

HONEST & OPEN GOVERNMENT UPDATE



Open Meetings and Freedom of Information Acts

By David Livingstone
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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 has been a lot of activity from the Public Access Counselor (PAC) and the courts. There has been 1 binding opinion on the OMA, and 1 PAC opinion interpreting the FOIA. The Court cases interpreting these Acts in detail, and relevant to fire protection districts, have been very few and far between.

For the sake of being thorough, it is worthwhile to memorialize the state government's response to the coronavirus related to the OMA. By the time this issue of the Fire Call is printed and delivered to you readers, there may have been other significant or minor changes to the OMA. Keep in touch with your legal counsel on this, as it likely will, and may have already, change. On March 16, 2020, Governor Pritzker issued Executive Order 2020-07 (COVID-19 Executive Order No. 5) which, among other things, relaxed two aspects of the OMA. The Order allowed public bodies to meet electronically, without having to follow the requirements of 5 ILCS 120/7, and it eliminated the requirement that members of a public body be "physically present" at a meeting. The next day, the Illinois Attorney General weighed in and offered its guidance which made clear that agenda and public comment requirements must still be followed. It further encouraged public bodies to ensure that the public can still access the meeting, whether by video conferencing or telephone conferencing. Please keep reading to see how the Attorney General

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has applied these rules. On April 1, 2020, the Governor extended the State's Disaster Proclamation until April 30, 2020, so these OMA relaxations will continue, at least, until that date. Time will tell if it will still be in place at the time this article is published.

OPEN MEETINGS ACT

In 20-001, a Village Board included the approval of minutes from a special and regular meeting held on September 10, 2019 and committee meeting minutes from September 17, 2019. Citizens filed a request for review alleging the approval of these minutes was outside of the time periods specified in the OMA. Section 2.06(b) of the OMA provides that a public body must approve the minutes of an open meeting within 30 days after the meeting or at its second subsequent regular meeting, whichever is later. In response to the PAC, the Village argued it was impossible for it comply with this OMA requirement because it was suffering from staffing shortages and because its frequency of meetings had drastically increased – it had four regular meetings, three special meetings, and six committee of the whole meetings between May 21, 2019 and November 19, 2019. The PAC said there are no exceptions in the Act that

allow for the delay of approval of minutes for these reasons, and, as such, it found that the public body violated the Act by failing to timely approve its meetings' minutes.

As of the date this article is written, the PAC has issued two *non-binding opinions* regarding two public bodies' meeting procedures during the Illinois Governor's COVID-19 Disaster Proclamation and suspension of Section 2.01 and 7 of the Illinois Open Meetings Act. By the time this article is published and in the readers' hands these opinions may no longer be operative, given the rapidly changing rules and guidance, but these non-binding opinions are covered now because they are timely. In one of the non-binding opinions, a single public body Board member met at the meeting location, presumably to afford the public access to the meeting, while all of the other Board members were present on a telephone conference call. The PAC said this was an appropriate method to hold a meeting in response to the Governor's Executive Order. In the other non-binding opinion, a public body posted on its meeting agenda

Continued on page 25

Honest & Open Government

Continued from page 24

that it would hold a “virtual meeting.” The agenda included a link for the public to attend the virtual meeting, and the agenda included an email address at which members of the public could submit comments at least 2 hours before the meeting. The PAC said that, based on the information it had, the public body did not violate the Open Meetings Act by holding a virtual meeting in this manner or by affording the public an opportunity to submit comments by email. This is a little extra assurance that these methods are (or were) appropriate and in accordance with the Governor’s Executive Order during the COVID-19 pandemic.

FREEDOM OF INFORMATION ACT

In **20-002**, a requester sought copies of certain agreements between a County and fuel company and ordinances and resolutions related to the same. The County failed to produce the records, seek an extension, or deny the request within the five business day timeframe. The requester submitted a request for review with the PAC. The County maintained that it was trying to locate the documents requested and it was apologetic for the delay. After a couple months, the County still had not produced the records to either the requester or the PAC. The PAC, of course, determined that the County violated the Act by failing to produce the records, seek a proper extension, or deny the request within the five business day timeframe. ■

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