

HONEST & OPEN GOVERNMENT UPDATE



OMA and FOIA Developments

By David Livingstone
Attorney at Law

Editor's Note: This column is intended to provide readers with new developments regarding FOIA and OMA and the state of Illinois local governments.

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 has been one Public Access Counselor (PAC) opinion on the OMA, and there have been four PAC opinions interpreting the FOIA and one unpublished appellate court case.

OPEN MEETINGS ACT

In the first Open Meetings Act PAC Opinion of 2018 (**18-012**), a public body, despite a sloppily worded agenda item for closed session, held a closed session to discuss specific personnel. On the PAC's review of the verbatim recording of the closed session, it was revealed that the public body did briefly discuss a specific employee, but a considerable majority of the closed session "concerned budgetary matters and considerations applicable to categories of employees, rather than the merits or conduct of individual employees." There is no exemption allowing a public body to enter closed session to discuss budgetary matters or classes of employees. This means, no matter how sensitive the subject be, public bodies cannot enter closed session to discuss employee layoffs (even for a single employee) for budgetary or other reasons that are unrelated to the performance of the employee.

About the Author: *David Livingstone received his undergraduate degree in Criminal Justice, Political Science, and Public Administration from Lindenwood University in St. Charles, Missouri. He is a 2016 graduate of St. Louis University School of Law, concentrating in Civil Litigation. And he is now an associate attorney at Stobbs, Sinclair & Associates, in Alton, Illinois, where he serves and represents individuals in assorted legal matters, local small businesses and various local units of government, including fire protection districts.*

FREEDOM OF INFORMATION ACT

In **PAC Op. 18-008**, a public body denied a request as "unduly burdensome" by contending that the requested was a repeated request. Section 3(g) does allow public bodies to deny repeated requests, but only if the request is for the same records that are unchanged or identical to records that were previously provided or properly denied. In this case, the PAC already issued a Request for Review letter three years prior regarding the same public body, the same requester, and the same request. In that three-year old letter, the PAC concluded that the public body did not properly deny the request and it ordered the public body to disclose the records, which it ultimately did not disclose. In 18-008, the PAC concluded that since the public body did not properly deny the request in 2015, it could not claim the request is unduly burdensome in this instance. Additionally, the PAC reiterated the public body's burden to claim the Section 7(1)(g) exemption

for trade secrets: the public body must demonstrate that competitive harm will result if the information is disclosed.

In **PAC Op. 18-009**, a requester sought the parcel identification numbers (PINs) of parcels that were granted certain variances by a City. PINs are numbers attached and assigned to specific parcels of property, primarily for tax purposes within its county. The City redacted the PINs, claiming they were "private information" and "unique identifiers" under Section 7(1)(b). As one can easily guess, the PAC concluded that PINs must be disclosed. According to the PAC, "unique identifiers" are intended to be applicable only to people and not to property. Additionally, the PAC noted that PINs are public information anyway, so there is no personal privacy interest associated with them.

In **PAC Op. 18-010**, the PAC concluded that all settlement and severance agreements are subject to disclosure,

Continued on page 19

Honest & Open Government

Continued from page 18

unless there is an applicable exemption to redact certain information. Specifically in this case, the public body wanted to redact the nature of the allegations against the public body that were made by the former employee. The PAC concluded that information bearing on public duties of public employees are not “personal information” and may not be redacted as such, and that the public is entitled to see the terms that brought on the public body’s paying a settlement to the former employee for his resignation.

In **Pac Op. 18-011**, the public body failed to respond to a request for records with a disclosure, and valid extension, or a denial or redaction pursuant to a valid exemption within five business days of the request. Additionally, it did not respond to the PAC when it requested communication and information. Always properly respond to a request within five business days, and always cooperate with the PAC if it ever intervenes.

In **Blanco v. Joliet Police Dept.**, 2018 IL App (3d) 170667-U (this is an unpublished case, meaning it cannot be cited as precedent except in limited circumstances, but for the purposes of this article it is used for informational purposes), a FOIA requester sought records relating to his arrest. The police department denied the request, citing only the “Juvenile Court Act” and two different PAC opinions – it did not reference specific FOIA exemptions. The requester sued in circuit court complaining that the police department failed to appropriately cite specific FOIA exemptions in its denial letter, and sought the release of the records and a \$5,000 penalty. The circuit court agreed with the police department, after the department expounded on the proper denial exemptions in its answer to the complaint. The requester appealed, but the appellate court could not decide whether the circuit court made an error in its ruling because the requester did not submit a full record of the circuit court proceedings to the appellate court for its review. The bottom line is: always cite specific FOIA exemption sections and the reasons why a request is denied or a disclosure is redacted in the response letter to the requester, otherwise the response could be subject to challenge. ■

VICTIM ASSISTANCE



SECURING BUILDINGS MINIMIZING DAMAGE PROTECTING PEOPLE

Quick action and commitment to the well-being of fire victims has made **1-800-BOARDUP** a leader in providing emergency board up services — trusted by firefighters and insurance companies nationwide since 1998.



SERVICES PROVIDED INCLUDE:

- Board up broken and damaged windows and doors
- Patch/tarp openings in roofs
- Stabilize structures to prevent collapse and further damage
- Provide winterization or emergency power/lights
- Protect contents from the elements
- Save belongings for restoration
- Prevent neighborhood children or thieves from entering the property
- Provide on scene relief for victims, families and pets
- Short term and long term resources to victims coping with the tragedy

TRUST **1-800-BOARDUP** TO PROVIDE EMERGENCY ASSISTANCE
IN YOUR NEIGHBORHOOD, 24 HOURS A DAY, 7 DAYS A WEEK.

Servicing Suburban Chicagoland & Quad Cities.

1-800-BOARDUP

2 6 2 - 7 3 8 7

Securing Buildings • Protecting People • Minimizing Damage • Victim Assistance