

# Ancel Glink Summer Seminar

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Chicago – Vernon Hills – Naperville – Crystal Lake

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# FOIA: The First Six Months

Overview of PAC Decisions &  
General Compliance Issues

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# Appointment / Training



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## Appointment / Training

- Must appoint at least one FOIA officer.
- Complete training 8 days ago....
- Must appoint at least two individuals to take the OMA training.



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Who should we designate to take the OMA training and as our FOIA officers?

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Endless possibilities...



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How do you register?

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Appointment / Training

[www.illinoisattorneygeneral.gov](http://www.illinoisattorneygeneral.gov)



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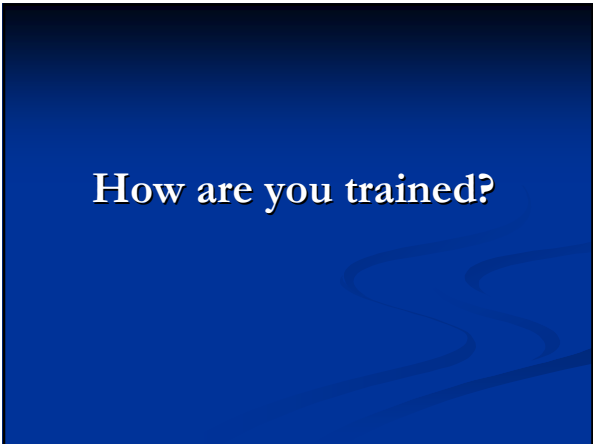
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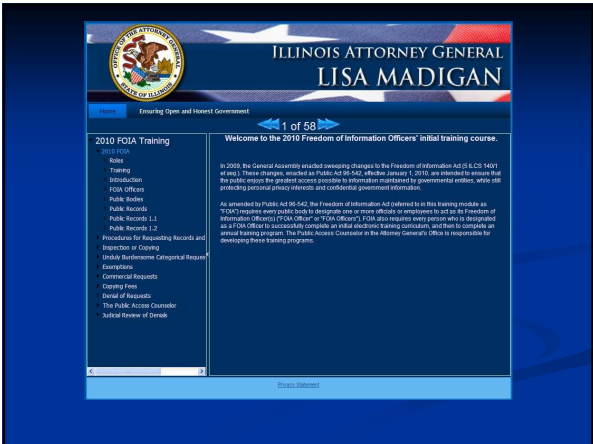
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A little confusing...



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### Personal Information v. Private Information



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### Redact Private Information...

- **Unique identifiers, including:**
  - social security numbers;
  - driver's license numbers;
  - EIN (of individual)
  - biometric identifiers;
  - personal financial information;
  - passwords and other access codes;
  - medical records
  - home or personal phone numbers;
  - personal email addresses;
  - home addresses and personal license plates, except as otherwise required by law.



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## Seek pre-approval for personal information

- “Personal information” contained within a public record is to be redacted under Section 7(1)(c).
- Must constitute a “clearly unwarranted invasion of personal privacy”.
- Means information that is highly personal or objectionable to a reasonable person.
- Right to privacy must outweigh any legitimate public interest.
- Can consent to disclosure.

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## Pre-Approval



**Notice must be given to the Requester and the Public Access Counselor of any exemptions claimed under Section 7(1)(c).**

- The Notice must:
- be given within statutory time frame;
  - include a copy of the request;
  - include a copy of the proposed response; and
  - Provide a detailed summary of the public body's basis for asserting the exemption.

Public Access Counselor then, within 5 working days, determines whether further inquiry is necessary.

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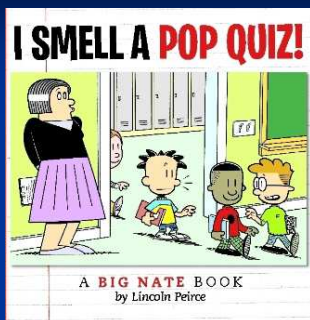
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## Pop Quiz!

Gender and ethnicity information of public employees?

- Not exempt
  - See PAC Decision 5124

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## Pop Quiz!

Prospective candidate names, resumes and correspondence from candidates seeking appointment to public office?

- Not exempt – but compare with employees
  - See PAC Decision 5611 (see also 6071, 6072 & 6073)

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## Pop Quiz!

Graphic photographs of police scene?

- Usually exempt
  - See PAC Decisions 5850

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## Pop Quiz!

Records relating to whether employee will take maternity leave?

- Exempt
  - See PAC Decision 6485

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## Pop Quiz!

Performance evaluation of village manager?

- Not exempt
  - See PAC Decision 6548 (see also 6576)

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## Pop Quiz!

Public official's personal calendar?

- Exempt
  - See PAC Decision 7187

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## Pop Quiz!

Dates of birth?

- Nearly always exempt, but must always obtain pre-approval
  - See PAC Decision 5916

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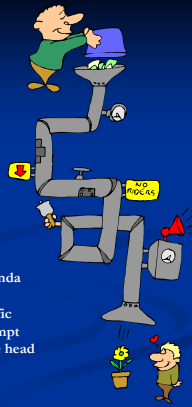
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## Section 7(1)(f) “preliminary draft” exemption.

Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body. 5 ILCS 140/7(1)(f)



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## Pop Quiz - Section 7(1)(f)

Police officers notes in LEADS report?

- Exempt as opinion
  - See PAC Decision 5170

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## Pop Quiz - Section 7(1)(f)

Clerk's tape recording of meeting?

- Not exempt
  - See PAC Decision 5888

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## Pop Quiz - Section 7(1)(f)

Bidder list for specified projects?

- Not exempt
  - See PAC Decision 6564

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## Pop Quiz - Section 7(1)(f)

Internal communication relating to bid award?

- Exempt
  - See PAC Decision 6830

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## Pop Quiz - Section 7(1)(f)

Hand written notes of employees?

- Exempt
  - See PAC Decisions 7032 & 7085

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## Pop Quiz - Section 7(1)(f)

Community survey and other materials used at interview of finalist for superintendent?

- Exempt
  - See PAC Decision 6749

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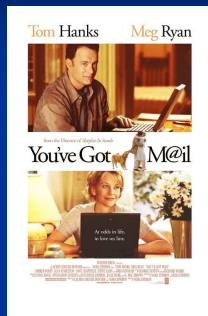
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## Emails!



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## Email

Content of personal emails that relate to public duties are subject to FOIA.

PAC Decision 5720

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## Email

Ok to withhold personal emails between states attorneys that did not relate to public business.

PAC Decision 6896

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## Email

Emails between village employees were exempt as preliminary information since they expressed opinions and formulated actions related to the matter under Section 7(1)(f).

PAC Decision 6621

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## Email

Emails suggesting certain policy changes associated with village matter were exempt.

PAC Decision 6806

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## Email

Ok for Governor's office to redact hand written notes of employees and email correspondence as documents expressed opinions, gave recommendations and evaluated actions to be taken.

PAC Decision 7032

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## Email

AG does not have to provide email correspondence between AG employees where opinions are expressed as part of an effort to formulate a policy or decide a course of action.

PAC Decision 7154

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## Email

Email correspondence between mayor and alderman regarding appointment of official was exempt.

PAC Decision 5611

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## Binding Opinions



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## PAC Opinion 10-01

Low on resources? Doesn't matter. Must make copies!



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## PAC Opinion 10-02

Cannot charge fees for copies of documents made for internal file.



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The realities...

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The State Journal-Register • Springfield, IL • The Official Newspaper in Illinois

**Attorney general backlogged on FOIA rulings**

By BRUCE RUSHION (bruce.rushion@sj-r.com)  
THE STATE JOURNAL-REGISTER  
Posted: Aug 21, 2010 @ 11:30 PM

Nearly 600 cases have piled up  
public bodies must release records  
As of June 3, 427 requests from  
attorney general's staff have 1/3  
of the cases have been pending  
public record.

  
The State Journal-Register • Springfield, IL • The Official Newspaper in Illinois

**Hundreds have sought FOIA help from attorney general**

By BRUCE RUSHION (bruce.rushion@sj-r.com)  
THE STATE JOURNAL-REGISTER  
Posted: Mar 27, 2010 @ 11:20 PM  
Last update: Mar 19, 2010 @ 06:47 AM

To no one's surprise, the Illinois attorney general's office has received hundreds of requests for help and advice since changes to the state Freedom of Information Act took effect in January.

Nearly 600 public bodies have asked permission to withhold information because requested records are preliminary drafts or opinions exempt from disclosure or because release of documents would constitute an invasion of privacy. In addition, as of late last week, the public access coordinator's office in the attorney general's office has received 273 requests to order records released after public bodies denied FOIA requests.

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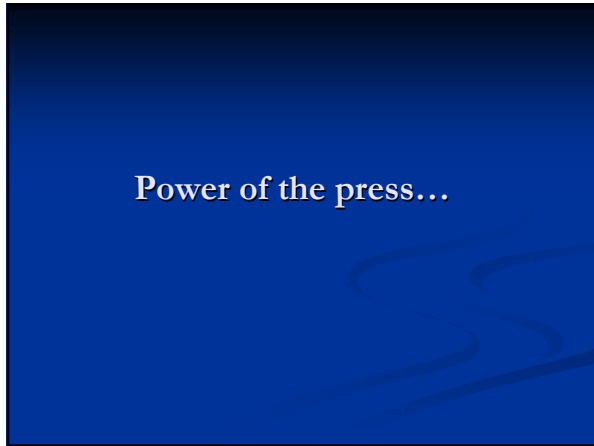
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**PANTAGRAPH.COM**

**State reviews whether Farmer City Council illegally closed meeting**

By Steve Hoffman | shoffman@gmail.com | Posted: Wednesday, April 7, 2010 7:00 pm

FARMER CITY — The Illinois Attorney General's office is looking into whether the Farmer City Council illegally closed a special meeting. The state agency's request came after two complaints were filed.

The Farmer City Council did an unauthorized session prior to a "covered" Open Meeting, police department, on May 11, 2009, in the Open Meeting Act, as required by law.

City Manager Don Smith did not immediately return a copy.

The attorney general's office has asked the city for more info.

"We have determined the father applies to request to be included in a meeting, and whether he should be included in the meeting," said a person from public access.

The Open Meeting Act does not list the business of "open agreement, employment, compensation, discipline, performance or department of employees."

The state request for review may result in a decision that a violation. A hearing option also is possible.

On Monday, at night of closed meeting, the council used a walk-in option to order an executive session legal.

**AG's office asks for records, recording of LeRoy meeting**

By Keith Brady-Lewis | kbrady@pantagraph.com | Posted: Wednesday, March 24, 2010 5:56 pm

LeROY — The Illinois attorney general's office has asked LeRoy city officials for records and a tape recording of a March 15 meeting to determine if the council violated the state's Open Meetings Act.

The state's letter addresses questions raised by The Pantagraph on the legality of a closed-door session held by the council to discuss other alleged violations of the Open Meetings Act involving the P.O. 11 council meeting.

In a March 23 letter to LeRoy Mayor Steve Diney, state Public Access Counselor Cary Smith asked for minutes of the March 15 meeting, a verbatim recording of the closed session and copies of the agenda and notice for the meeting. Smith asked for the records to be delivered within seven days.

CITY ADMINISTRATION AND COUNCIL did not return a comment on the attorney general's review.

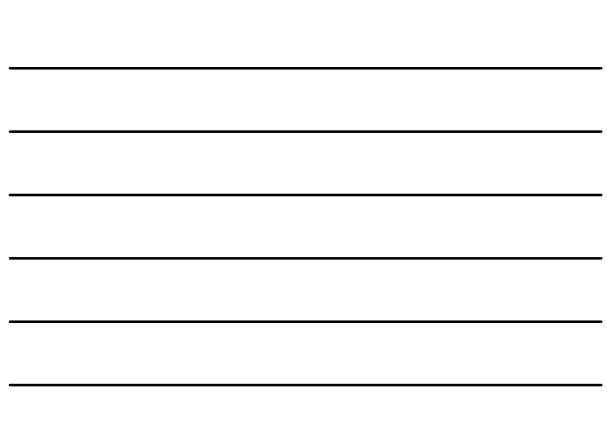
The council listed "pending litigation" as the reason for sending the executive session that lasted more than an hour. Included in the notice to include the public from the discussion was a reference to correspondence between City Attorney Bruce Lind and McLean County Assessor Nancy's Attorney Elizabeth Eason about the Feb. 11 council meeting.

At issue is whether that correspondence met the legal definition of "pending litigation" in the Open Meetings Act. The law allows public bodies to close their meetings for discussion of certain topics.

Eason had recommended that the council vote again on several issues handled at the February meeting as a way to address the city. Mayor Diney agreed. All items in full were of the meeting. Smith disagreed with Eason and asked the council that reporting votes on the matters, including removal of Eason's contract, was not necessary.

Three responses are possible as a result of the attorney general's review of the decision to close the March 15 meeting. The public access counselor may find no violation exists, the matter may be resolved through informal mediation, or the access counselor may decide to issue a hearing option that requires the city to address its case.

A public body may ask for a review of the state's decision if there is an objection to the opinion.



**PANTAGRAPH.COM**

**AG's office to be asked for opinion in LeRoy Open Meetings Act case**

By Keith Brady-Lewis | kbrady@pantagraph.com | Posted: Friday, March 13, 2010 9:43 pm

LEROY — Illinois Attorney General's office will be asked for an opinion on whether the LeRoy City Council violated the Open Meetings Act by failing to properly post an agenda for its Feb. 11 meeting.

Officials were asked to file a public comment response to questions only city officials admitted that the agenda was not posted for public viewing 48 hours before the meeting, as required.

McLean County Assessor Nancy's Attorney Elizabeth Eason recommended that the council conduct a new vote on several matters that were handled at the February meeting. According to Eason, the council did not follow the requirements of the Open Meetings Act.

In an opinion that differed from Eason's, the access counselor recommended that the council vote on the P.O. 11 agenda, the attorney general's office could recommend the council's action, or the council could file a public comment response to the attorney general's office.

Eason said she will ask Midgarden's office for an opinion.

"I will think that we will not be in a position to do that," she said.

Council member Bill Swisher said the group of the city pending of the review. He is reporting that "We believe this was done intentionally to keep them off their feet because the administration's cost."

The council approved a three-year contract with Midgarden Eason from the option. Eason said available to answer questions Friday on the city.

Head letter is expected to be discussed at Monday.

**AG looking into Open Meetings complaint against Lisle Township**

**Contents**

June 5, 2010

From Staff Reports

Attorney General Lisa Madigan's office is looking into an allegation that the Lisle Township Board of Trustees violated the Open Meetings Act.

The action is in response to a recent Madigan received from Naperville resident Virginia Wisdom, captain of the Lisle Township 50th Precinct. Wisdom said that at the May 22 meeting, Township Clerk Richard Tarulis urged the board to "call the sheriff and have (Wisdom) thrown out" after she refused to tell Township Supervisor Charles Clarke the name of her attorney and whether she was recording the meeting.

The board has until June 16 to supply the attorney general with a written response which may include other documents, records, recordings or affidavits with the requested information.

Madigan's office received a request for review through its public access counselor, said Robyn Ziegler, Madigan spokeswoman. As part of that review, she said, the office has requested more information from the Lisle Township board.



## Questions

Ancel, Glink, Diamond, Bush,  
DiCianni & Krafthefer

Stewart H. Diamond  
Adam B. Simon  
Julie A. Tappendorf  
Jeffrey R. Jurgens  
Nicholas A. Grojean

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