

# HONEST & OPEN GOVERNMENT UPDATE

## Update



By David Livingstone  
Attorney at Law

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 three binding opinions from the Public Access Counselor (PAC). Should you endeavor to read any of the binding PAC opinions, the new Public Access Counselor website address is: <https://foiapac.ilag.gov/>. According to the website, FOIA and OMA training is now available after registering on the website. Any questions about registering, the training, or the training certificate of completion should be directed to the Illinois Attorney General Public Access Counselor's office. Now that the training is available, those trustees who have not yet completed it should add the task to their list of things to promptly do. Be sure to print a copy of the certificate of completion and file it with your District's secretary.

### OPEN MEETINGS ACT

In **22-010**, a citizen challenged a school board's closed sessions. According to the Board's agenda, it would go into closed session three separate times in accordance with Section 2(c)(1) of the Open Meetings Act. For those of you who have thus far memorized Section 2(c) of the Act, this section allows closed session discussion of certain matters involving specific personnel. The PAC concluded that the Board's first and third closed sessions were proper. However,

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the second closed session did not involve specific personnel and it did not involve "anticipated litigation" or "criminal investigations" as asserted by the Board. Rather, during the second closed session, the Board discussed issued involving bids for a student transportation contract and it was beyond the scope of any OMA exception to open sessions. The PAC directed the Board to release the minutes and recording from that second closed session.

In **22-012**, a school board went into closed session to discuss the purchase or leasing of real estate in accordance with Section 2(c)(5) of the OMA. A citizen alleged the Board discussed this topic in closed session, outside of the Section's scope, because the Board announced it was considering the construction of a new school building, but there had been no agenda items or other public discussion about the issue. In response to the request for review, the Board denied the allegation that it violated OMA and sent 16 closed session recordings for the PAC's review. The PAC first addressed the Board argument that the citizen's complaint was untimely under Section 3.5 which says, generally, that requests for review must be brought within 60 days of the occurrence. The PAC pointed out that

the Section also allows complaints to be brought within 60 days after the discovery of an alleged violation and, here, the PAC found that the complaint was timely. With respect to whether Section 2(c)(5) of the Act was violated, the PAC said that although case law allows some degree of a Board's discussion of "peripheral" matters pertaining to a closed session issue, here, the Board tended to discuss building and funding a new school, legislative consideration, and other topics concerning the project that were beyond the narrow topic of purchasing or leasing property, and the Section did not permit those discussions simply because the school district would need to at some point acquire property. The PAC directed the Board release certain portions of the each of the closed session discussions.

### FREEDOM OF INFORMATION ACT

In **22-011**, a requestor sought the "names and applications of the candidates" for a vacancy on a Village Board of Trustees. The Village denied the request citing (a) the fact that the Village President had not provided the documents to other members of the Village Board which

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would not make them public records, (b) the disclosure of the documents would constitute a clearly unwarranted invasion of personal privacy if disclosed, and (c) the documents were records in which opinions are expressed or policies or actions are formulated. The Village *did* eventually provide the applications and resume paperwork of the candidate that was selected and appointed to the Board, but it did not supply the records pertaining to the candidates not selected. The PAC said it did not matter if the president did not supply the documents to the other Trustees. It is the fact that the documents pertain to Village business and came into possession of the Village by the President which renders them public records. The

PAC said that the disclosure of the records would not constitute an unwarranted invasion of personal privacy because, in short, the records did not contain any information that would be embarrassing or unflattering to the candidates, and there is a strong public interest in the disclosure of applications pertaining to individuals who may be appointed to fill an elected vacancy.

In *Warren v. City of Urbana*, 2022 IL App (4th) 210564-U, an inmate requested documents from a City that pertained to his real estate. The City provided documents responsive to his request, but it redacted his home address, phone number, date of birth, and his mother's name, home address and phone number. The inmate filed a request for review with the PAC alleging the City should not have redacted that information. The PAC said

that no further inquiry was warranted – it declined to review his request. The inmate sued in circuit court. The circuit court dismissed the inmate's suit, concluding the redactions were proper. The court found that the inmate's argument that the fact his own information was redacted was not listed in within the statute or any other relevant authority as prohibited. The inmate appealed. The appellate court upheld the circuit court. ■



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