



# Office of the Illinois Attorney General's Public Access Counselor Update

— Summer 2024 —

While these slower summer months often provide the best opportunities for R&R, vacations with friends and family, and perhaps even reduced office hours for certain public bodies, please remember that the compliance requirements of FOIA and OMA remain ongoing throughout the year. With that in mind, it is important to have a backup FOIA Officer or designee to respond to FOIA requests on behalf of your public body.

Similarly, for those of you serving as an OMA Designee, make certain that a colleague is available to facilitate the many tasks associated with public body meetings that may be held during your absence. All individuals assisting with these duties, even on a part-time basis, should be familiar with the requirements of FOIA and OMA and can complete the PAC online trainings, the registration and log-in for which can be found at the following link: <https://foiapac.ilag.gov/>. Implementing these steps ahead of time will give you peace of mind while you enjoy your hard-earned PTO.

Thank you for your service to your communities!

**Leah Bartelt**  
Public Access Counselor


## 2024 Online Training Portal



The 2024 FOIA/OMA training modules are accessible on the PAC online training portal - <https://foiapac.ilag.gov/>. For those requiring general assistance in accessing the portal, you

may speak with a PAC attorney M-F during business hours by leaving a voicemail message at 877-299-3642. For those needing a password reset or who encounter more complex technical difficulties, please contact PAC IT staff at [PACTechnicalSupport@ilag.gov](mailto:PACTechnicalSupport@ilag.gov).

## Take Note!



Some public bodies utilize a template letter when denying FOIA requests for records. Although this practice might help respond to large volumes of requests, public bodies must ensure that all denial letters are up to date and in compliance with the requirements of section 9(a) of FOIA. Public bodies must also make sure that denial letters include the correct address and phone number for the PAC (see PAC Contact Information below) and the names and titles or positions of each person responsible for the denial. Depending on the circumstances of the denial, this latter requirement is particularly helpful to PAC attorneys attempting to contact your FOIA Officer to discuss potential mediation of a Request for Review.

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## PAGES AND POSTS FOR FOIA & OMA INFORMATION

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Office of the Illinois Attorney General webpage - <https://www.illinoisattorneygeneral.gov/>

Public Access Bureau webpage and resources - <https://www.illinoisattorneygeneral.gov/open-and-honest-government/pac/>

Public Access Bureau online training portal - <https://foiapac.ilag.gov/>

2023 PAC Annual Report - <https://www.illinoisattorneygeneral.gov/Page-Attachments/FOIAPAC/PAC-ANNUAL-REPORTS/2023PublicAccessCounselorReport.pdf>

Illinois FOIA Statute - <https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=85&ChapterID=2>

Illinois OMA Statute - <https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=84&ChapterID=2>

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## Recent PAC Binding Opinions

Below are summaries of and links to two recently-issued PAC binding opinions. All binding opinions can be accessed on the PAC webpage: <https://www.illinoisattorneygeneral.gov/Open-And-Honest-Government/PAC/Opinions/>

### Ill. Att’y Gen. Pub. Acc. Op. No. 24-007, June 21, 2024

<https://www.illinoisattorneygeneral.gov/Page-Attachments/FOIAPAC/2024-Binding-PAC-Opinions/Binding%20Opinion%2024-007.pdf>

**OPEN MEETINGS ACT:** Attendance by Means Other Than Physical Presence Because of Employment Purposes; Taking Final Action on Matter Not on Meeting Agenda: A member of the public submitted a Request for Review to the Public Access Bureau alleging that the Village of Princeville Board of Trustees violated OMA by authorizing the Village President to attend meetings by means other than his physical presence on multiple occasions while traveling in connection with the duties of his personal employment. Section 7(a) of OMA provides that “a majority of the public body may allow a member of that body to attend the meeting by other means if the member is prevented from physically attending because of \* \* \* employment purposes[.]” Section 7(c) of OMA requires public bodies to adopt rules that may permit remote attendance for any of the reasons set forth in section 7(a), unless the public body chooses to be more restrictive. The Board of Trustees had adopted a rule that permitted members to attend remotely because of conflicting obligations to their employer. Attorney General Raoul concluded that the plain and ordinary meaning of “employment purposes” in section 7(a) of OMA included actions in the course of executing a person’s job responsibilities, and that conflicting obligations to employers are a form of such “employment purposes.” Accordingly, the Board did not violate section 7(a) when it allowed the Village President to attend meetings remotely when his job responsibilities prevented him from physically attending the meetings.

The Board also voted to approve the purchase of a vehicle without providing the public with advance notice of the Board’s final action authorizing the purchase at its March 5, 2024, meeting. Attorney General Raoul concluded that this action violated section 2.02(c) of OMA, which requires that “[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting.” The Board corrected this violation by providing sufficient notice and re-voting on the purchase at a later meeting.

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### Ill. Att’y Gen. Pub. Acc. Op. No. 24-008, June 21, 2024

<https://www.illinoisattorneygeneral.gov/Page-Attachments/FOIAPAC/2024-Binding-PAC-Opinions/Binding%20Opinion%2024-008.pdf>

**FREEDOM OF INFORMATION ACT:** Meaning of “Security Measures” in Section 7(1)(v) of FOIA: In response to a FOIA request from a Fair Housing Specialist with the HOPE Fair Housing Center, the Chicago Housing Authority (CHA) redacted all but the second digit in the street addresses of its vacant Scattered Site public housing units. To fall within the scope of section 7(1)(v), a record (or information therein) must first consist of or depict a vulnerability assessment, a security measure, a response policy, or a response plan. CHA misconstrued section 7(1)(v) as authorizing public bodies to redact records as a security measure in and of itself. The street addresses of vacant Scattered Site public housing units are simply pieces of data in a spreadsheet and do not meet the threshold requirement of consisting of or depicting vulnerability assessments, security measures, or response policies or plans. Accordingly, the section 7(1)(v) exemption did not apply.

## Helpful Non-Binding Determinations

Note: The PAC does not currently publish on our website copies of our non-binding determinations. However, upon request, the PAC will provide copies of these determination letters to public bodies, members of the public, and any other interested individuals as certain important conclusions in non-binding determinations are often relied on as precedents in subsequent PAC reviews and referenced in educational presentations.

### **FOIA:**

#### **Ill. Att’y Gen. PAC Req. Rev. Ltr. 68723, issued June 6, 2024**

A member of the news media sought, from Kane County, copies of academic transcripts and the course schedule of a County employee who took college courses paid for by the County. The County contended that, despite initially reviewing the records upon completion of the courses, it returned them to the employee/student and, thus, was no longer in possession of the records. The County described an initial search for the records that appeared reasonable, but it also confirmed that it had not contacted the employee/student for copies of the records in connection with this request. Additionally, the County argued that the requested records were not public records as defined under section 2(c) of FOIA because they did not pertain to the transaction of the County’s business. Alternatively, the County argued that if the requested records met the section 2(c) definition of “public records”, they were properly withheld under the exemption in section 7(1)(c) of FOIA for information that would constitute an unwarranted invasion of personal privacy if disclosed. The PAC determined that the requested records met the definition of “public records” because the County used the records to verify the courses that were taken and that passing grades were received. Importantly, the records also directly related to the use of public funds under section 2.5 of FOIA because the County paid for the courses in question. Further, because these records related to the employee’s public duties, disclosure could not be an invasion of privacy under 7(1)(c). Because the requested records were public records, the County was obligated to conduct a reasonable search by asking the employee/student to produce the records in response to the FOIA request.

### **OMA:**

#### **Ill. Att’y Gen. PAC Req. Rev. Ltr. 80554, issued June 21, 2024**

A member of the public submitted a Request for Review alleging that the Leland Grove City Council held an undisclosed meeting to discuss a property located within the city. OMA defines a “meeting” as a gathering of at least a majority of a quorum of the members of public bodies for the purpose of discussing public business. The Council has 7 members, so a majority of a quorum is three members. The Mayor met with two Council members and two City residents to discuss the property in question. In its response to the PAC, the Council did not dispute that the discussion concerned public business but instead argued that the gathering did not constitute a meeting subject to OMA because the Mayor had not “traditionally” been considered part of the Council. Specifically, the Council asserted the Mayor was not counted toward a quorum because he only casts votes in the event of a tie. The Council also relied upon a City ordinance adopting Roberts Rules of Order as its parliamentary procedure, which treated the Mayor similarly, it argued. The PAC rejected both arguments, concluding that the Mayor is counted toward the quorum and is a member of the Council because (1) the Illinois Municipal Code defines quorum for non-home rule cities as a majority of the “corporate authorities” and because (2) the Municipal Code defines “corporate authorities” as the mayor and alderpersons. The City ordinance could not alter quorum requirements set by state statute. Accordingly, the PAC concluded that the meeting in question violated OMA, and directed the Council to compile and make available minutes from that meeting, and also cautioned the Council against holding such undisclosed meetings going forward.



### FOIA

Although public bodies must generally comply with FOIA requests seeking copies of all records within a given category, section 3(g) of FOIA can be a particularly helpful tool when

responding to a request that would “unduly burden” a public body’s operations. However, the burden of compliance must outweigh the public interest in disclosure of the records, and any public body that wishes to assert section 3(g) must remember to issue a timely response in which it first extends to the requester an opportunity to confer with it in an attempt to reduce the request to manageable proportions.

### OMA

A public body’s rules governing public comment under section 2.06(g) of OMA can be particularly helpful in maintaining meeting decorum, conserving time, and ensuring that each interested individual has an opportunity to address public officials. However, public bodies must remember that before they enforce any such rules, they must first have been established and recorded with the public body, meaning the rules must be formally adopted, and not merely displayed for review on a meeting notice or a website. In addition, the adopted rules must not unreasonably restrict members of the public from exercising their statutory right to address public officials.

## Have a question for PAC?

Leah Bartelt,  
Public Access Counselor  
Illinois Attorney General’s Office  
500 South Second Street  
Springfield, Illinois 62701

Public Access Hotline  
(877) 299-3642  
Public Access Fax  
(217) 782-1396  
General E-mail  
[Public.Access@ilag.gov](mailto:Public.Access@ilag.gov)

PAC Technical Support  
[PACTechnicalSupport@ilag.gov](mailto:PACTechnicalSupport@ilag.gov)

## UPCOMING PAC WEBINARS

The PAC is charged, in relevant part, with providing education on the requirements of FOIA and OMA. FOIA officers, OMA designees, elected/appointed officials, and municipal staff are encouraged to participate in a series of free educational webinars offered throughout the year by the PAC. Please note that the content of these webinars is not targeted for the general public.

Those interested in registering for one or more of the following training sessions may contact this office at [Special.Events@ilag.gov](mailto:Special.Events@ilag.gov).

**Open Meetings Act Webinar**  
September 18, 2024, 2-3:30 pm  
November 21, 2024, 10-11:30 am

**FOIA for Public Bodies Webinar**  
September 26, 2024, 10-12 pm  
October 18, 2024, 10-12 pm

**FOIA for Law Enforcement Agencies Webinar – Video Recordings**  
October 17, 2024, 10-11:30 am  
December 5, 2024, 10-11:30 am

**FOIA for Law Enforcement Agencies Webinar – Common Reports**  
October 1, 2024, 10-11:30 am  
November 19, 2024, 10-11:30 am

In addition to hosting these webinars, PAC attorneys may be available for in-person presentations covering FOIA and/or OMA. Any group or organization interested in hosting a training conducted by a PAC attorney may contact this office at [Special.Events@ilag.gov](mailto:Special.Events@ilag.gov) for more information. *In an effort to best utilize the PAC’s resources, we request that any hosting organization procure a minimum of 25 attendees prior to requesting an in-person presentation.*