

Freedom of Information Act for Public Bodies

Public Access Bureau
Illinois Attorney General's Office
April 10, 2025

April 10 2025

1

Public Access Counselor

Added to the Attorney General Act in 2010, the Office of the Public Access Counselor within the Attorney General's office is authorized to:

- Provide advice and education with respect to FOIA and OMA
- Resolve complaints concerning compliance with FOIA and OMA without litigation (Requests for Review)

15 ILCS 205(7)

April 10 2025



2

Public Access Counselor

- In 2024, the Public Access Counselor (PAC) received more than 4,200 complaints concerning FOIA and OMA
- Many are resolved informally or with just one letter to a public body
- 206 Binding Opinions Issued
- Thousands of determination letters issued
- Required online training plus presentations
- Hotline (877-299-3642)

April 10 2025

3

FOIA Overview: Intent, General Principles, and Limitations



April 10 2025

4

The Freedom of Information Act (5 ILCS 140/1 *et seq.*)

- The Illinois Freedom of Information Act (FOIA) originally became effective in 1984, but was significantly revised in 2010. Major changes included the adoption of an annual training requirement and creation of Public Access Counselor position
- Purpose of FOIA:
 - “The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a **fundamental obligation of government** to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act.” (Emphasis added.) 5 ILCS 140/1

April 10 2025

5

FOIA Training Requirements

Each public body shall designate one or more officials or employees to act as its FOIA officer or officers. All FOIA officers shall complete an electronic FOIA training curriculum **annually**.

5 ILCS 140/3.5(a), (b)

Neither FOIA nor the Open Meetings Act requires elected or appointed officials to complete the FOIA training, although they may do so if they wish.

April 10 2025

6

concerning FOIA requests and compliance with OMA (Requests for Review)

- Issue binding opinions on FOIA and OMA in response to Requests for Review submitted by members of the public.
- Provide electronic training to all FOIA Officers, all elected and appointed officials, and persons designated by public bodies to receive OMA training.
- Provide educational presentations and materials to public bodies and to respond to informal inquiries from public bodies and the public.

To Explore our Resources Select from Below:

»» Information for FOIA Officers

FOIA Officers can complete required training and can access resources to assist them in responding to FOIA requests and making public information easily accessible.

»» Information for Elected and Appointed Officials

Members of public bodies, for example councils, boards, committees and other entities, can complete required training and access resources about compliance with the Open Meetings Act.

»» Ensuring Illinois Residents Have Access to Open Government

Individuals can learn more about their rights to obtain copies of public records from public bodies and to attend public meetings, and how the Illinois Attorney General's Office can assist in resolving disputes with those laws.

April 10 2025

9

[Home](#)
[Open and Honest Government](#)
[PAC](#)
[PAC Training](#)

[Click here to learn how to register for FOIA/OMA Training Portal](#)

Register for FOIA/OMA Training

Account Information

Email * Email Address

Password * Password * Confirm Password

Security Information

Security Question * Question

Security Answer * Answer

Registration Information

Title and Position * Title * Select Positions

Name * First Name Initial * Last Name

Public Body * Public Body Name

Address * Street Address

City, State, Zip * City Illinois * Zip Code

Phone Numbers * Primary Phone Alternate Phone

[Register your account](#)

FOIA/OMA Training Portal

April 10 2025

10

FOIA Posting Requirements

Each public must display:

- Brief description of itself, including summary of purpose, block diagram of its organization, total operating budget, location of offices, number of employees, and identification of advisory or governing body members;
- Brief description of methods whereby the public may submit FOIA requests, a directory designating the FOIA officer, the address where FOIA requests should be directed, and fees allowable.

*A public body that maintains a website **shall** also post this information there.*

5 ILCS 140/4(a), (b)

April 10 2025

13

List of Records

“[E]ach public body shall maintain and make available for inspection and copying a reasonably current list of all types or categories of records under its control. The list shall be reasonably detailed in order to aid persons in obtaining access to public records pursuant to this Act.”

5 ILCS 140/5

April 10 2025

14

Presumption of Openness

“All records in the custody or possession of a public body are **presumed to be open** to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by **clear and convincing evidence** that it is exempt.”

5 ILCS 140/1.2

Generally, under FOIA, **"clear and convincing"** evidence requires the public body to "provide a **detailed** justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate adversary testing." (Emphasis in original.)

Illinois Educ. Ass'n v. Illinois State Bd. of Educ., 204 Ill. 2d 456, 464 (2003).

April 10 2025

15

Definition of “Public Records” under FOIA

The definition of “public records” includes:

“[A]ll * * * documentary materials **pertaining to the transaction of public business**, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, possessed or under the control of any public body.”

5 ILCS 140/2(c)

April 10 2025

16

What is a Public Record?

E-mails and Texts

- Electronic correspondence is subject to FOIA if it ***pertains to the transaction of public business.***
- Even if sent on personal devices (texts on cell phones paid for by employee or Mayor/President) or to/from personal email accounts.

Better Government Ass'n v. City of Chicago, 2020 IL App (1st) 190038

April 10 2025

17

What is a Public Record?

A public record must ***pertain to the transaction of public business.*** Therefore, any communications relating to strictly personal matters are not “public records” subject to disclosure under FOIA, regardless of how or where they are maintained.

Content controls, not the medium.

April 10 2025

18

Explanations, Questions, Requests for General Information

- FOIA is not intended to compel public bodies to interpret or advise requesters as to the meaning or significance of the public records.

5 ILCS 140/3.3

- A public body is not required to answer questions or generate new records in response to a FOIA request.

Kenyon v. Garrels, 184 Ill. App. 3d 28 (4th Dist. 1989)

April 10 2025

19

Requests Seeking Data Reports/Spreadsheets

- FOIA does not require a public body to create records in order to respond to a FOIA request; rather a public body is required to make records within its possession or control available for inspection and copying.

Workmann v. Illinois State Bd. of Educ., 229 Ill. App. 3d 459, 464 (2d Dist. 1992).

- FOIA does not compel the compilation of data a public body does not ordinarily keep.

Martinez v. Cook County State's Attorney's Office, 2018 IL App (1st) 163153 ¶ 25.

April 10 2025

20

Requests Seeking Data Reports/Spreadsheets

However, compiling and re-organizing information that a public body maintains in the ordinary course of business is **not** creating a new record.

Hites v. Waubensee Community College, 2016 IL App (2d) 150836 (2016); *Hamer v. Lentz*, 132 Ill. 2d 49, 57 (1989)

- Data in college's databases are "public records" under FOIA.
- A request for an entire database is simply a request for all the data.
- Request for report of data from database (zip codes of students in particular classes) does not require creation of new records.

April 10 2025

21

Searching for Records

- A public body is required to conduct a "reasonable search" for records responsive to a FOIA request.
- Must "search those places that are reasonably likely to contain responsive records."
- With respect to locating e-mails or texts on personal devices or e-mails in personal accounts, the public body may be able to fulfill its obligations under FOIA by asking personnel to search their e-mail accounts in good faith.

Better Gov't Assn. v. City of Chicago, 2020 IL App (1st) 190038 (2020)

April 10 2025

22

Record Held by Agent

A public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted *to perform a governmental function* on behalf of the public body, and that *directly relates to the governmental function* and is *not otherwise exempt* under this Act, shall be considered a public record of the public body, for purposes of this Act.

5 ILCS 140/7(2)

Rushton v. Department of Corrections, 2019 IL 124552

April 10 2025

23

Settlement and Severance Agreements

“All settlement and severance agreements entered into by or on behalf of a public body are public records subject to inspection and copying by the public, provided that information exempt from disclosure under Section 7 of this Act may be redacted.”

➔ Presence of confidentiality clause does not supersede FOIA

5 ILCS 140/2.20

April 10 2025

24

Receiving and Responding to FOIA Requests



April 10 2025

25

Form of FOIA Requests

- In writing, directed to the public body.
- Oral requests **may** be honored.
- Standard form/portal **may not** be required.
- Public body **may not require** requester to specify a purpose, *except* to determine whether the request is for a commercial purpose.
- Forward immediately to FOIA officer!

5 ILCS 140/3(c)

April 10 2025

26

Time for Responding

A public body must generally respond to a FOIA request within **5** business days **after** receipt of a written request.

- The time for response may be extended **by the public body** for an additional 5 business days for one of seven reasons specified in the Act.
- The parties may also agree *in writing* to an extended time for compliance.

5 ILCS 140/3(d),(e)

➔ Note: A request emailed/submitted on a Sunday is “received” on Monday; business day one **after** receipt is Tuesday.

April 10 2025

27

Failure to Respond

Failure to respond to a request within the time permitted is treated as a **denial** of the request.

- A public body that fails to respond to a request within the time permitted, but then provides copies of the requested public records **may not impose a fee** for those copies.
- A public body that fails to respond to a request received **may not treat the request as unduly burdensome** under section 3(g).

5 ILCS 140/3(d)

April 10 2025

28

FOIA Response

A FOIA request may be granted, denied, or granted in part and denied in part. *If denying* a request for public records the public body shall *notify the requester in writing of*:

1. The decision to deny the request,
2. The *reasons* for the denial, including a detailed factual basis for the application of any exemption claimed, and
3. The names and titles or positions of each person responsible for the denial.

April 10 2025

29

FOIA Response, *cont.*

In addition, each notice of denial by a public body shall:

1. Inform the requester of his or her right to seek review by the Public Access Counselor,
2. Provide the address and phone number of the Public Access Counselor:

500 S. Second Street, Springfield, IL 62701
877-299-3642
3. Inform the requester of his right to judicial review under section 11 of FOIA.

5 ILCS 140/9(a)

April 10 2025

30

Copying Fees

- No fees may be charged for the first 50 pages of black and white, letter or legal sized copies. 5 ILCS 140/6(b)
- The fee for black and white, letter or legal sized copies may not exceed **15 cents per page**. 5 ILCS 140/6(b)
- If a public body provides copies in color or in a size other than letter or legal, the public body may charge its actual cost for reproducing the records. 5 ILCS 140/6(b)
- When other copy fees are authorized by statute, a public body may charge those fees instead of the section 6(b) fee. (Ex: Vehicle Code authorizes a \$5 fee for traffic crash reports.)

April 10 2025

31

Requests/Fees for Electronic Copies

- A public body must produce **records that are maintained in an electronic format** in the electronic format specified by the requester, if feasible.
- If not feasible, must disclose in the electronic format in which the records are maintained or in paper, at the option of the requester. 5 ILCS 140/6(a)
- A public body may only charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium. 5 ILCS 140/6(a)
- Statutory fees applicable to copies of public records when furnished in a paper format **shall not** be applicable to those records when furnished in an electronic format, unless the General Assembly otherwise provides. 5 ILCS 140/6(a)

April 10 2025

32

Records Maintained Online

A public body is not required to copy a public record that is published on the public body's website.

- Public body must **notify** the requester that the public record is available online and **direct** the requester to the part of the website where the record can be accessed.
- Persons unable to reasonably access the record online may **re-submit the request**, public body must then respond as provided in section 3.

5 ILCS 140/8.5

April 10 2025

33

Unduly Burdensome Requests

Section 3(g) permits a public body to deny a request if the burden of compliance on public body outweighs public interest in the information.

- Before invoking this section, public bodies must extend to requester an opportunity to **confer with it to reduce the request to manageable proportions**.

5 ILCS 140/3(g)

April 10 2025

34

Unduly Burdensome Requests

- **Illinois Attorney General Public Access Opinion No. 21-001** (issued January 26, 2021) addresses the public body's duty to confer with a requester under section 3(g).
- **Illinois Attorney General Public Access Opinion No. 23-007** (issued May 26, 2023) addresses requests for emails seeking key words or about a specific topic, and whether a request is *per se* unduly burdensome if the requester ***does not identify the employees/officials whose may have responsive email***. Here the public body was found to have violated FOIA because the public body was in the best position to perform a search for responsive records.

April 10 2025

35

Unduly Burdensome Requests (additional examples)

- ... **manually** locating and compiling large numbers of records from **93 separate facilities** or systems over a **23-year time span**.
- ... compiling all records, including financial records, school policies, and correspondence for a **12-year period**.
- ... only **two employees** to gather, review, and redact **thousands** of records from several sources over a **six-year** span.

April 10 2025

36

Exemptions to Disclosure



April 10 2025

37

Exemptions

Exemptions allow public bodies to maintain certain types of sensitive public records or information confidentially. FOIA provides a number of exceptions to the requirement that public records are available for public inspection.

- FOIA Exemptions are listed in **section 7 and section 7.5** (5 ILCS 140/7 and 5 ILCS 140/7.5)

April 10 2025

38

FOIA – Section 7(1)

When a record contains information that is exempt under section 7 or 7.5, but also contains information that is not exempt, the public body **may elect** to redact exempt information; remaining information shall be made available for inspection and copying. **5 ILCS 140/7(1).**

The exemptions to disclosure under FOIA are to be *narrowly* construed.

Lieber v. Board of Trustees of Southern Illinois University, 176 Ill. 2d 401, 408 (1997).

April 10 2025

39

Section 7(1)(a) – Information Exempt Under Other Laws

Exempts from disclosure:

“Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.”

5 ILCS 140/7(1)(a)

Section 7(1)(a) applies only when a law or rule implementing a law **specifically** prohibits the public body from releasing the information in question. *Better Government Ass’n v. Blagojevich*, 386 Ill. App. 3d 808, 814 (4th Dist. 2008).

April 10 2025

40

Section 7(1)(b) – Private Information

- Allows withholding of **private information**, unless required by another provision of FOIA, a State or federal law or a court order.
- Private information is defined in section 2(c-5) of FOIA.

April 10 2025

41

Section 7(1)(b) – Private Information

Unique identifiers, including:

- Social Security Numbers
- Driver's License Numbers
- Employee Identification Numbers
- Biometric Identifiers (DNA, retina/iris scan, fingerprint, voiceprint, scan of hand)
- Personal Financial Information
- Passwords or Other Access Codes
- Medical Records, including electronic medical records
- Home Addresses
- Home or Personal Telephone Numbers
- Personal license plates (if attributable to someone)
- Personal Email Addresses

5 ILCS 140/2(c-5)

April 10 2025

42

Section 7(1)(c) – Personal Privacy

Exempts “[p]ersonal information contained within public records, the disclosure of which would constitute a *clearly unwarranted invasion of personal privacy*, unless the disclosure is consented to in writing by the individual subjects of the information.”

“Unwarranted invasion of personal privacy means the disclosure of information that is–

- Highly personal or objectionable to a reasonable person, and in which the
- Subject's right to privacy outweighs any legitimate public interest in obtaining the information.”

April 10 2025

43

Section 7(1)(c) – Personal Privacy, con't

“The disclosure of information that *bears on the public duties of public employees and officials* **shall not** be considered an invasion of personal privacy.”

April 10 2025

44

Section 7(1)(c) – Personal Privacy

Exempt personal information:

- Dates of birth
- Race
- Family information about employees (i.e., emergency contacts)
- Specific medical information (i.e. descriptions of specific injuries, illnesses, and treatments)
- Information related to unsuccessful candidates for employment

April 10 2025

45

Section 7(1)(c) – Personal Privacy

Not exempt from disclosure:

- Complaints filed against public employees (name of employee/facts of complaint)
 - **Even when complaint is determined to be unfounded**
- Salaries/expense reimbursements
- Used paid time off/balances (detailed descriptions of how the employee is using the time off, or why the employee is taking the time off, can usually be redacted)

April 10 2025

46

Requests for Employee Personnel Files

Exempt personal information: dates of birth, race, family information about employees (i.e., emergency contacts), specific medical information unrelated to on-the-job injuries (i.e. descriptions of specific injuries, illnesses, and treatments), information related to unsuccessful candidates for employment

Not exempt from disclosure: Salaries/expense reimbursements, complaints filed against public employees (name of employee/facts of complaint)

➤ **Even when complaint is determined to be unfounded**

April 10 2025

47

Section 7.5(q) – Personnel Record Review Act

820 ILCS 40

- **Section 11:** Permits withholding of routine performance evaluations.
- **Section 8:** Permits withholding of “disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than 4 years old.”
- **Section 7:** Requires written notice (first class mail) to employee when divulging a disciplinary report, letter of reprimand, or other disciplinary action to a third party, with some exceptions.

April 10 2025

48

Section 7(1)(n) – Adjudication of Discipline/Grievance

- Allows a public body to withhold “records relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed.”
- Investigative records (police reports, citations, etc.) that do not relate to an actual adjudication are not exempt.

Peoria Journal Star v. City of Peoria, 2016 IL App (3d) 140838, 52 N.E.3d 711 (2016) (police department improperly withheld report of investigation of grievance that was created before any adjudication).

April 10 2025

49

Section 7(1)(f) – Deliberative Process

- Allows withholding of “records in which opinions are expressed, or policies or actions are formulated”
- Except when record is publicly cited by head of public body
- The purpose of the deliberative process exemption is to protect the predecisional communications process and encourage frank and open discussion *among agency employees*.

April 10 2025

50

Section 7(1)(m) – Privileged Information

Exempts communications between a public body and an attorney or auditor representing the public body *that would not be subject to discovery in litigation*, or are prepared in anticipation of litigation.

However, not all attorney/client communications are privileged.

- Invoices for legal services not exempt.

III. Att’y Gen. Pub. Acc. Op. No. 14-002, issued April 15, 2014.

- Lists containing names and pay rate of outside counsel for State agencies not exempt.

III. Att’y Gen. Pub. Acc. Op. No. 15-010, issued Oct. 21, 2015.

April 10 2025

51

Section 7(1)(h) – Proposals/Bids

- Allows withholding of “proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, *until an award or final selection is made*. Information prepared by or for the body in preparing of a bid solicitation shall be exempt until an aware or final selection is made.”

➔ By its own terms, this applicability of this exemption expires once “an award or final selection is made.”

April 10 2025

52

Law Enforcement Records

- **Section 7(1)(c):** Privacy concerns
- **Section 7(1)(d)(i)-(d)(vii):** Interference with pending law enforcement proceedings, pending administrative enforcement proceedings; disclosure would obstruct ongoing investigation; disclosure would reveal identity of witnesses, except witnesses to traffic crashes
- **Section 7.5(bb):** Records confidential under the Juvenile Court Act
- **Section 7.5(cc):** Records prohibited from disclosure under the Law Enforcement Officer-Worn Body Camera Act
- **NEW: Section 7(1)(d-7):** “Information gathered or records created from the use of automatic license plate readers....”

April 10 2025

53

Lightning Round

- **Section 7(1)(l):** Closed session minutes
- **Section 7(1)(p):** Records related to collective negotiating matters except for the final contract or agreement
- **Section 7(1)(q):** Test questions, scoring keys, and other examination data used to determine the qualifications of an applicant for a license or employment
- **Section 7(1)(kk):** Public body’s credit card numbers, debit card numbers, bank account numbers, FEIN, security code numbers, passwords, and similar account information, the disclosure of which could result in identity theft of impression or defrauding of a governmental entity or a person

April 10 2025

54

Types of Requests and Requesters



April 10 2025

55

Commercial Purpose Requests

- “‘Commercial purpose’ means the use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services.” **5 ILCS 140/2(c-10)**
- Extended deadline – must respond within 21 working days after receipt. **5 ILCS 140/3.1(a)**
- Fees – for hours spent by personnel searching for an retrieving a record or examining the record for necessary redactions, in excess of 8 hours, up to \$10/hour. **5 ILCS 140/6(f)**

April 10 2025

56

Recurrent Requester

- Definition of Recurrent Requester: A person who, in the 12 months immediately preceding the request, has submitted to the same public body:
 - (i) a minimum of 50 requests for records,
 - (ii) a minimum of 15 requests for records within a 30-day period,
 - (iii) a minimum of 7 requests for records within a 7-day period.
- News media and non-profit, scientific, or academic organizations are generally excluded.

5 ILCS 140/2(g)

April 10 2025

57

Recurrent Requester

- Extended deadline:
 - must notify requester in **5 business days**
 - respond to request submitted by recurrent requester within **21 business** days after receipt (**section 3.2**)
- Definition of **Request**: “a written document . . . that is submitted to a public body. . . . One request may identify multiple records to be inspected or copied.”

April 10 2025

58

Review of FOIA Denials



April 10 2025

59

Request for Review

A Request for Review must be filed with the Public Access Counselor “not later than 60 days after the date of the final denial.”

The request must be in writing, signed by the requester and include:

- 1) a copy of the request for records, and
- 2) any responses from the public body

5 ILCS 140/9.5(a)

April 10 2025

60

Judicial Review

Any person denied access to inspect or copy any public record by a public body may file suit for injunctive or declaratory relief.

5 ILCS 140/11(a)

If the requester files suit under section 11 * * * the Public Access Counselor shall take no further action with respect to the request for review and shall so notify the public body.

5 ILCS 140/9.5(g)

April 10 2025

61

PAC Contact Information

PAC Hotline: **877-299-3642**

(Voicemail, 9 a.m. – 5 p.m. on business days)

public.access@ilag.gov

Public Access Bureau, Office of the Attorney General

500 South Second Street, Springfield, Illinois 62701

<https://www.illinoisattorneygeneral.gov/open-and-honest-government/pac/>

April 10 2025

62