

HONEST & OPEN GOVERNMENT UPDATE



FOIA & OMA Updates

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 have been at least seven binding opinions from the Public Access Counselor (PAC): one concerning OMA and six 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

IMPROPER CLOSED SESSION DISCUSSION:

In **23-005**, a school district went into closed session under Section 2(c)(6) of OMA to discuss setting the price for sale of real estate it owned. After reviewing the closed session recording, the PAC determined that the Board's discussion veered into subject matter beyond the narrow scope of setting the price for real estate. The Board discussed further marketing efforts if the minimum bid price (which had already been set) was not met. PAC directed the District to release its closed session recording and minutes. In short, when going into closed session, stay focused on the reason the board went into closed session and avoid straying off into other topics.

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. He is now principal in the law firm Stobbs, Sinclair & Livingstone, 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

DUTY TO RESPOND TO FOIA REQUESTS:

23-006 and **23-011** relate to the most often misstep of public bodies concerning FOIA requests: they must respond to FOIA requests within five (5) business days of the request with a disclosure, whole or partial denial, or a proper extension.

UNDULY BURDENSOME:

In **23-007**, a requestor wanted emails for a defined period of time and related to specific keywords, but not limited by specific employee, from a Building and Zoning Department. The department demanded the requestor specify names of employees who may have responsive emails, and it claimed responding to the request would be unduly burdensome because it would require the department to review all department emails to determine whether there were any responsive records. The PAC said that the City did not adequately explain why or how the request was an undue burden. The PAC, further, said that public bodies are not required to search every email account of every employee,

but, instead, it is required to search the accounts of employees "reasonably likely" to contain responsive records.

COMMERCIAL PURPOSE:

In **23-008**, the requestor, a non-profit organization, requested records regarding flood related home buyout programs. The requestor stated the information was in the public interest and was not for commercial benefit and requested a fee waiver. The County considered the request commercial anyway and required payment of \$1,000 for copies and labor hours. The PAC said the County did not explain why it believe the requestor's request was for a commercial purpose and determined the fee was not justified.

POLICE REPORTS CONCERNING PUBLIC EMPLOYEE:

In **23-009**, a requestor requested records pertaining to a public school teacher charged with crimes against a minor. The police department denied the request claiming disclosure of the information in the records would constitute an unwarranted invasion of personal privacy of the minor victim. The PAC disagreed and said *identifying information* of the minor victim could be redacted, but the content of the reports should be released. Additionally, the PAC made suggestions to the public body as to its recommended redactions. This is an unusual approach taken by the PAC as it does not often provide those types of recommendations.

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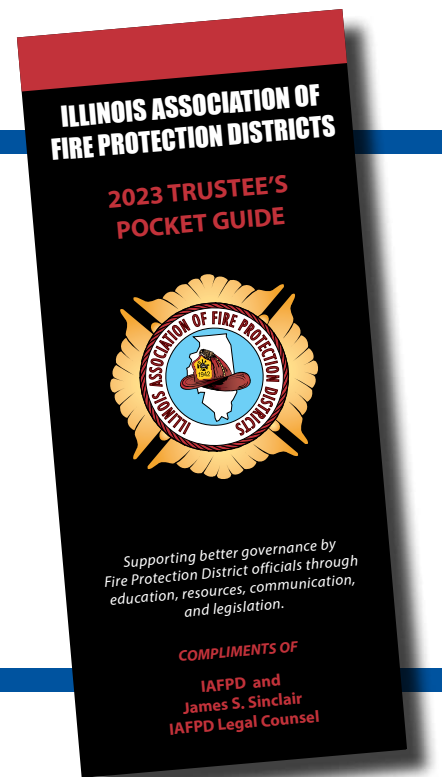
POLICE REPORTS CONCERNING ADULT AND JUVENILE OFFENDER:

In **23-010**, a requestor wanted reports pertaining to a certain incident at a high school. The report contained information pertaining to a minor and an adult arrestee. The Village withheld the reports in their entirety because the Juvenile Court Act prohibits disclosure of any juvenile law enforcement records even if they contain information about an adult arrestee. The PAC agreed and found that the JCA clearly provides that a report involving a minor arrestee must be withheld entirely, regardless of any information otherwise disclosable, and that the JCA does not take into account the public's interest in the report. ■

A revised Trustees Pocket Guide is available to our members upon request

This quick reference guide serves as a great resource to answer your most frequently asked questions about OMA, FOIA, Reporting and more.

To request a copy, please email IAFPD at info@iafpd.org.



Do You Need CE Hours? We Can Help!

The IAFPD Back-to-Basics 3-Part Webinar Series serves as an ideal refresher on the financial responsibilities and procedures of the Fire Protection District. Each program is one hour in continuing education credit.

#1 Fundamentals of Budgets and Appropriations A look at the mandatory budget and appropriation process and the steps required from adopting a Tentative Budget Ordinance to publishing and filing the Final Budget and Appropriation Ordinance.

#2 Financial Reporting - It's their money—not yours—and you have to tell them how you spent it! All fire protection districts are required to prepare various financial reports each year. This session sorts out the various reports, when they are required, what they must contain, when they are due, and where they must be filed or published.

#3 Mind Your Levy - This program focuses on the preparation of the levy including limitations in setting the amount of the levy; estimation of equalized assessed value (tax base); the application of the Truth in Taxation Law and the Property Tax Extension Limitation Law; referendum and election matters related to tax rates and levies and more.

All Programs are Available to View On-Demand at your Convenience

Thank you Northern Illinois Fire Sprinkler Advisory Board for their sponsorship of our Online Learning Programs



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