

# HONEST & OPEN GOVERNMENT UPDATE



## 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 three binding opinions from the Public Access Counselor (PAC): one concerning OMA and three concerning FOIA. Should you endeavor to read any of the binding PAC opinions, the new Public Access Counselor website address is: <https://foiapac.ilag.gov/>.

### OPEN MEETINGS ACT

#### MEETINGS MUST BE CONVENIENT AND OPEN TO THE PUBLIC

In **24-010**, three citizens independently filed requests for review challenging a meeting held by a Village in June 2024. Among other things, they alleged the meeting was not convenient and open to the public because (a) the Village barricaded streets leading to the Village Hall, (b) the Village set up entry blockades and made attendees stand in line for an hour, (c) there was a 40-seat limit in the meeting room despite the Village having prior knowledge of anticipated large attendance, (d) there was a "military like contingent of law enforcement" in and out of the building creating an "intimidating atmosphere," (e) the Village "barricaded the parking lot" forcing "seniors and disabled to walk or hobble up to 2 blocks" in the summer heat, and (f) no alternative accommodations for attendees were provided. While this request for review was pending, another meeting was

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held in July 2024, and similar restraints were alleged by subsequent requests for review concerning that second meeting. The Village contended that the measures were taken in response to threatening letters sent to and received by the Village President, and that the seating limitations were required by the Fire Chief due to occupancy concerns. The PAC was not convinced by the threatening letter which, in its review, was more critical and insulting of the Village of President, but it "did not implicitly or explicitly" threaten violence. Further, the Fire Chief's letter bolstered the necessity of an alternative meeting space, especially given the advance notice of large attendance. In short, take reasonable steps to ensure that meeting spaces and locations are convenient for your attendees and open for their attendance.

### FREEDOM OF INFORMATION ACT

#### INTERFERENCE WITH A LAW ENFORCEMENT PROCEEDING EXEMPTION

In **24-011**, for background, apparently, the citizen-requestor was walking by an active police investigation scene taking pictures of the police, he was stopped by the police, and questioned at that time, but ultimately released. The citizen requested

the police report from his encounter and all records related to it, except body camera footage. The police department denied the request and withheld all records entirely pursuant to Section 7(1)(d)(i) [that disclosure would interfere with a pending or reasonably contemplated law enforcement proceeding]. During the request for review process, the police department intimated that the citizen-requestor matched the description of the offender and was in the vicinity of the occurrence. The department asserted that although he was not involved in the incident and did not witness it, because the investigation in the underlying occurrence was ongoing, "it would be in the best interest" for the investigation if the report was not release prior to completion. The PAC was not convinced that the report documenting the encounter with the citizen-requestor would interfere with a pending law enforcement proceeding, especially given that the report of the encounter indicated that the department "administratively closed its investigation into this matter." The PAC said the police department did not meet its burden to show that the entire report of the pedestrian stop should be withheld, but it did not close the door on redacting other potentially exempt information.

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## Honest & Open Government

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### PERSONAL PHONE NUMBERS ARE EXEMPT FROM DISCLOSURE

In **24-012**, a law firm requested 911 call recordings and any other documents related to a specific traffic accident from a dispatch center. The dispatch center provided copies of the recordings, but it redacted the callers' names and phone numbers, but it did not cite a specific exemption. After the request for review was filed and sent to the public body, the dispatch center voluntarily provided the requestor with a new copy of the recording with the witness names unredacted, but phone numbers still redacted. The requestor remained dissatisfied for several reasons.

First, the PAC was unconvinced by the contention that law firms, as officers of the court, are entitled to unredacted access to public records more than the general public.

Second, Section 7(1)(d)(iv) [allows withholding names of confidential sources or persons who file compliance or provide information to law enforcement] does not apply solely to confidential sources and is more expansive to include people who simply provide information to law enforcement.

Third, just because a caller voluntarily provides their information to law enforcement or dispatch personnel, this does not overcome the confidentiality provisions within the Act protecting that information.

Fourth, and finally, the term "identity" is typically just a person's name, and other information (like a phone number) is not required to constitute "identity."

Even though the FOIA does not exempt the "identities" of witnesses to traffic crashes (Section 7(1)(d)(iv)), a public body is still authorized to redact other private information that is expressly exempt under the Act, like personal phone numbers (See Section 2(c-5)). ■

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