


Freedom of Information Act & Open Meetings Act


Township Officials of Illinois
Monday, November 8, 2010
10:30 a.m. – 12:00 p.m.

Presented By:
Jeffrey R. Jurgens
Nicholas A. Grojean
www.ancelglink.com





FOIA: Year 1

Overview of PAC Decisions & General Compliance Issues



Appointment / Training




Appointment / Training

- Must appoint at least one FOIA officer.
- Must appoint at least one individual 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



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How are you trained?



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ILLINOIS ATTORNEY GENERAL
LISA MADIGAN

Ensuring Open and Honest Government


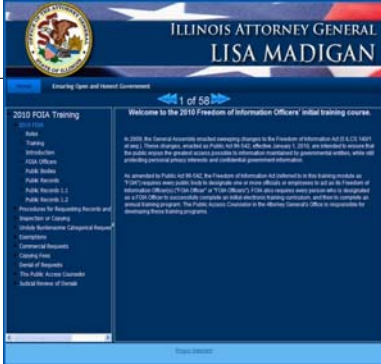
Freedom of Information Act

2010 FOIA Training
2010 OMA Training (Available Feb 1, 2010)

Select a Training and Click Here



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Ensuring Open and Honest Government


1 of 50

2010 FOIA Training

Welcome to the 2010 Freedom of Information Officers' initial training course.


In 2009, the General Assembly enacted sweeping changes to the Freedom of Information Act (5 ILCS 140/1-140/2). These changes, included in Public Act 09-002, effective January 1, 2010, are intended to increase the public's access to government records and to improve government transparency.

As mandated by Public Act 09-002, the Freedom of Information Act underwent a revision to include an "FOIA" response team public body to designate one or more officials or employees to act as the Freedom of Information Officer ("FOIA Officer") of that public body. The FOIA Officer's role also requires such personnel to designate an FOIA Officer to coordinate compliance with initial on-line training curriculum, and then to complete an annual retraining program. The Public Access Committee is the Illinois Governor's Office is responsible for administering these training programs.




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A little confusing...



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Personal Information v.
Private Information



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Redact Private Information...


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




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Seek pre-approval for personal information

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



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:

- o be given within statutory time frame;
- o include a copy of the request;
- o include a copy of the proposed response; and
- o 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.





A few examples...

FOIA Applications

Gender and ethnicity information of public employees?



- Not exempt
 - See PAC Decision 5124



FOIA Applications

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)



FOIA Applications

Graphic photographs of police scene?

- Usually exempt
 - See PAC Decisions 5850




FOIA Application

Records relating to whether employee will take maternity leave?

Exempt

- See PAC Decision 6485




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FOIA Application

Performance evaluation of village manager?

Not exempt

- See PAC Decision 6548 (see also 6576)




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FOIA Application

Public official's personal calendar?

Exempt

- See PAC Decision 7187



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FOIA Application

Dates of birth?

Nearly always exempt, but must always obtain pre-approval

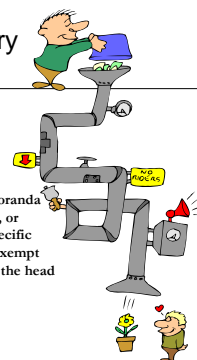
- o See PAC Decision 5916





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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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FOIA Application - Section 7(1)(f)

Police officers notes in LEADS report?

Exempt as opinion

- o See PAC Decision 5170






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FOIA Application - Section 7(1)(f)

Clerk's tape recording of meeting?



- Not exempt
- See PAC Decision 5888



FOIA Application - Section 7(1)(f)

Bidder list for specified projects?



- Not exempt
- See PAC Decision 6564



FOIA Application - Section 7(1)(f)

Internal communication relating to bid award?


- Exempt
- See PAC Decision 6830



FOIA Application - Section 7(1)(f)

Hand written notes of employees?

- Exempt
- See PAC Decisions 7032 & 7085



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FOIA Application - 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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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.

The realities...






Attorney general backlogged on FOIA rulings

By BRUCE RUSHFON (bruce.rushfon@sj-r.com)
 THE STATE JOURNAL-REGISTER
 Posted: Jan 20, 2010 @ 11:20 AM

Nearly 600 cases have piled up at the Illinois attorney general's office from governments and people who want rulings on whether public bodies must release records under the state Freedom of Information Act.

As of June 3, 2007 only attorney general's staff of the issues have been resolved.



Hundreds have sought FOIA help from attorney general

By BRUCE RUSHFON (bruce.rushfon@sj-r.com)
 THE STATE JOURNAL-REGISTER
 Posted: Mar 17, 2010 @ 11:24 AM
 Last update: Mar 18, 2010 @ 10:47 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 373 requests to order records released after public bodies denied FOIA requests.

Power of the press...

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PANTAGRAPH.COM

State reviews whether Farmer City Council illegally closed meeting

By Steve Hoffman | shoffmst@gmail.com | Posted: Wednesday, April 7, 2010 3:00 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 Journal and "Township, the People, the Politics, the People" are the "Open Meetings Act" (OMA) watchdogs.

City Manager Trent Smith, the attorney general's office.

"We have determined that the OMA is a statutory, self-enforced system for holding the county's business in the open."

The Open Meetings Act does not require, employment, or other or department of health.

The state's request for review includes: A hearing system.

On Monday, an original copy with a relative to order to sue.

PANTAGRAPH.COM

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

By Erik Brady | ebrady@pantagraph.com | Posted: Wednesday, March 21, 2010 6:30 pm

LeROY — The Illinois attorney general's office has asked LeRoy city officials for records and a tape recording of a March 17 meeting to determine if the council violated the state's Open Meetings Act.

The state's latest address 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 Feb. 17 council meeting.

In a March 21 letter to LeRoy Mayor Steve Dean, state Public Access Counselor Cary Smith asked for minutes of the March 17 meeting, a verbatim recording of the closed session and copies of the agenda and notice for the meeting, search asked for the minutes to be returned within seven days.

City Administrator Jeff Larson did not return a call for comment on the attorney general's request.

The council faced "pending litigation" on the matter for entering the executive session that lasted more than an hour. Included in the action to include the public from the discussion was a conference on correspondence between City Attorney Brian Reed and Madison County Assistant State's Attorney Hannah Eisner about the Feb. 17 council meeting.

An 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.

Eisner had recommended that the council vote again on several issues handled at the February meeting in a way to address the city's failure to post its agenda 48 hours in advance of that meeting. Reed disagreed with Eisner and advised the council that the council could not vote on the agenda, including council of Council's consent, was not necessary.

Three outcomes are possible as a result of the attorney general's review of the decision to close the March 17 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 binding opinion that requires the city to address its error.

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 Erik Brady | ebrady@pantagraph.com | Posted: Friday, March 12, 2010 6:42 pm

LEROY — Illinois Attorney General's office will be asked for an opinion on an alleged error whether the LeRoy City Council violated the Open Meetings Act, according to a preliminary report on reports from the Feb. 17 meeting.

Questions were raised by the LeRoy City Council. It is unclear if any other city officials advised that the agenda was not posted for public viewing on time, whether the meeting was required.

Madison County Assistant State's Attorney Hannah Eisner recommended that the council conduct a same session on several matters that were handled in a closed session.

AG looking into Open Meetings complaint against Lisle Township

Comments
June 9, 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 report Madigan received from Naperville resident Virginia Wadson, captain of the Lisle Township 30th Precinct. Wadson said that at the May 12 meeting, Township Clerk Richard Tranko urged the board to "tell the sheriff and Lisa (Wadson) Brown 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.

SJ-R.COM

Madigan: More lawyers devoted to FOIA

By **MARK W. HANSEN** (San Jose, California) 6/20/13
 1:16 PM
 11/11/13
 Last update: 6/20/13, 1:16 PM

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 downloading the app.

Lisa Madigan, Democrat for attorney general



At a time when a high-tech solution, Illinois attorney general Lisa Madigan said Monday she's increased staffing in the division of her office that administers the state Freedom of Information Act.

During a meeting with the state Journal-Sunday editorial board, Madigan said she has nearly a dozen lawyers working full time on FOIA issues. In June, Madigan's office said several attorneys were assigned to the public-access computer's office, which administers FOIA requests and has the power to seal bad-faith requests.

"I've got a full-time lawyer in the public-access computer's office, which is really a stretch at this point, considering the budget of the attorney general's office," Madigan said. "We've pulled people from several different areas, in addition to new hires."

Some criticism to the state records law took effect this year and the attorney general's office had to reduce the law, Madigan's office has received more than a year since. Madigan said the state's records law was drafted during the state's early drafting of workbooks.

Underestimated volume
 "I think it's going to continue to be high volume... I just think that's the nature of it," Madigan said. "We may have underestimated"

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Changes to the Open Meetings Act



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Open Meetings Act


Public Act 096-1473 (HB 5483)

- Must approve minutes of open meeting within 30 days after that meeting or at the public body's subsequent regular meeting, whichever is later.
- Minutes must be subject to inspection within 10 days (not 7)

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Open Meetings Act

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



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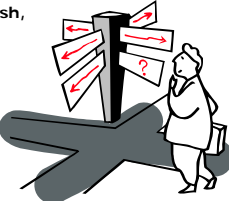
Questions

Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer

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