

# HONEST & OPEN GOVERNMENT UPDATE



## FOIA & OMA Updates

By David Livingstone  
Assistant Madison County State's Attorney serving as Chief of the Civil Division

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

#### PUBLISHING NOTICE OF REGULAR MEETING CHANGE:

In **24-013**, a citizen claimed a village board failed to properly publish in a newspaper a change in its regular meeting dates. The board moved its all of regular meetings from the third Monday of the month to the third Wednesday of the month. The village contended that although it did not take the step of contacting a newspaper and publishing the change on its own, a reporter covered the meeting date change in an article about the meeting. The village also contended that it gave public notice by printing the notice of meeting date change on the reverse side of water utility bills. The PAC said this was insufficient. A public body must take the affirmative step of publishing a notice of meeting change in a newspaper – the opinion discussed the

**About the Author:** David Livingstone received his undergraduate degree in Criminal Justice, Political Science, and Public Administration from Lindenwood University. He is a 2016 graduate of St. Louis University School of Law, concentrating in Civil Litigation. Formerly a principal in the law firm Stobbs, Sinclair & Livingstone, Ltd., in Alton, Illinois, where he represented a number of individuals, entities, and various local units of government, including fire protection districts. He is now Chief of the Civil Division of the Madison County State's Attorney's Office.

Notice by Publication Act in some detail, which is worth an additional read. The takeaways here are (1) a public body *does not* need to, but it may, publish notice in a newspaper if a single meeting date, time, or location is changed; (2) a public body *must* publish a notice of meeting change in a newspaper if all regular meeting dates, times, or locations are changing; and (3) request and retain a copy of the publisher's certificate to subsequently prove that the publication was made in the event of a challenge.

### FREEDOM OF INFORMATION ACT

#### PUBLIC BODIES HAVE A DUTY TO CONDUCT A REASONABLE SEARCH FOR RECORDS AND TO DISCLOSE PUBLIC RECORDS:

In **24-014**, a citizen claimed that the public body failed to conduct a reasonable search for responsive records regarding police-involved shootings and in-custody deaths. The public body initially responded that there were no responsive records but later disclosed a letter about a specific case, and attempted

to claim compliance was an undue burden after receiving correspondence from the Public Access Counselor. The requestor challenged the public body's response and argued that the office was legally required to review such cases and was required to maintain responsive records. The PAC said that a public body must perform a reasonable search for records responsive to a FOIA request and that the public body bears the burden of demonstrating that the search for the records was reasonable. The takeaways here are (1) a public body must explain how it conducted its search for responsive records or explain why they could not electronically search a recordkeeping system; (2) it is improper for a public body to require a requestor specifically name the subjects of a report, because a requestor is only required to identify the records being requested through a description of their contents; and (3) a public body must give a requestor an opportunity to narrow their request to manageable if the public body believes that an initial request was unduly burdensome.

*Continued on page 27*

## Honest & Open Government

Continued from page 26

### PUBLIC BODIES MUST RESPOND TO FOIA REQUESTS WITHIN FIVE BUSINESS DAYS:

PAC Op. **24-015** is another opinion in the long line of opinions in which the PAC reiterates the most fundamental rule of the FOIA: public bodies must respond to a FOIA request within five business days after receipt with (1) a disclosure of records, (2) a whole or partial denial of records, or (3) a proper extension of time to respond.

### PUBLIC BODIES MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THAT A DOCUMENT IS EXEMPT FROM DISCLOSURE:

In **24-016**, a citizen submitted a FOIA request seeking a copy of a letter that was sent to the public body regarding an

investigation into the one of the public body's chief officers. The public body claimed responsive records were exempt under 7(1)(c) [unwarranted invasion of privacy], 7(1)(d)(iv) [disclosure would identify a confidential source], 7(1)(d)(vi) [disclosure would endanger certain lives], 7(1)(f) [deliberative process], 7(1)(m) [internal audit privilege], or 7(1)(n) [adjudication of employee grievances]. The PAC said there was no unwarranted invasion of personal privacy, because the record bore upon the duties of a public employee and the public's interest in disclosure outweighed any privacy interests, as, on the PAC's review, it did not contain any personal details. The PAC rejected the law enforcement related exemptions because the public body did not possess the record as part of its involvement in a law enforcement investigation or proceeding and because the public body did not successfully

demonstrate that disclosure would endanger any life. The PAC said the record did not contain any deliberative content of the public body – it was a letter sent by outside persons to it. The PAC was not convinced that because the record might be used or considered during an audit of the public body, that the internal audit privilege exemption should apply. Finally, the PAC said that the public body did not demonstrate that the subject of the letter was being adjudicated, and, further, that the record was create before any adjudication took place. In short, while it is helpful to sometimes think outside of the box when evaluating FOIA requests, the application of FOIA exemptions must fit within the narrowly defined walls of the box. ■



SERVICE BY **FIREFIIGHTERS**  
FOR **FIREFIIGHTERS**.

*Like those we serve, on call 24/7.*

**309-962-6111**

**Greg Steffen**  
Firefighter II  
First Responder

**Myron Munyon**  
Firefighter III  
Retired Chief

**Dave Fulton**  
Basic Ops  
Firefighter

