

HONEST & OPEN GOVERNMENT



FOIA & OMA Updates

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Since our last update on the Illinois Open Meetings Act (OMA) (5 ILCS 120/) and the Illinois Freedom of Information Act (FOIA) (5 ILCS 140/), there have been at least one binding opinions from the Public Access Counselor (PAC) concerning FOIA and one concerning OMA. Should you endeavor to read any of the binding PAC opinions, the new Public Access Counselor website address is <https://illinoisattorneygeneral.gov/Open-And-Honest-Government/PAC/Opinions/>.

FREEDOM OF INFORMATION ACT EMPLOYEE TERMINATION LETTERS NOT CREATED FOR A LAW ENFORCEMENT PURPOSE BY A LAW ENFORCEMENT AGENCY ARE SUBJECT TO DISCLOSURE

In PAC Opinion **26-002**, a requester requested, basically, documents related to disciplinary action against an assistant state's attorney. The State's Attorney's Office denied the request entirely pursuant to subsections in Section 7(1)(d), citing disclosure would interfere with a pending criminal prosecution and the selection of a jury, because the responsive termination letter included details leading to the employee's termination. The PAC said that because Section 7(1)(d) requires that records be created "for law enforcement purposes," and since the termination letter was created and maintained for personnel purposes (not law enforcement purposes), the record was not exempt under Section 7(1)(d), but was producible as a personnel record. Moreover, the State's Attorney's Office did not demonstrate, to

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the PAC's satisfaction, that the disclosure would create a substantial likelihood that a person would be deprived of a fair trial.

REQUESTERS CANNOT REQUIRE FUTURE RECORDS BE COMPILED AND PRODUCED

In *Tobias v. City of Chicago Office of the Mayor*, 2026 IL App (1st) 241435-U, a requestor requested text messages between the mayor and another person between a certain date and "the date this request is processed." The Mayor's Office initially extended the time to respond, but did not respond within the extended period of time. The requester sued. After the suit was filed, the Mayor's Office produced several pages of text messages, and asserted that the requester's suit was, at that point, moot. The Court dismissed the suit, finding in favor of the City, because the records were not in the City's possession at the time the records were due. The appellate court affirmed, in part, the circuit court and concluded that the City conducted a reasonable search for the records, and that there was no requirement that a public body must provide records coming into its possession after conducting a search. The appellate court took considerable time interpreting the term "processed" and questioning when exactly the request's timeframe concluded. In short, the court held that a

requester cannot request records that do not yet exist, and, in this case, the proper date timeframe of the search was from the initial date identified by the requester through the date the City acknowledged receipt of the request. However, although the City did prevail on the merits, the appellate court remanded the matter back to the circuit court to determine whether civil penalties should be assessed against the City for not responding within the 5-day extension time. Takeaway: if your district receives a request for records between a date and "the date the search for records is conducted," at least one court has determined it is safe to consider the timeframe to end the date the request is acknowledged received.

REQUESTS ARE RECEIVED THE DATE THEY ARRIVE IN AN EMAIL SPAM FOLDER OR ARE QUARANTINED

In *Balzer v. Northeast Illinois Regional Commuter Railroad Corporation*, 2026 IL App (1st) 232227 a request was emailed to a public body. The public body's third party spam filter quarantined the email, but the third-party software did not notify the public body until the following business day that the email was received and quarantined. On that same date, the public

Continued on page 27

Honest & Open Government

Continued from page 26

body replied to the requester, asking the requester to narrow the request because it posed an undue burden. The requester did not narrow the request, and on the sixth business day after the email was quarantined (which was the fifth business day after the public body removed it from quarantine and acknowledged it), the public body denied the request. The requester sued. The circuit court found in favor of the public body, holding the denial was timely. The appellate court reversed the circuit court, and concluded that, for FOIA purposes, the request was received the date it was received and quarantined by the third-party software, not the date the third-party software notified the public body it was received. Also, because the response was untimely, the public body was unable to use the undue burden exemption. Takeaway: always check spam/quarantine/junk mail folders in email, because the date a FOIA request comes into your email inbox (or intercepted by third party software) is the date it is received.

PUBLIC BODIES MAY DESIGNATE THE TIME, PLACE, AND PERSON TO WHOM REQUESTS MUST BE DELIVERED

Lenard v. Illinois Sec. of State, 2026 IL App (5th) 241062-U, a requester mailed several FOIA requests to the public body's address he alleged was maintained by the Public Access Counselor. However, the public body adopted regulations and rules requiring FOIA requests be sent to a specific address, which was different than the one known by the requester. The public body argued, and the circuit court agreed, that because the requests were not sent to the proper address, the public body's duty to respond was not triggered. The appellate court affirmed the trial court, and concluded that because Section 3(h) of FOIA authorizes public bodies to promulgate rules governing the time, place, and person from whom records may be requested, and because the public body exercised that authority by adopting rules requiring requests be sent to a certain person, the requester's requests were sent to the wrong address and, therefore, were not actually received

by the public body. Takeaway: public bodies can designate a specific recipient for FOIA request, but be reasonable, and do not require requests be delivered to a mailbox on top of a building when the moon is full.

OPEN MEETINGS ACT

ENSURE PUBLIC HAS AN OPPORTUNITY TO COMMENT AND ANY LIMITATIONS ON COMMENT FOLLOW ADOPTED RULES.

In PAC Opinion **26-001**, a citizen spoke at a village board meeting and was identifying village trustees specifically by name, but did not make any inherently inflammatory statements. The first time the citizen named a trustee, the mayor gave warning that citizens may not specifically name trustees. The second time the citizen named a trustee, the mayor unplugged the audio system, so no sound would come through the microphone. The citizen continued to speak, so the mayor approached the lectern and removed the

microphone. The citizen continued to speak, and the mayor and police stood next to the citizen for the remainder of her speaking time. In short, the PAC said (a) although Robert's Rules of Order authorize the mayor to maintain decorum of a meeting, the citizen's comments did not appear to disrupt the decorum of the meeting, and (b) the village did not have an adopted public comment rule prohibiting the name of trustees. The PAC also noted that even if the village did have such a rule, Section 2.06(g) of the Act guarantees "an opportunity to address public officials," which, it concluded "necessarily implies the right to state the names of public officials," and that "rules for public comment at meetings must tend to accommodate, rather than unreasonably restrict, the right to address public officials." So, even if a rule prohibiting the naming of trustees was in place, the rule may not be enforceable as its constitutionality would be questionable. ■

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