

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 four binding opinions from the Public Access Counselor (PAC) all three of which concern FOIA. Impactful legislation was also signed by the Governor (Public Act 104-438). 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

FEES ASSESSED FOR RESPONDING TO REQUESTS MUST BE PURSUANT TO STATUTE

In PAC Opinion **25-013**, a public body charged a base fee for responding to certain FOIA requests (\$5 for residents and \$10 for non-residents). The basis for the fee was an ordinance adopted by the municipality setting the fee. In short, the PAC said only fees allowed by 5 ILCS 140/6(a) are allowed, unless there is a separate, specific statute that allows for a different fee. A municipal ordinance setting a fee does not apply or take precedence over FOIA.

FEES ASSESSED FOR RESPONDING TO REQUESTS MUST BE PURSUANT TO STATUTE

In PAC Opinion **25-014**, a public body was assessing a 'per-minute' fee for redacting body camera footage. Similar

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to PAC Op. 25-013, the PAC said the only fees allowed to be charged for responding to FOIA requests are those permitted by FOIA or some other statute, and no statute permits a 'per-minute' redaction fee for body camera footage.

GENERALLY, NAMES OF PUBLIC EMPLOYEES SUBJECT TO DISCIPLINE IN CERTAIN RECORDS ARE NOT PRIVATE INFORMATION

In short, the takeaway of PAC Opinion **25-015** is that names of public employees cannot be redacted from a record under 7(1)(c) [*unwarranted invasion of personal privacy*] when the disclosure of that information bears on the public duties of those employees.

TERMINATION LETTERS ARE NOT NECESSARILY EXEMPT UNDER THE ILLINOIS PERSONNEL RECORD REVIEW ACT

In PAC Opinion **25-016**, a village withheld the letter terminating the village clerk under the Illinois Personnel Record Review Act (PRRA), 7(1)(c) [*unwarranted invasion of personal privacy*], and 7(1)(n) [*adjudication of employee grievances/disciplinary cases*]. The PAC said that the PRRA does not prohibit disclosure of termination letters (or other records of disciplinary action) under FOIA, but it does require notice be provided to the

former employee on or before the day the information is divulged. However, the PRRA does prohibit the disclosure of records of disciplinary action that are more than four years old and "performance evaluations," which are not the same as termination letters. Furthermore, the PAC said 7(1)(c) did not apply because the termination was concerned with the clerk's public duties, and 7(1)(n) did not apply because, typically, the final outcome of a disciplinary case does not fall under this exemption, but also because the village could not show that any formalized adjudication was conducted.

NEW LEGISLATION. *Courtesy of P.A. 104-438.*

5 ILCS 140/3(j) provides that if a public body has a reasonable belief that a request was not submitted by a "person," the public body may require the requestor to verify, orally or in writing, that they are a person. The deadline to respond to the request is paused until the person provides the verification, and if the person does not verify within 30 calendar days, then the public body may deny the request. A public body *may not require* the requestor to submit personal information, private information, or

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identifying information to verify they are a person. FOIA's definition of the term "person" is now specifically limited to an individual or an individual acting as an agent of a corporation, partnership, firm, organization, or association. 5 ILCS 140/2(b). As of this article, there is no guidance from the PAC on the specific process a public body may use to verify a requestor's "personhood," but surely PAC opinions on this will be forthcoming.

5 ILCS 140/2(c) revised the definition of "public record" to now exclude "junk mail." 5 ILCS 140/2(j) defines "junk mail" as "(i) any unsolicited commercial mail sent to a public body and not responded to by an official, employee, or agent of the public body or (ii) any unsolicited commercial electronic communication sent to a public body and not responded to by an official, employee, or agent of the

public body." *Bonus:* the Local Records Act was also revised to exclude "junk mail" as a public record subject to retention and destruction pursuant to a destruction certificate. 50 ILCS 205/3.

5 ILCS 140/3(c) now requires the content of FOIA requests sent by email to be in the actual body of the email, and a public body is not required to open any attachments or click any links within an email sent by a requestor. A public body has 5 business days after receiving such a request to notify the requestor that the request must appear within the body of the email.

5 ILCS 140/4 removes the requirement that a "FOIA Statement" is required to be physically posted so long as it is posted electronically on a website (not social media) that is maintained by the public body. If the public body does not maintain a website, it must still be physically posted.

5 ILCS 140/9.5(f) expanded immunity for producing records in accordance with an Attorney General opinion from just

"public bodies" to "any officer or employee of a public body."

OPEN MEETINGS ACT

NEW LEGISLATION. *Courtesy of P.A. 104-438.*

5 ILCS 120/2.07 now prohibits public bodies (or their committees) from holding any regular or special meetings on the same day as a general primary election, general election, consolidated primary election, or consolidated election. Be sure to check your annual meeting schedules. If a regular meeting falls on an election day, you may want to consider revising it.

5 ILCS 120/7(a) was revised to now allow members who are physically absent due to their "performance of active military duty as a service member" to attend meetings remotely. Be sure to revise your district's remote attendance policy to include this as an allowable reason to attend a meeting remotely. ■



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#1 Fundamentals of Budgets and Appropriations A look at the mandatory budget and appropriation process and the steps required from adopting a Tentative Budget Ordinance to publishing and filing the Final Budget and Appropriation Ordinance.

#2 Financial Reporting - It's their money—not yours—and you have to tell them how you spent it! All fire protection districts are required to prepare various financial reports each year. This session sorts out the various reports, when they are required, what they must contain, when they are due, and where they must be filed or published.

#3 Mind Your Levy - This program focuses on the preparation of the levy including limitations in setting the amount of the levy; estimation of equalized assessed value (tax base); the application of the Truth in Taxation Law and the Property Tax Extension Limitation Law; referendum and election matters related to tax rates and levies and more.

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