

Illinois FOIA & OMA Overview

2024 Municipal Clerks of Illinois Institute and Academy

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Illinois Attorney General's Office
October 9, 2024

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Public Access Counselor

Office of the PAC 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)

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FOIA/OMA Training Requirement

- FOIA Training: Yearly, for FOIA Officers
- OMA Training: One time, for each elected or appointed member of a public body
- OMA Training: Yearly, for OMA Designee

Must file a copy of the certificate of completion with the public body!

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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 available.
- 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.

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Honest and Open Government

Home > Open and Honest Government > FOIA > FOIA Officers

Transfer Website

Jump To:

- Consumer Protection
- Honest and Open Government
- Preserving the Environment
- Rights of the People
- Safe Communities
- File a Complaint
- Quick Links:
 - Legal Assistance Referrals

Search

FOIA Officers

FOIA Officers can Log in or Register for the training portal.

FOIA and OMA Training Portal

Electronic training and other resources for FOIA Officers:

- FAQ on FOIA for FOIA Officers
- FOIA Officer Fact Sheet
- FOIA Guide for Law Enforcement
- Sample Letter: FOIA Denial of Request
- Sample Letter: FOIA Grant of Request
- Sample Letter: FOIA Denial in Part and Grant in Part
- Sample Letter: 5-Day Extension Letter

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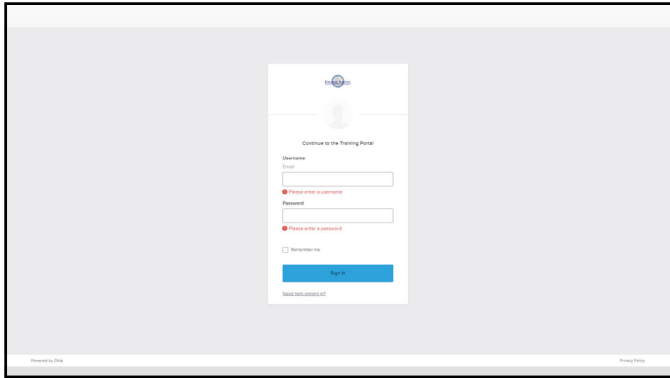
FOIA and OMA Training Portal

The Attorney General's Office has made several updates to our training portal. If you are required to attend training for the first time, please log in to the training portal for the first time. If you have already completed OMA and FOIA training, you will not need to log in again.

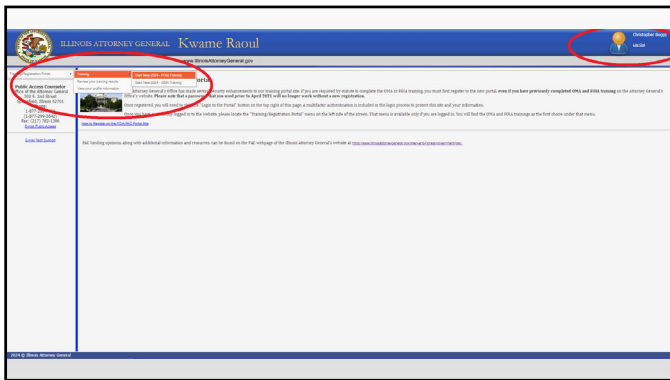
For more information, please visit our website at www.IllinoisAttorneyGeneral.gov and click on "FOIA and OMA Training Portal".

Log In to the Portal

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Alternative OMA Training

- School Board Members
- Drainage District Commissioners
- Directors of Soil and Water Conservation Districts
- Park, Forest Preserve, Conservation, and Fire Protection District Members
- Municipality Members

See 5 ILCS 120/1.05 (c)-(g)

- Conducted by Specified Organizations
- Certain Content Must Be Included
- Certificate Required

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Freedom of Information Act

(5 ILCS 140/1 *et seq.*)

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The Purpose of FOIA

The Freedom of Information Act (FOIA) originally became effective on July 1, 1984.

“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.”

5 ILCS 140/1

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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

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Definition of “Public Records”

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)

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Explanations and Questions

- 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)

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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.”
- Better Gov’t Assn. v. City of Chicago*, 2020 IL App (1st) 190038 (2020)

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Records of Funds

“All records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public.”



5 ILCS 140/2.5

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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.”

5 ILCS 140/2.20

→ Confidentiality clause does not supersede FOIA

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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.

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E-mails and Texts Pertaining to Public Business are Subject to FOIA

- 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

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Locating Records

- 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)

- Public Bodies should have policies concerning use of personal devices.

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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

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FOIA Requests

- In writing, directed to the public body.
- Oral requests may be honored.
- Standard form **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)

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Time for Responding

- 5 business days after receipt of a written request
- 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.
- Requester must be notified in writing of extension.
- The parties may also agree in writing to an extended time for compliance.

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

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FOIA Reminder:

Timely responses

- Section 3(d) of FOIA requires public bodies to respond (or extend the time for response) to FOIA requests within **5 business days** after receipt. 5 ILCS 140/3(d)
- Business days include any day that is not a Saturday, Sunday, or official State of Illinois holiday. For the list of State holidays, see the Promissory Note and Bank Holiday Act (205 ILCS 630/17).
- **Even if a public body's office is closed on a business day, the public body may not exclude that day when calculating the time for response to a given FOIA request.**

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Failure to Respond

Failure to respond to a request within the time permitted is considered 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)

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Elements of Proper 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.
4. Inform the requester of his or her right to seek review by the Public Access Counselor and right to judicial review under section 11 of FOIA.

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Copying Fees

- No fees may be charged for the first 50 pages of black and white, letter or legal sized copies.
- The fee for black and white, letter or legal sized copies may not exceed *15 cents per page*.
- 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(a).

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Requests for Electronic Copies/Fees

- 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.
 - “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”
 - May charge the requester for the actual cost of DVD or flash drive
- 5 ILCS 140/6(a), (b)

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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 website.
 - 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

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FOIA Officer Obligations

- Annual Training
 - Create file for retention of original request, copy of response, record of written communications with requester, and copy of other communication.
 - “[D]evelop a list of documents or categories of records that the public body shall immediately disclose upon request.”
- 5 ILCS 140/3.5(a)

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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)

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List of Records

Each 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.

Each public body shall furnish upon request a description of the manner in which public records stored by means of electronic data processing may be obtained in a form comprehensible to persons lacking knowledge of computer language or printout format.

5 ILCS 140/5

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Notices of Denial

“Copies of all notices of denial shall be retained by each public body in a single central office file that is open to the public and indexed according to the type of exemption asserted and, to the extent feasible, according to the types of records requested.” 5 ILCS 140/9(b)

5 ILCS 140/9(b)

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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 *respond within 5 business days or take a timely extension* AND
- Extend to requester an opportunity to *confer with it to reduce the request to manageable proportions* AND
- Confer in *good faith*. See Ill. Atty. Gen. Pub. Acc. Op. No. 21-001, issued January 26, 2021.
- Repeated requests by same person for same records identical to records previously provided or properly denied are unduly burdensome.
5 ILCS 140/3(g)

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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.
- 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).

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Section 7(1)(a) – Other federal or state laws

“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).

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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.
 - **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
 - Home or Personal Telephone Numbers
 - Personal Email Addresses

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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.”

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

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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
 - Victim names/identifying information
 - Names of suspects not arrested, third parties mentioned incidentally in reports
 - Graphic photos, descriptions of offenses/autopsies

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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)

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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

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Section 7(1)(d) – Law Enforcement Exemptions

- 7(1)(d)(i): pending law enforcement proceedings
- 7(1)(d)(ii): interference with active administrative enforcement proceedings
- 7(1)(d)(iii): deprivation of fair trial/hearing
- 7(1)(d)(iv): protection of witnesses, confidential sources
- 7(1)(d)(v): special investigative techniques
- 7(1)(d)(vi): danger to life or physical safety
- 7(1)(d)(vii): obstruction of ongoing criminal investigation

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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*.

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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 October 21, 2015

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Section 7.5 of FOIA

Consolidates references to State statutes that exempt records from disclosure –extent of the exemption depends on the specific language of the statute. Examples:

- Subsection 7.5(bb): Information which is or was prohibited from disclosure by the Juvenile Court Act of 1987;
- Subsection 7.5(cc) Recordings made under the Law Enforcement Officer-Worn Body Camera Act, except to the extent authorized under that Act.

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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

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Special Types of Requesters and Requests

- Commercial
- Recurrent
- Voluminous

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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)

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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)

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Open Meetings Act (5 ILCS 120/1 et seq.)

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OMA Public Policy

"The General Assembly * * * declares it to be the public policy of this State that its citizens shall be given **advance notice of and the right to attend** all meetings at which any business of a public body is discussed or acted upon in any way."

5 ILCS 120/1

"[T]he people have a right to be informed as to the conduct of their business."

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Openness Required

All meetings of public bodies shall be open to the public unless:

- excepted in subsection 2(c), and
- closed in accordance with Section 2a.

5 ILCS 120/2(a)

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What is a Public Body?



State Boards and Commissions



Municipalities



Counties



School Boards



All subsidiary bodies of the foregoing bodies

5 ILCS 120/1.02

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What is a Not Covered?

General Assembly and its Committees or Commissions, also ...



Condominium Associations



Private Companies and their Boards



Individual Officers



Not-for-Profit Organizations

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What is a Meeting?

OMA defines a **meeting** as “any **gathering** * * * of a **majority of a quorum** of the members of a public body held for the **purpose of discussing public business.**”

- Any gathering that meets these requirements is subject to OMA – it must be previously noticed and open to the public.

5 ILCS 120/1.02

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What is a Gathering?

Gathering can occur:

- in person,
- by video or audio conference,
- electronic means, or
- by other means of **contemporaneous interactive communication.**

5 ILCS 120/1.02

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Majority of a Quorum

“Quorum”: minimum number of members of a public body who must be present at a meeting in order for the body to take official action.

Usually, a majority of the total members.

“Majority of a Quorum”: smallest number of members of a public body able to control action when a bare quorum is present.

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Majority of a Quorum

| Member Number | Quorum | Majority of Quorum |
|---------------|--------|--------------------|
| 13 | 7 | 4 |
| 11 | 6 | 4 |
| 9 | 5 | 3* |
| 7 | 4 | 3 |
| 5 | 3 | 3** |
| 3 | 2 | 2 |

*A quorum cannot include half-a-person.

**Special rule for 5-member public body.

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Purpose of Discussing Public Business

A social gathering of public body members is not prohibited, but it could turn into a meeting if a majority of a quorum discusses public business in a deliberative fashion.



Be mindful of the appearance of impropriety.

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Meeting Location

Meetings must be held at locations that are “convenient and open to the public.” **Section 2.01**

- Questions of time, date, location, capacity
- Meeting at private residence not open. **III. Att’y Gen. Pub. Acc. Op. No. 12-008**
- Special meeting 26 miles from usual location not convenient. **III. Att’y Gen. Pub. Acc. Op. No. 13-014**

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Meeting Location

Common complaint → Meeting room was too small

“A meeting can be open in the sense that no one is prohibited from attending it, but it can be held in such an ill-suited, unaccommodating, unadvantageous place that members of the public, as a practical matter, would be deterred from attending it.”

• However, rule of reasonableness, not absolute accessibility.

Gerwin v. Livingston Co. Bd., 345 Ill.App.3d 352 (2003).

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Meeting Attendance by Members

• Except in special circumstances, a quorum must be *physically present* at the meeting in order for the member to attend by other means.

5 ILCS 120/7(a)

• Before allowing a member to attend remotely, a public body must adopt a rule or regulation permitting electronic attendance.

• Public body must vote to permit member to attend a meeting by other means.

5 ILCS 120/7(c)

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Meeting Attendance by Members

If those conditions are met, another member may attend a meeting remotely for these reasons **only**:

- Personal illness or disability;
- Employment purposes or business of the public body;
- Family or other emergency; or
- Unexpected childcare obligations

5 ILCS 120/7(a)



Member **may not** attend remotely if absence is due to a **vacation or planned out of town trip** that is not related to “employment purposes” or “business of the public body.”

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Public Notice of Meetings

Advance notice of meetings is part of OMA's policy that public business is to be conducted openly.

At beginning of calendar or fiscal year, public body must post schedule of regular meetings.

- Date
- Time
- Location

5 ILCS 120/2.02

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Public Notice of Meetings

What? Notice and Agenda (agenda alone will suffice)

Where? Principal office + location of meeting + website
(if full-time staff of PB maintains website)

5 ILCS 120/2.02(a), (b)

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Public Notice of Meetings

When? 48 hours before regular or special meeting
(If emergency meeting being held because of bona fide emergency, post as soon as possible)

How long? Notice and Agenda must be continuously available for public review during entire 48-hour period preceding the meeting
(Website posting satisfies this continuous posting requirement)

5 ILCS 120/2.02(c)

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Content of Agenda

Date, time, and location of meeting

Meeting agenda must set forth **general subject matter** of any resolution or ordinance that will be a subject of final action.

- Agenda must provide main element of action item but specific details are not required

5 ILCS 120/2.02(c)

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Content of Agenda

General subject matter of any final action item:

- “Vote on recommendation to County Board regarding farming options for County Farm”
 - Did not set forth general subject matter of votes to attain crop insurance and borrow money for crop expenses.
Ill. Att’y Gen. Pub. Acc. Op. 22-008, issued June 30, 2022
- “School Year Update” vs. “Approve contract for City Manager”
- “Action on items discussed in closed session” only proper if description of closed session on agenda set forth general subject matter of topic.

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Content of Agenda

A public body **may** discuss matters not on the agenda, including holding closed session that was not previously identified.

In re Foxfield Subdivision, 396 Ill. App. 3d 989 (2d Dist. 2009)

However, it **may not** take final action on any matter not on the agenda

- Similarly, may not amend agenda to add action items less than 48 hours before the meeting.

Ill. Att’y Gen. Pub. Acc. Op. No. 14-003, issued May 5, 2014

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Final Action and Public Recital

- Before a public body votes on a matter (takes final action), the vote must be “preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted.” **5 ILCS 120/2(e)**
- Recital must describe the “general nature of the matter under consideration” with “specific detail sufficient to identify the particular transaction.”

Board of Education of Springfield School District No. 186 v. Attorney General of Illinois, 2017 IL 120343.

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Final Action Must Be Open

"[N]o public body in Illinois subject to the Open Meetings Act can take final action by merely circulating some document for signature and not voting on it publicly."

Howe v. Retirement Board of the Firemen's Annuity & Benefit Fund, 2013 IL App (1st) 122446, ¶129 (2013)

- Court vacated the board's decision to deny disability benefits because the board had circulated the decision for signatures privately rather than voting on it in open session.

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Meeting Minutes (Open Session)

- Public body must approve and make available to the public written meeting minutes of open session.
- Must include:
 - ✓ Date, time, and location of meeting
 - ✓ Summary of discussion of all matters proposed, deliberated, or decided;
 - ✓ Names of all members present or absent; and
 - ✓ Record of any votes taken.

5 ILCS 120/2.06

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Meeting Minutes (Open Session)

Minutes must be approved by the public body either:

- Within 30 days of the meeting, or
- At the public body's second subsequent regular meeting (whichever is later)

Minutes must be available for public inspection and posted on website (if applicable) no later than 10 days after approval.

5 ILCS 120/2.06

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Closed Meetings/Executive Sessions

Section 2(c) of OMA authorizes 40 exceptions for a public body to close a portion of its meeting to the public (*i.e.*, closed or executive sessions)

- Exceptions authorize but do not require the holding of a closed session.
- Exceptions are to be **narrowly construed** – topics must fit squarely within the cited exceptions.

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Closed Meetings/Executive Sessions

- Exceptions relate to, among other things, employment, litigation, land acquisition, collective bargaining, and student disciplinary cases.
- Many are quite specific; review to determine whether any apply to your public body.

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Closed Meetings/Executive Sessions

General Rules for closed/executive sessions:

- Vote in open session to enter closed session – vote must identify the applicable section 2(c) exceptions. **5 ILCS 120/2a**
- Create verbatim recording of the closed session (audio or video). Recording is confidential. **5 ILCS 120/2.06**
- Must generate and approve minutes (may maintain as confidential).
- No final action in closed session. **5 ILCS 120/2(e)**

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Exceptions: Employment, 2(c)(1)

- Discussion to consider “appointment, employment, compensation, discipline, performance, or dismissal” of specific employees or legal counsel.
- Must relate to *specific employee or employees*
 - Not general budgetary matters that impact employees. *See, e.g., Ill. Att’y Gen. Pub. Acc. Op. No. 15-007, issued September 16, 2015.*
 - Not general processes involving evaluation of employees. *See, e.g., Ill. Att’y Gen. Pub. Acc. Op. No. 20-004, issued June 2, 2020.*

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Exceptions: Litigation, 2(c)(11)

Discussion to consider “litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal[.]”

Discussion must be limited to the strategies, postures, theories, and possible consequences of the litigation itself.

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Exceptions: Litigation, 2(c)(11)

Also, "when the public body finds that an action is **probable or imminent**, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting."

Three requirements:

- Litigation probable or imminent
- Finding in minutes that litigation probable or imminent
- Discussion must be limited to the strategies, postures, theories, and possible consequences of the litigation.

Ill. Att’y Gen. Pub. Acc. Op. No. 22-010, issued July 25, 2022

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Ending Closed/Executive Session

- Adjourn closed session and return to open session
- If public body wishes to take final action, may do so after closed session **only if** item was identified on agenda.
- "Action on items discussed in closed session" only proper if description of closed session on agenda set forth general subject matter of items discussed.

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Closed/Executive Session Minutes

- Minutes of closed session are exempt from disclosure under section 7(1)(I) of FOIA (**5 ILCS 140/7(1)(I)**) unless the public body votes to make them available.
- Closed session minutes must be reviewed every six months to determine whether the need for confidentiality still exists.
5 ILCS 120/2.06(d)
- OMA specifically allows access to closed session minutes to duly elected officials of the public body or appointed officials filling a vacancy of an elected office.
5 ILCS 120/2.06(f)

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Right to Record Meeting

Section 2.05 of OMA provides any person the right to record a meeting, subject only to reasonable rules of the authority holding the meeting.

5 ILCS 120/2.05

Because OMA specifically provides that meetings may be recorded, a public body would have a steep burden to overcome to show that any rule or policy requiring advance notice is reasonable.

Ill. Att’y Gen. Pub. Acc. Op. No. 16-014, issued December 28, 2016

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Public Comment

“Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.”

5 ILCS 120/2.06(g)

➤ To comply with section 2.06(g), public bodies must establish and record rules governing public comment.

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Public Comment Rules

Common Permissible Rules:

- Time limits (per speaker, total time for public comment)
- Matters relating to decorum (no profanity)

Improper Rules:

- Residency limitations/provision of home address

Ill. Att’y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014

- Advance sign-up requirements

Ill. Att’y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014 (5 days notice improper)

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Review of OMA Violations

Any person may file a Request for Review with the Public Access Counselor within 60 days of discovery of the alleged violation.

5 ILCS 120/3.5

Any person, including the State's Attorney of the county, may bring a civil action in the circuit court where the alleged noncompliance has or is about to occur.

5 ILCS 120/3

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Public Access Counselor Review

Requests for Review (RFR) under OMA:

- PAC determines whether further action is warranted on allegations; if so, contacts public body to request relevant records and response to allegations.
- PAC may issue determination letter or AG may issue binding opinion (subject to administrative review).

5 ILCS 120/3.5

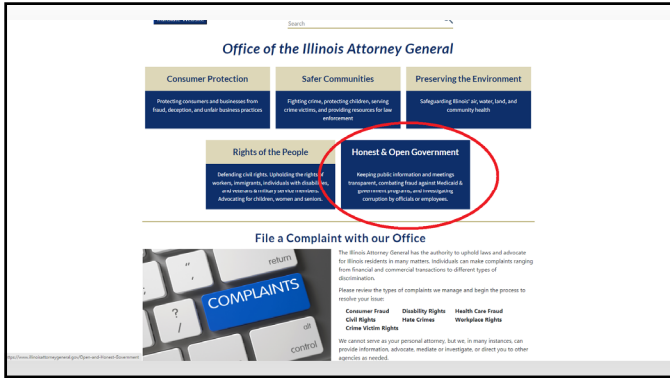
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Possible OMA Resolutions

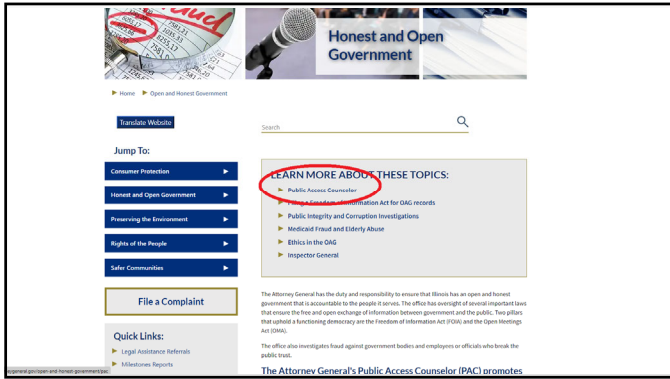
If PAC finds an OMA violation, it may direct the public body to:

- Release closed session recording and minutes;
- Instruct the public body to re-vote on a matter; and/or
- Instruct the public body on how to avoid future violations.

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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

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