

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 four 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

FINAL ACTION ON DEFICIENT AGENDA ITEM AND REMOTE ATTENDANCE

In **24-007**, a citizen complained that (1) a Village Trustee's attendance was improper and (2) the Village took action to purchase something not listed on the agenda. As to the first issue, the citizen alleged the Trustee took a job away from the Village that required travel and that would keep him from physically attending most meetings. The PAC said physical absence due to "employment purposes" is a valid reason to allow remote attendance, and there is no limit on the nature or frequency or intentionality of physical absence due to employment purposes. The PAC acknowledged it could not read limitations into the law that were not specifically stated in the statute. As to the second issue, the Village took action to purchase a vehicle under the agenda item "Report from the Superintendent of Public Works." The Village did not dispute that this agenda item did not specifically

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list a purchase of a vehicle, and the Village voluntarily held another meeting at which it included the action item on the agenda and re-vote and approved the purchase. The PAC said this sufficiently remedied the violation. Fire protection district trustees and chiefs are encouraged to take particular note of this opinion.

FREEDOM OF INFORMATION ACT

DEATH REPORTS OF A MISSING PERSON

In **24-006**, a citizen requested all police reports regarding a specific missing person who died. The Sheriff's Office denied the request claiming the information was private and disclosure would be an unwarranted invasion of personal privacy. The requestor replied that because the subject was deceased, there was no privacy concern, and that it was a matter of public interest. The PAC said the resolution of a personal privacy exemption requires the balancing of the public's interest in disclosure against the individual's (or their family, in the case of a deceased person) interest in privacy. Specifically, there are four factors: (1) the requestor's interest in disclosure, (2) the public interest in disclosure, (3) the degree of personal privacy invasion, and (4) the availability of alternative means of

obtaining the requested information. The PAC said there was significant requestor and public interest in this matter and a family's privacy interests only extend to intrusive and anguish-inducing records (think postmortem photographs), but not simple reports of a missing person and discovery of remains, both of which bear on the public duties of public employees. Further, the PAC said the Sheriff's Office was unable to clearly articulate that disclosure *would* interfere with a pending or contemplated law enforcement proceeding or obstruct an investigation.

THE "SECURITY MEASURES" EXEMPTION

In **24-008**, a citizen, on behalf of a not for profit organization dedicated to eliminating housing discrimination, requested a spreadsheet of vacant units from the Chicago Housing Authority. The Authority redacted the unit numbers of each address claiming they were exempt under 7(1)(v) because disclosure would pose a threat to community safety and make the buildings subject to squatters and other illegal activity. The PAC said there are three requirements for 7(1)(v) to apply: (1) there must be an existing vulnerability assessment, security measure, or response

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policy/plan (2) that is created for the purpose of identifying, preventing, or responding to potential attacks on a community or its infrastructure, and (3) disclosure could reasonably be expected to expose the vulnerability or jeopardize the effectiveness of the measure/policy/plan or the safety of the personnel implementing them. In other words, a public body may not use a redaction of information as a security measure itself.

DUTY TO RESPOND TO FOIA REQUESTS

24-009 relates to the most common 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. ■

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