

FIRE COUNSEL NOTES



“Transparency” & “Accountability”: Buzz Words Or Watchwords?

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In both social and traditional media reports and commentary today, the words “Transparency” and “Accountability” are often used prominently in the critique of government, including units of local government like fire protection districts. Typically, these terms appear when some aspect of a government’s decision or decision-making process is being criticized in the press or by a member of the public or “watchdog group” on social media. While words like “Transparency” and “Accountability” are often considered by local government officials (like fire protection trustees) to be trite cliches used by the media and those looking to cause problems for units of local government, these two words, like most such terms, carry a grain of truth worth consideration by fire protection trustees and administrators. This article will explore some points in relation to such a consideration.

At the outset, as to transparency, consider that, by and large, state law through the Open Meetings Act (5 ILCS 120/1 et seq.) and the Freedom of Information Act (5 ILCS 140/1 et seq.) mandates that all units of local government in Illinois operate openly and with full access by any member of the public with only very limited exceptions.

The Open Meetings Act (OMA) limits severely how much local government officials are allowed to confer outside an open public meeting about the business of the local government. For units such as fire protection districts, this is particularly

constraining because most fire boards are comprised of three trustees which, under OMA, means that any time two trustees discuss district business the conversation is a meeting and it is, therefore, subject to all of the OMA rules regarding notice and public observation and comment. The failure to adhere to the OMA limitations can be significant in that any action taken by a district as a result of such noncompliant meetings can be nullified if challenged along with the imposition of penalties on the district as well as possible criminal sanctions against the trustees.

Similarly, the Freedom of Information Act and its companion law, the Local Records Act (50 ILCS 205/1 et seq.), makes nearly all records of a unit of local government in whatever form they are created available and subject to mandatory disclosure upon the request of any member of the public. It does not matter that the record may be an email or text message on the personal computer or smartphone of a trustee. It also does not matter that the record may be hard for the unit of government to locate or incredibly old. With only limited exceptions, nearly all records of discussions or actions by the unit will be accessible to the public. Again, if records are not produced, the district and the trustees can be compelled to produce such records if they exist.

Both the courts and the Illinois Attorney General’s Office, through the Public Access Counselor (PAC), have been vigorous in enforcing the provisions of OMA and FOIA against units of local

government. In each issue of the Fire Call, attorney David Livingstone presents an article updating the developments of both of these laws under the title “Honest and Open Government,” which is similar to the catch-phrase used by the Attorney General’s Office to describe the application and interpretation of these laws. In the majority of the opinions issued by the PAC, the decision is in favor of the complaining party and against the unit of government. While districts and trustees may complain about the burden of compliance with OMA and FOIA, it is nevertheless the law. While a full treatment of the rules under FOIA is beyond the scope of this article, the foregoing highlights the breadth of this law and its impact on districts and other units of local government.

Consequently, it is important for all districts to ensure compliance with both OMA and FOIA including being certain that trustees all have required OMA training upon taking office and that the district has an appointed OMA officer and FOIA officer each of whom take the required annual training mandated for those offices. All meetings must have a proper agenda which is posted timely at least 48 hours before a regular or special meeting and special meetings must be noticed properly by posting the time, date, location and topic or topics of the meeting at least 48 hours before the meeting. District boards need to be sure that proper minutes are maintained and approved

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by the board of trustees within the time limits prescribed by OMA. Similarly, districts must make timely responses (5 business days from the date a request is received) to FOIA requests. Districts with websites which are maintained by a full time employee of the district are also mandated to post meeting agendas and minutes along with other items throughout the year. A proposed bill currently pending in the state legislature (HB 3410), if passed into law would impose even further internet posting requirements on districts with a budget of \$1 million or more.

When it comes to accountability, districts are again subject to multiple statutory requirements which force them to report to the public about their operations. Most notable are the requirements regarding district finances. The Illinois Municipal Budget Law (50 ILCS 330/1 et seq.) and Section 7 of the Fire Protection District Act (70 ILCS 705/7) require that the district adopt an annual budget to appropriate funds to be spent by the District in a manner which informs the public how the District Board of Trustees will spend the taxpayers' money each year. Under current law, all budget and appropriation ordinances must be published in the newspaper. Similarly, there are multiple reporting requirements imposed on districts to inform the public about how the district, in fact, spent its money. These include the Governmental Account Audit Act (50 ILCS 310/0.01 et seq.) and the Public Funds Statement Publication Act (30 ILCS 150/0.01 et seq.) which require the district, depending on the amount of its revenues in any given year, to have an audit made by a certified public accountant of its financial records, and regardless of the amount of its revenues during the year, to prepare and file an Annual Financial Report with the Illinois Comptroller which becomes part of a state database. Additionally, districts are required to prepare (and in most cases publish in the newspaper) a separate Statement of Receipts and Disbursements which informs the public regarding moneys received and expended during the district's fiscal year. Beyond publication and filing at the state level, all of the foregoing reports must also be filed with the County Clerk or Clerks in the county or counties in which the district is located. The failure to do so can result in real estate tax revenues being withheld from the district.

Other laws, such as the Truth in Taxation Law (35 ILCS 200/18-55 et seq.) and the Public Funds Deposit Act (30 ILCS 225/0.01 et seq.) and the Public Funds Investment Act (30 ILCS 235/0.01) mandate how the district levies taxes to fund the district and how funds received are to be handled and invested. In the area of procurement, Section 11k of the Fire Protection District Act (70 ILCS 705/11k) and Section 4 of the same law (70 ILCS 705/4) require that most significant procurement expenditures be made using sealed competitive bidding and that trustees and members of the fire department not be party to or have a direct or indirect interest in financial transactions with the district. These procurement rules and prohibitions are designed to prevent favoritism in purchasing, self-dealing, and conflicts of interest in spending public money.

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All of the foregoing laws have as primary purposes the open and accountable disclosure to the public of what units of local government are doing and how they do it. But beyond these statutory mandates, several of which carry criminal and financial penalties for noncompliance, are there other reasons for local government officials like fire protection district trustees and administrators to pay attention to the meaning behind these rules? The answer is a resounding “yes.” In addition to being the right thing to do, these laws serve to protect local officials from bogus or unwarranted claims of those who may have an axe to grind with an official or a unit of government. Districts which carefully adhere to the OMA, FOIA, financial reporting, and spending rules protect the district and trustees from allegations of impropriety. By

operating in an open and transparent manner and being accountable to the public, it becomes much easier to refute charges that something inappropriate or imprudent has been done by the district or a board of trustees. Attempting to hide information from the public serves only to foster the impression that something improper is going on. Refusing to supply records when properly requested under FOIA because a district board feels that the requester is endeavoring to harass or embarrass the district or the board simply fosters the opinion that there is, in fact, something to hide. Likewise, conducting the “real” business of the board at the local coffee shop, outside a proper meeting, or behind closed doors away from the public leads to the conclusion, rightly or wrongly, that something inappropriate is occurring. In today’s social media and watchdog world, the smallest alleged or perceived misstep by a board of trustees or some of its members can lead to a devastating public relations nightmare for

the district and the board, and it can take a great deal of effort, time, and resources to mitigate the damage which results. The simple reality is that it is much easier to adhere to the statutory rules and conduct business properly by being “transparent” and “accountable.” So, take these “buzz words” to heart as “watchwords” to live by in operating your fire protection district. ■

Open Meetings Act Training

Illinois law requires newly elected or appointed local government officials to complete OMA training within the first 90 Days of taking office.

IAFPD has developed a program specifically for fire protection district trustees that fulfills the requirement and covers the basic rules of the Act.

The training is available through the online learning library but is also being presented at the IAFPD Conference on Saturday, June 26, 2021 (see page 33).

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