**Can the public entity charge fees for copies of the information?**

Yes, but the fees are limited. For traditional black and white, letter or legal sized copies (8 ½ x 11 or 8 ½ x 14), the first 50 pages are free, and any additional pages can cost no more than 15 cents a page. For color copies or abnormal size copies, the public body can charge the actual cost of copying.

**REDACTIONS**

**Can a public body remove or black out information from produced documents?**

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.” But the public body must produce the remaining information.

**Is there any information that a public body MUST withhold or redact?**

Although there may be legitimate reasons to redact or withhold certain types of information, the only information that the Freedom of Information Act requires a public body to redact are the home addresses, home/private telephone numbers and social security numbers of employees noted on certified payroll records that are required to be submitted to a public body under the Prevailing Wage Act.

**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. They must allow you to inspect and obtain copies of public documents.

**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 to issue an advisory opinion regarding compliance 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 can 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 ask for 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.

**What happens if the public body relies on an advisory opinion from the PAC in responding to a FOIA request but still ends up being sued by a requester?**

A public body that relies in good faith on an advisory opinion of the Attorney General's PAC in responding to a request is not liable for penalties under FOIA, as long as the public body fully and fairly disclosed to the PAC the facts upon which the opinion is based.

*Source: Illinois Attorney General*

## **Illinois Open Meetings Act Frequently Asked Questions By the Public**

The Open Meetings Act (OMA) is designed to ensure that Illinois residents have access to their government. In 2009, Attorney General Lisa Madigan worked with legislators and a diverse group of individuals and organizations to strengthen the transparency laws in Illinois and hold government more accountable. On January 1, 2010, key changes to the Open Meetings Act took effect to provide Illinois residents with a more open and accountable government.

### **WHO'S WHO UNDER OMA**

**Public Access Counselor (PAC)** – An attorney in the Attorney General's Office who works to ensure compliance with OMA and the Illinois Freedom of Information Act (FOIA). The Public Access Counselor oversees the Public Access Bureau in the Attorney General's Office, which includes several Assistant Attorneys General and professional support staff members working to respond to OMA and FOIA issues raised by the public and government officials. Working under the direction and supervision of the Attorney General, the PAC has the authority to determine whether a public body has violated the Open Meetings Act. The PAC also has the authority to review requests for documents under FOIA and determine whether those documents should have been disclosed. As part of this Public Access work, the Attorney General has subpoena power, may issue advisory opinions to guide public bodies, may issue binding opinions in OMA and FOIA disputes and may sue to enforce binding opinions.

**"Public Body"** – The Open Meetings Act defines "public body" to include "all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof."

Under OMA, "public body" also includes tourism boards and convention or civic center boards located in counties that are contiguous to the Mississippi River with populations of more than 250,000 but less than 300,000. OMA specifically provides that "public body" does not include a child death review team, the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act, or an ethics commission acting under the State Officials and Employees Ethics Act.

**"Meeting"** – The Open Meetings Act defines "meeting" to include "any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business. Accordingly, for a 5-member public body, 3 members of the body constitute a quorum and the affirmative vote of 3 members is necessary to adopt any motion, resolution, or ordinance, unless a greater number is otherwise required."

## GENERAL INFORMATION

### **What is the Open Meetings Act (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 the Freedom of Information Act (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
- all municipal corporations

"Public bodies" also includes all committees, subcommittees and subsidiary bodies of public bodies. Examples of "public bodies" include everything from park district boards to city councils to civic commissions. "Public bodies" includes, but is 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 a 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 7-member board with a quorum of 4, a majority of the quorum would be 3. Under OMA, 5-member bodies have a 3-member quorum and require the affirmative vote of 3 members to adopt any motion, resolution, or ordinance, unless a greater number is otherwise required.

## PUBLIC NOTICE OF A MEETING

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

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

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

At the beginning of each calendar or fiscal year, every public body must create and make available to the public the schedule for regular meetings that year, including the dates, times, and location 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 this 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.

The public body must post an agenda (see below) for the 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.

## MEETING AGENDA

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

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

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

A public body cannot change the agenda less than 48 hours before the meeting.

### **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 cannot even discuss items that did not appear on the agenda for the special or emergency meeting.

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

The Open Meetings Act requires that public bodies give members of the public an opportunity to speak at a public meeting. Public bodies are authorized to adopt rules regarding the public comment portion of a meeting. Such rules may limit the time allotted for the public to speak.

## TIME AND LOCATION OF A MEETING

### **When and where does an open public meeting need to 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; and
- 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 one) within 10 calendar days after the minutes are approved by the public body. Typically, the minutes are approved at the next board meeting.

## **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 a specific employee or legal counsel for the public body;
- 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;
- evidence or testimony received in a hearing, provided that the body is a quasiadjudicative 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;
- conciliation of complaints of discrimination in the sale or rental of housing;
- ongoing, prior or future criminal investigations, when discussed by public bodies with criminal investigatory responsibilities;
- 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;
- 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; and
- meetings of a residential health care facility resident sexual assault and death review team;
- meetings of a mortality review team appointed under the Department of Juvenile Justice Mortality Review Team Act;
- confidential information, when discussed by one or more members of an elder abuse fatality review team, designated under Section 15 of the Elder Abuse and Neglect Act, while

participating in a review conducted by that team of the death of an elderly person in which abuse or neglect is suspected, alleged, or substantiated;  
meetings of an independent team of experts under Brian's Law.

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.

**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 the Open Meetings Act that applies and allows the closure of the meeting.

**Who can attend a "closed" meeting?**

Only the members of the public body and others who are directly involved in the matter which 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.

**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, by 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. 5 ILCS 120/7(c). 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) a family or other emergency. If a member wants to attend the meeting by video or telephone conference, he or she must notify the recording secretary or clerk of the public body before the meeting, unless advance notice is impractical.

**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 Public Access Counselor at the Office of the Attorney General, or you can bring a civil action in circuit court against the public body.

**What is a Request for Review?**

A Request for Review is a letter sent to the Public Access Counselor which 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.

**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.

**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. 5 ILCS 120/3.5(b).

If the Public Access Counselor reviews the Request for Review and determines that further action is warranted, she must forward a copy of the Request for Review to the public body within 7 working 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 review. The public body must provide the requested records within 7 working days of receiving the request from the PAC.

Within 7 working days of receiving the request from the PAC, the public body may, 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 of memorandum.

The Public Access Counselor 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, he or she must do so within 7 working days of receiving the public body's answer. The requester must send a copy of his or her response to the public body.

Once she has all of the necessary information to analyze the OMA issue and determine whether the public body violated the law, the PAC may:

Decide that no further review is necessary and that the allegations are unfounded.

Mediate and work to resolve the dispute. The PAC can decide to work informally to try to mediate the dispute between the member of the public and the public body.

Issue an opinion resolving the matter. If the PAC decides to issue a binding opinion, she 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 30 days by sending written notice to the requester and the public body and including an explanation of the reasons for the need for an extension of time.

**What kind of information can the PAC request as she reviews 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 the Open Meetings Act?**

**Criminal Penalties:** Under the law, a State's Attorney may bring a criminal action for a violation of the Open Meetings Act. 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, or (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.

**How do I contact the Public Access Counselor?**

The Public Access Counselor is a part of the Public Access Bureau in the Attorney General's Office. Here is her contact information:

Sarah Pratt  
Public Access Counselor  
Public Access Bureau  
500 S. 2nd Street  
Springfield, Illinois 62706  
E-mail: [SPratt@atg.state.il.us](mailto:SPratt@atg.state.il.us)  
FOIA Hotline: 1-877-299-FOIA (1-877-299-3642)

*Source: Illinois Attorney General*

SAMPLE FOIA REQUEST

**\*\*Note to Requester:** Retain a copy of this request for your files. If you eventually need to file a Request for Review with the Public Access Counselor, you will need to submit a copy of your FOIA request.\*\*

Name and Address of Public Body Receiving Request: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date Requested: \_\_\_\_\_

Request Submitted By:  E-mail  U.S. Mail  Fax  In Person

Name of Requester: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/County Zip (required): \_\_\_\_\_

Telephone (Optional): \_\_\_\_\_ E-mail (Optional): \_\_\_\_\_

Fax (Optional): \_\_\_\_\_

Records Requested: \*Provide as much specific detail as possible so the public body can identify the information that you are seeking. You may attach additional pages, if necessary.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Do you want copies of the documents? YES or NO

--Do you want Electronic Copies or Paper Copies? \_\_\_\_\_

--If you want Electronic Copies, in what format? \_\_\_\_\_

Is this request for a Commercial Purpose? YES or NO

*(It is a violation of the Freedom of Information Act for a person to knowingly obtain a public record for a commercial purpose without disclosing that it is for a commercial purpose, if requested to do so by the public body. 5 ILCS 140.3.1(c)).*

Are you requesting a fee waiver? YES or NO

*(If you are requesting that the public body waive any fees for copying the documents, you must attach a statement of the purpose of the request, and whether the principal purpose of the request is to access or disseminate information regarding the health, safety and welfare or legal rights of the general public. 5 ILCS 140/6(c)).*

Source: Illinois Attorney General

## SAMPLE FOIA REQUEST

Dear FOIA Officer,

In accordance with the Freedom of Information Act I am requesting the following.

1. Copy of XXX
2. Copy of YYY
3. Copy of ZZZ

I request expedited processing on the basis of an urgency to inform the citizens and taxpayers of Illinois about their government's activities. If any element of this request is denied in whole or in part, I ask that you justify all withholdings individually by reference to specific exemptions of the Act. Please provide all responsive information to me electronically.

In the event that fulfillment of the request requires time beyond the statutory deadline to produce a substantial volume of records, I request a rolling production of records, such that the public body furnishes records to my attention as soon as they are identified, preferably electronically, but as needed then to my attention, at the below address. If you have any questions, please do not hesitate to contact me.

If you are not the FOIA officer responsible for any part of this request you are required by law to forward it to the appropriate FOIA officer.

The purpose of the request is to access and disseminate information regarding the legal rights of the general public and is not for the principal purpose of personal or commercial benefit.

As outlined in FOIA, documents shall be furnished without charge or at a reduced charge, as determined by the public body, if the person requesting the documents states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest. Waiver or reduction of the fee is in the public interest if the principal purpose of the request is to access and disseminate information regarding the health, safety and welfare or the legal rights of the general public and is not for the principal purpose of personal or commercial benefit.

I am requesting the records be provided in electronic format if that is the method in which they are stored. If they are in paper form and the copier can convert them to electronic format, I would appreciate receiving them electronically.

Thanks,

Kirk Allen  
P.O. Box 593  
Kansas, IL 61933

*Source: Edgar County Watchdogs*

## HOW TO SUBMIT A REQUEST FOR REVIEW

If a member of the public believes that a public body has improperly denied his or her FOIA request, or 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.

In the case of FOIA, the Request for Review is a formal way of asking the PAC to take a look at the original FOIA request, as well as the public body's response, and determine if a FOIA violation has occurred. In the case of OMA, the Request for Review is a formal way of asking the PAC to determine if the actions of the public body in connection with a public meeting violated OMA. (5 ILCS 140/9.5(a); 5 ILCS 120/3.5(a))

The OMA Request for Review must be made in writing, be signed by the requester, and include a summary of the facts supporting the allegation. In a FOIA Request for Review, the member of the public must also include a copy of the original FOIA request and any responses from the public body. (5 ILCS 120.3.5(a); 5 ILCS 140/9.5(a))

A Request for Review must be submitted to the PAC within 60 calendar days after the denial of the FOIA request or the conduct that is alleged to have violated OMA. (5 ILCS 140/9.5(a); 5 ILCS 120/3.5(a))

A Request for Review may be submitted to the PAC by either electronic mail or U.S. Mail. By U.S. Mail, please address it to:

Sarah Pratt  
Public Access Counselor  
Office of the Attorney General  
500 S. 2nd Street  
Springfield, Illinois 62706

To submit a Request for Review by electronic mail, please e-mail the request to Sarah Pratt, Public Access Counselor, at: [publicaccess@atg.state.il.us](mailto:publicaccess@atg.state.il.us).

The Request for Review does not need to follow any particular format. However, sample FOIA and OMA Request for Review forms are available on the Attorney General's website at [www.IllinoisAttorneyGeneral.gov](http://www.IllinoisAttorneyGeneral.gov) for those who would like to use them.

*Source: Illinois Attorney General*

## SAMPLE REQUEST FOR REVIEW

Subject: Request for Review  
From: Kirk Allen  
To: PublicAccess@atg.state.il.us

I am requesting a review for a possible Open Meetings Act violation. Specifically, the Edgar County Board held their study session on October 26, 2015. During that meeting they went into closed session for applicable reasons however after coming back into open session a comment was made that points to discussions of matters in closed session that are not authorized by statute. At the 25 min. 17 sec. mark of the video, a board member makes the following comment: "You may have heard us talking about that earlier." Video link here:  
<https://www.youtube.com/watch?v=EP7uqqzwpQ>

A review of the entire meeting video reflects there was no such discussion in public prior to the closed session so no one could have heard them talking about it earlier as he implies. That being the case we question what "earlier" he is referring to. We have reason to believe that discussions took place in closed session and that does not qualify for closed session discussion. I am requesting a review of the closed session recording and if items were discussed outside the allowable criteria that those portions of the recording be provided to us.

It should be noted that a previous request for review this public body acknowledged violating the closed session rules and have yet to release the applicable recording.

The public body is:  
Edgar County Board  
County Clerk Augie Griffin  
115 W. Court St., Room J  
Paris, IL 61944

My contact information is as follows:

Kirk Allen  
PO Box 593  
Kansas, IL 61933  
217-508-0564

*Source: Edgar County Watchdogs*

CONTACT INFORMATION

***Edgar County Watchdogs***  
***www.illinoisleaks.com***

**Kirk Allen**      **(217) 508-0564**    **kirk@illinoisleaks.com**  
**John Kraft**      **(217) 808-2527**    **john@illinoisleaks.com**

***Americans for Prosperity Foundation – Illinois***  
**Andrew Nelms (224) 545-0011**    **anelms@afphq.org**

# Citizen Watchdog Training

*in conjunction with*

## The Edgar County Watchdogs

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*Springfield – August 20, 2016*

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*This presentation should not be considered legal advice. Please contact an attorney for assistance with your specific factual situation or any interpretation of the law.*

## WATCHDOGS IN ILLINOIS

*By Adam Andrzejewski*

*This article was originally published on [www.Forbes.com](http://www.Forbes.com) on November 5, 2014*

*Two regular guys from Southern Illinois, Kirk Allen and John Kraft, became folk heroes after lawfully “citizen arresting” their park district board. Now, their fight against corruption threatens to shake the political establishment.*

Illinois’ number one manufactured product is corruption. More than 95 percent of the Illinois legislature is safe in gerrymandered districts. The incumbent governor has three current federal investigations of his administration, but the Attorney General/state’s attorney class can’t find public vice anywhere.

So what can the law abiding citizen do? The answer is coming from some regular guys in southern Illinois who decided to hold public officials accountable. They call themselves the “Watchdogs.”

Kirk Allen and John Kraft live in Edgar County which may be the most corrupt county in the country. For a couple of watchdogs, it’s a target rich environment.

In 1985, New York prosecutor Rudy Giuliani indicted the local pizza owner during the mob “Pizza Connection” prosecutions. For twenty years, State trooper Michale Callahan staked his career on reversing the false double-murder convictions of Randy Steidl and Herb Whitlock and became a local legend. In a county of only 18,000 residents, just four units of government have amassed \$79 million of bonded debt.

During the summer, the Watchdogs used a little known provision of law to “citizen arrest” an entire unit of government. The story was featured on Chicago broadcast news and garnered the front page in most downstate daily newspapers.

Mr. Allen and Mr. Kraft are unlikely watchdogs. Neither are lawyers. Neither are wealthy individuals – their Edgar County Watchdog organization is a non-profit. And neither have a law enforcement background, although both served in the military.

Yet, in just 22 months their exposure has caused more than 100 public and elected officials to flee or resign their positions. They also beat IL Assistant Attorney General Emma Steimel pro se (they represented themselves) to open the books on state emails.

Despite the institutional forces arrayed against them, the Watchdogs have exposed 33 Edgar County based public officials who eventually resigned or no longer serve in their posts- including

the county board chairman, multi-township property tax assessor, airport manager (and entire airport board), the Shiloh superintendent – revealing a conviction in Cook County for misdemeanor sexual battery, the Redmond mayor – who moved out of town and thought he could still serve as mayor, the Kansas fire department attorney, and many others.

The Watchdogs anti-corruption toolbox features an “exposure” website, insistence on freedom of information, pro se lawsuits, public comment at open meetings, earned media, and motivating hundreds of local citizens to attend board meetings. It may be the most effective watchdog model in the nation.

Now, they’re taking their honed, good government show on the road. With their reputation preceding them, fast victories have been notched in neighboring towns.

For example, in Albion, the entire leadership of the fire department resigned after the Watchdogs stopped the board from holding an illegal vote on contracts to conflicted parties. In Effingham, after just one public comment followed by one Freedom of Information Act request, the health department administrator tried to resign but was instead fired by the board. In Ford-Iroquois County, the health department was disbanded after the Watchdogs pushed an investigation into an alleged \$4 million federal flood grant fraud, public credit cards used for private beer and gasoline purchases, and substantial gift card employee compensation which circumvented payroll taxes.

They even recently exposed a superintendent – a candidate running for the state house – who racked up \$5,000 on the school credit card at fast food restaurants.

The Watchdogs live by Dillon’s Rule – a principle from a famous 1868 case that says government only has the power granted by law. As the Watchdogs argue, in the absence of a legal basis, government power is limited. Public bodies are asked to prove that public funds, property or credit are only being used only for public purposes (Article 8 Section 1 of Illinois Constitution). Trusting government to act in the public’s interest isn’t good enough. They require proof and verification. Sadly, the Watchdogs don’t get much help from state or local law enforcement agencies. The top cop in Illinois, Attorney General Lisa Madigan, has sat on one “request for review” of the Watchdogs for two and a half years, another “request for review” is more than one year old, and has refused to prosecute cases.

Yet, at the federal level, the federal Office of Inspector General, Federal Bureau of Investigations, and Department of Energy have opened investigations based on the Watchdog’s information. Grand juries have been convened, and subpoenas issued.