



# Becoming the Clerk They Won't Want to Replace

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Forms of Government; Mayor's Role;  
Votes and Vetoes; Clerk as Collector

**Central Illinois Municipal Clerks Organization  
& Municipal Clerks of Illinois  
June 20, 2013**

**Presented By:**

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# Forms of Municipal Governments

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- Aldermanic – City
- Trustee – Village
- Commission
- Managerial
- Strong Mayor
- Special Charter



# History of cities, villages & towns: Special Charters

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- Prior to 1870, a community that desired to incorporate as a municipality had to apply to the General Assembly for a “special charter” to establish its powers, boundaries and form of organization.
- Since 1870, special charters have been prohibited by the Illinois Constitution.
- As such, only about 2% of the current Illinois municipalities are incorporated by special charter.



# History of cities, villages & towns: Legislative amendments

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- The “Cities and Villages Act of 1872” established a statutory scheme for the initial organization and incorporation of municipalities.
- Those laws were modified in 1941 by the “Revised Cities and Villages Act.”
- The “Illinois Municipal Code,” the current body of law governing cities, villages and towns, was enacted in 1961 and is currently codified in Act 5, Chapter 65, of the Illinois Compiled Statutes (65 ILCS 5/1-1-1, *et seq.*).



# Who's Who Among Illinois Municipalities?

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- Only about **2%** of municipalities continue to operate under pre-1870 **special charters**. They are “incorporated towns” governed by the Municipal Code, and are different than “townships” governed by the Township Code.
- Approximately **23%** of municipalities are “**cities**.”
- Approximately **75%** of municipalities are “**villages**.”
- Most operate under either the “**aldermanic-city**” form or the “**trustee-village**” form, although several others are of the more complicated “**commission**,” “**managerial**” or “**strong-mayor**” forms of government



# There's more than one way to skin a cat, or to call a spade a spade...

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- Under the Municipal Code, the terms "**city**," "**village**" and "**incorporated town**" all generally mean the same thing
- The word "**mayor**" is generally the same as "**president**"
- "**Alderman**," "**commissioner**" and "**trustee**" are essentially the same
- "**City council**" equals "**board of trustees**," unless it means a "**council**" of commissioners, all of which are known as the "**corporate authorities**"
- Generally, no matter the form of government, the laws applicable to an alderman on a city council also apply to a trustee on a board of trustees or a commissioner on a village council, unless expressly stated otherwise



# Forms of Government: Aldermanic-City

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- The legislative body (like a board of trustees) is a “City Council” usually consisting of two “aldermen” elected in staggered four-year terms from each ward.
- The number of wards (and thereby the number of aldermen) is determined by the size of the city’s population, but can also be changed by referendum.
- The “mayor,” “**city clerk**” and “treasurer” are usually elected at-large to four-year terms.
- A city may, by referendum, reduce its terms of office to two years.



# Forms of Government:

## Trustee - Village

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- Most villages have a legislative body called a “**board of trustees**,” consisting of six “**trustees**” usually elected to four-year terms from the village at-large
- Unlike aldermanic cities, the number of trustees does *not* change along with the size of the village
- But villages with more than 5,000 residents may, by referendum, opt to elect the six trustees from districts, rather than at-large
- The village “**president**,” a.k.a. “mayor,” is elected at-large, usually also with an elected “**village clerk**”
- The president/mayor may appoint other officers, *including a village attorney*, with the advice and consent of the village board





# Forms of Government: Commission

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- The commission form of government is a statutory creature controlled by Article 4 of the Illinois Municipal Code (65 ILCS 5/4-1-1, *et seq.*)
- This form is designed for smaller communities, and is not available to those with more than 200,000 residents
- The legislative body is a “council” of four commissioners and a mayor elected at-large to 4-year terms. They comprise the “corporate authorities” and hold all executive, administrative and legislative powers and duties of the village.
- The mayor is president of the council and supervisor of all governmental departments.



# Commission Form of Government: Departments and Department Heads

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- Commission-form governments must establish five departments:
  - Dept. of Public Affairs
  - Dept. of Accounts & Finances
  - Dept. of Public Health & Safety
  - Dept. of Streets & Public Improvements
  - Dept. of Public Property
- The mayor serves as commissioner of Public Affairs
- At the first meeting following an election, the council, by majority vote, designates the commissioners to each serve as head of one of the other four departments, OR
- The residents may, by referendum, require candidates to run for a specific office tied to one of the departments
- The commissioner of Accounts and Finances is vice president of the council and serves as interim mayor in the event of a vacancy

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# Commission Form of Government: Appointment of Other Officers

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- The council of commissioners, including the mayor, may appoint by majority vote the following officers:
  - Municipal clerk**
  - Corporation council
  - Municipal attorney and assistant attorney
  - Treasurer
  - Library trustees
  - Commissioner of streets and public improvements
  - Superintendent of streets
  - Superintendent of special assessments
  - Superintendent of sewers
  - City engineer
  - Plus “any additional officers that the council considers necessary or expedient.”



# Commission Form of Government: A little history lesson


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According to Ancel Glink's very own *Illinois Municipal Handbook*, published by the Illinois Municipal League:

- The commission form of government was quite popular in the early 1900s, but the number of such municipalities has declined steadily since 1920.
- There are only about 50 commission-form governments of the 1,300 or so municipalities in Illinois.
- The decline in this form of government may be attributable to a modern distaste for each commissioner having near-absolute power over his or her department. As governments become more complex, greater coordination is needed between departments, which can be difficult under the commission form.

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# Forms of Government: Managerial (or “Manager”)

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- The managerial form of government is controlled by Article 5 of the Illinois Municipal Code (65 ILCS 5/5-1-1, *et seq.*)
- It is available only to municipalities with fewer than 500,000 inhabitants
- Not all governments with a municipal “manager” are actually incorporated under the managerial form of government, which can only be obtained by referendum



# Managerial Form of Government: The Municipal “Manager”

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- The managerial form of government bestows upon the municipal manager certain statutory executive powers that a manager in other forms of government does not possess. The manager serves as the administrative head of the government and is responsible for “efficient administration of all departments”
- The manager is appointed by the mayor, with advice and consent from the village board or city council, to an indefinite term of office. He or she need not be a resident at the time of appointment
- The manager can be removed from office by a majority vote of the city council or village board



# Managerial Form of Government: The Manager's Duties and Powers

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- The special statutory duties and powers held by the municipal manager are stated in 65 ILCS 5/5-3-7, and may include the following:
  - (1) Enforcement of laws and ordinances;
  - (2) Appointment and removal of all directors of departments;
  - (3) Control of all departments and divisions;
  - (4) Appointment and removal of all non-elected officers;
  - (5) Exercise the duties of **municipal clerks** and comptrollers in respect to preparing financial reports regarding municipal expenses for consideration by the corporate authorities in preparing an annual budget;
  - (6) Attendance at all council or board meetings with right to participate, but not to vote;
  - (7) Recommendations for adoption of measures necessary or expedient for the municipality; and
  - (8) To perform all other duties prescribed by the Municipal Code and local ordinances.



# Managerial Form of Government: Form of Legislative Body

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- The managerial form of government can exist in a city with aldermen or a village or town with trustees. The council's or board's powers are purely legislative, including approval of all expenses and liabilities
- City aldermen and village trustees are usually elected to staggered 4-year terms from districts or wards, unless by referendum the voters opt to elect at-large, or to not have staggered terms
- The number of aldermen or trustees is based on the population of the municipality, and may be changed by referendum





# Managerial Form of Government: Voting and Veto Powers for the Mayor

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- The mayor of a city or village that elects aldermen or trustees from wards does NOT vote on any resolutions or ordinances except (1) to break ties in votes that require a majority; (2) when half the board or council has voted in favor, but there is no tie; or (3) when more than a majority vote is required.
- In municipalities that elect aldermen or trustees at large, the mayor may vote on all ordinances and resolutions, but has no veto power.
- Whenever a mayor or president does have and exert veto powers, a two-thirds vote is required to override the veto.



# Managerial Form of Government: Clerks (yea!) and Treasurers

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- In managerial cities with an aldermanic form of government, the city clerk and treasurer are elected at-large to four-year terms.
- In any city with 100,000 or fewer residents, the council may provide by ordinance that the clerk and/or treasurer will be appointed by the mayor with approval of the council, rather than being elected to the office.
- In cities with 100,000 to 500,000 residents, the clerk and treasurer may appoint people to serve as “clerical help and subordinates” as needed for their respective offices.



# Forms of Municipal Government: Strong Mayor

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- In the strong-mayor form of government, the mayor must be able to bench press at least five reps at 200 pounds, or must beat Rahm Emanuel in three consecutive arm-wrestling matches
- A strong mayor must also have dark, penetrating eyes, a square jaw, broad shoulders and a powerful voice
- Arnold Schwarzenegger was a strong mayor in Illinois prior to becoming a weak governor in California



# Forms of Municipal Government: Strong Mayor

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- The strong mayor form of government is set forth in Article 6 of the Municipal Code, 65 ILCS 5/6-1-1, *et seq.*, and is available by referendum only to communities with populations ranging from 5,000 to 500,000.
- A strong mayor community has an elected mayor, **clerk**, treasurer and anywhere from eight to 20 aldermen – depending on the population of the municipality – elected from wards to four-year terms.
- A common misconception is that a municipality that has not lawfully adopted the statutory strong-mayor form is, nonetheless, a “strong mayor” community simply because the mayor has political control over the council. Even in such a community, the alleged “strong mayor” lacks the statutory powers granted under Article 6.



# Strong Mayor Form of Government: What Makes the Mayor so Strong?

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- In an Article 6 strong mayor community, the general powers of a mayor are merged with the additional powers granted to a municipal manager under the Article 5 managerial form.
- However, even stronger than the Article 5 manager, who can be removed from office by a simple majority of the board, an Article 6 strong mayor is elected to a four-year term of office and generally cannot be removed until the expiration of his or her term.
- A strong mayor generally has the power, without council approval, to appoint and remove administrative assistants, budget and finance directors, heads of all departments, all other non-elected officers and members of commissions, boards and agencies other than those covered by civil service laws.
- The council's powers, therefore, are purely legislative.



# Strong Mayor Form of Government: Its Short History Hasn't Led to Much

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- The strong mayor form existed on an informal basis in many Illinois communities prior to the legislature enacting Article 6 in 1969. In a community willing to grant such broad powers to its mayor, this form of government is appealing.
- However, there are currently *zero* statutory strong mayor municipalities in Illinois.



# Forms of Municipal Government: Special Charter

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- Special charter municipalities, which include all incorporated towns (but no townships), are those few remaining units of government operating under the original pre-1870 characteristics of their incorporation.
- The main difference is that special charter towns now elect their presidents and **clerks**.
- These towns generally retain their original identities and structures, and their officials possess the powers granted under the special charter in addition to those powers generally given to municipalities under the Illinois Constitution and Municipal Code.
- Most special charters originated by the General Assembly granting to a township the additional powers generally given to a village, including that the governmental powers are exercised by a town president and board of trustees.



# The Mayor's Role (a.k.a. "The President's Role")

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- As already discussed, a mayor's or president's role in a municipality varies greatly depending on the statutory form of government. The best example of the opposite ends of the spectrum could be a "strong mayor" holding the statutory powers of a municipal manager in a managerial government, as compared to the mayor in such a managerial government, who hands over those powers to the municipal manager.
- Generally speaking, a mayor is the chief executive officer of a city and a president is the same for a village or town.
- The mayor or president perform all duties, and have all powers, set forth by law – including local ordinances – and are charged with execution and enforcement of such laws.
- Mayors must provide information to the council or board concerning the affairs of the municipality, and subject to similar authority by the governor, have the power to call out the militia suppress riots and disorderly conduct.





# The Mayor's Role: Veto, Liquor and Emergency Powers

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- Mayors generally serve as president of the board or council, and usually have the power to veto – or line-item veto – all ordinances, resolutions and motions that create a liability against the municipality or appropriate public funds (subject to certain statutory exceptions, like a mayor in a managerial village with trustees elected at-large).
- The Illinois Liquor Control Act makes the mayor the Local Liquor Control Commissioner for the municipality, with the power to enforce provisions of that Act in relation to local liquor licensing.
- The corporate authorities may pass an ordinance granting the mayor extraordinary powers during emergencies, which generally give the mayor the power to exercise *all* powers normally possessed by the corporate authorities as a whole.



# The Mayor's Role: Employees and Appointed Officers

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- Mayor's generally have powers to hire and fire administrative and executive employees, and to appoint non-elected officers, sometimes subject to consent of the board or council and other statutory limitations, as in a managerial government.
- As chief executive officer, the mayor essentially serves as the top "boss" in the municipality, with all department heads, administrators, managers and others reporting to the mayor and serving at the mayor's pleasure.
- The mayor's degree of control is subject to the council's power to prescribe the duties of various officers and employees, but many of those duties are established by statute. The council may only add duties that are not inconsistent with those statutes.



# The Mayor's Role: Presiding Officer of Legislative Body

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- As the presiding officer of a municipalities legislative body, a mayor generally has, among others, the following duties:
  - Open the meetings and call the members to order;
  - Announce the agenda topics to the council and the order of discussion;
  - Call for votes on such agenda items and announce the results thereof;
  - Allow appeals of his or her rulings as chair of the meeting;
  - Protect the council from dilatory or frivolous actions; and
  - Coordinate all activities of the municipality and its various boards, commissions, committees and officers.



# Votes and Vetoes: How much, when and why?

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- Section 3.1-40-40 of the Municipal Code requires all ordinances, resolutions and motions that (a) create any liability against the village, or (b) involve the expenditure or appropriation of its money, must receive a majority vote of all voting members, including the mayor.
- For example, in a city council with a mayor and 14 aldermen, an appropriation ordinance must be approved by at least eight of the 15 voting members, including at least eight aldermen or seven aldermen plus the mayor.
- When an elected council or board consists of an odd number of aldermen or trustees, a majority of the members is sufficient to pass other ordinances (subject to slight differences for commission-form governments).



# Votes and Vetoes:

## Examples of Super-Majority Votes

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- An ordinance, resolution or motion will require concurrence by a three-fourths ( $3/4$ ) majority of the trustees or aldermen then in office, *not including the mayor*, in situations including, but not limited to:
  - Selling school equipment
  - Street or alley vacations
- An ordinance to purchase or lease property via installment contracts requires concurrence by a two-thirds ( $2/3$ ) majority, *including the mayor*, because the  $2/3$  majority must be of all the “corporate authorities.”
- Thus, it is important to review the statutes governing the particular kind of ordinance, motion or resolution on the table to make sure the proper votes are calculated, because sometimes a super-majority vote is based only on the members of the legislative body, not including the mayor, but sometimes is based on a super-majority of all the corporate authorities, including the mayor.



# Votes and Vetoes: When and How Does a Mayor Veto?

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- Pursuant to section 3.1-40-45 of the Municipal Code, a mayor generally has the power to veto all resolutions and motions that (a) create a liability for the municipality, (b) that provide for the expenditure or appropriation of public funds, or (c) that sell any village or school property.
- The statute also gives a mayor veto power over *all* ordinances, regardless of their content.
- These veto powers are subject only to the limitations previously discussed in Article 4 commission forms and Article 5 managerial forms of government.
- If the mayor approves an ordinance, resolution or motion, he is required to sign it. However, if the mayor disapproves an such an act, he may veto (or line-item veto) it and then must provide his written objection to the village board for reconsideration at its next regular meeting.



# Votes and Vetoes: How Can the Board Override a Veto?

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- When an ordinance, resolution or motion has been vetoed and returned to the board with the mayor's written objections, the board must, at its next regular meeting, do as follows:
  - Pass a motion to reconsider the vetoed act (this motion requires a simple majority vote of the trustees then in office);
  - After such reconsideration, pass a motion to adopt the ordinance despite the veto (this motion requires a two-thirds (2/3) majority of the trustees then in office).



# Clerk as Collector: How and When Does *That* Happen?

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- A municipal “collector” is responsible for receiving revenue from sources other than taxes and paying it over to the municipal treasurer on a weekly basis, unless more often if so required by local ordinance.
- The collector also publishes notices required by the Local Improvement Act, keeps the special assessment warrant books, publish delinquency assessments and send notice of such delinquencies to the county collector.
- If authorized by local ordinance, the collector may hire and fire subordinates and is responsible for their fidelity.





# Clerk as Collector: How and When Does *That* Happen?

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- The corporate authorities may, by ordinance, create the office of collector. In cities, the authorities may further provide that such office be elective rather than appointive.
- In all municipalities without an elected collector, the corporate authorities must appoint someone to fill that role.
- The Municipal Code expressly provides that a municipal clerk is authorized to hold that office in addition to serving as the collector, in which case the clerk is allowed to be paid for both positions.
- It is therefore important to check you local ordinances if you don't have an elected collector to determine whether you, as the clerk, are *required* to serve as the collector, or that you *may be appointed* to fill that role.



## Clerk as Collector: When Does That *Not* Happen?

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- In a municipality with an elected “comptroller,” the comptroller assumes all of the clerk’s duties related to finances, the treasurer, **the collector**, and receipt and disbursement of money. 65 ILCS 5/3.1-35-100 and 120.
- A city council may, by ordinance passed by a two-thirds vote, provide that a city collector (and other officers) be an elected position within the City. 65 ILCS 5/3.1-20-40.



## Clerk as Collector: Okay, so What's the General Rule?

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- In most Illinois municipalities (those with a population of less than one million), the corporate authorities may enact an ordinance creating the office of an appointed collector. That ordinance may provide that the municipal clerk shall serve as the appointed collector, or that the clerk may hold that office. 65 ILCS 5/3.1-35-135.



## Bonus Prize for Municipal Clerks!

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If you are still awake, then you have earned yourself a 15-minute coffee break!



# Becoming the Clerk They Won't Want to Replace

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An Introduction to the Freedom of  
Information Act (“FOIA”)

**Central Illinois Municipal Clerks Organization  
& Municipal Clerks of Illinois  
June 20, 2013**

**Presented By:**

**Adam W. Lasker, Esq.**

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# The Freedom of Information Act:

It does not necessarily mean “freedom” for municipal clerks

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- In many municipalities, the Clerk also wears the hat of the local “Freedom of Information Officer”
- Even in places with separate FOIA officers, the Clerk, as the official keeper of municipal records, always plays an important role in responding to FOIA requests



# FOIA Officer Training: When, Where & Will I Pass the Test?

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- Every public body, including all cities, villages and towns, must designate one or more officials or employees to serve as a “Freedom of Information officer.” 5 ILCS 140/3.5(a)
- All FOI officers must complete an electronic training program within 30 days after assuming that position.
- The online training program is available on the Illinois attorney general’s Website at:  
[www.IllinoisAttorneyGeneral.gov](http://www.IllinoisAttorneyGeneral.gov).
- The training includes a test, and **yes, you will pass the test.**



# What is a FOIA Directory, and What Else Must My Municipality Publish?

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- Every public body must “prominently display” at each of its administrative offices, and make available for inspection and copying, certain FOIA information commonly known as a “FOIA Directory.” 5 ILCS 140/4. The Directory must include:
  - A description of the methods whereby the public may request information and records pursuant to FOIA;**
  - The name(s) of the FOIA officer(s);**
  - The address(es) where FOIA requests should be directed; and**
  - The fees charged pursuant to the FOIA.**
- This information must also be published on the municipalities Website, if it has one.





# What is a FOIA Directory, and What Else Must My Municipality Publish?

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- Additionally, every public body shall maintain and make available to the public a “reasonably current list” of all types or categories of records under its control.
- The public body must also maintain and make available to the public a description of the manner in which public records are stored electronically and how that data may be obtained “in a form comprehensible to persons lacking knowledge of computer language or printout format.” 5 ILCS 145/5.



# What is a FOIA Directory, and What Else Must My Municipality Publish?

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- In addition to the FOIA directory, each unit of government must also publish a “brief description of itself” that must include the following:
  - A summary of the public body’s purpose;
  - A block diagram of its functional subdivisions;
  - The total amount of its operating budget;
  - The number and location of all offices;
  - The approximate number of full and part-time employees;
  - The identification and members of any board, commission, committee or council that acts in an advisory capacity to the public body, or that has control over its policies or procedures, or to which the public body is answerable for its operations (5 ILCS 140.4(a)).



# How Does a Municipality Handle and Respond to FOIA Requests?

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- Upon receiving a FOIA request, the FOI officer must:
  - Note the date the FOIA request was received; Compute the day upon which the response period will expire, and note that date on the written request;
  - Maintain a paper or electronic copy of the written request, including all documents submitted with the request, until the request has been complied with or denied; and
  - Create a file for the retention of the original request, a copy of the response, a record of and copies of written communications with the requester



# Responding to FOIA Requests: Time Period for Issuing the Response

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- A public body must respond to all FOIA requests within five (5) business days, whether said response (a) provides all requested documents, (b) is a full or partial denial of the request, or (c) is a notice of an extension of time to respond for any of the following reasons:
  - (i) The records are stored at another location;
  - (ii) The request requires the collection of a substantial number of records;
  - (iii) The request is categorical and requires an extensive search for responsive records;
  - (iv) The requested records have not been located after a routine search;
  - (v) The requested records require examination by qualified personnel to determine whether any exemptions apply;
  - (vi) The request is unduly burdensome; or
  - (vii) Consultation is needed with another public body having a substantial interest in the subject matter of the request.



# Responding to FOIA Requests: Time Period for Issuing the Response

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- The FOIA requester and the public body may agree in writing to extend the time beyond the statutory deadline to a date agreed upon by the parties
- Failure to notify a FOIA requester of any extension of time or denial will be deemed to be a denial of the request
- There are special exceptions to the response period for requests made for commercial purposes (5 ILCS 140/3.1) and recurrent requesters (5 ILCS 140/3.2).



## What is Included in a FOIA Response?

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- As noted, a written response must be provided to the FOIA requester within five business days. The request must include:
  - All responsive records in their entirety, subject to redactions permitted by the Section 7 statutory exemptions; or
  - If the response is a full or partial denial, an explanation of the reasons for the denial and a reference to the exemption(s) claimed; or
  - If the response includes an extension of time, the reason(s) for said extension and the anticipated date of compliance



# What is included in a FOIA response?

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- The FOIA expressly contains a stated public policy of openness and transparency in government, such that all records are deemed to be public unless they fall within one of the 26 or so exemptions in section 7 of the Act, or based on other statutory exemptions described in section 7.5 of the Act.
- Therefore, responsive records should generally be provided in their entirety to a FOIA requester, including information in those records that is not relevant to the request.
- Partial denials, or redactions of information on records otherwise provided in the response, must be strictly limited to the exemptions expressly described in the Act.
- Records stored in an electronic format should be provided to the requester in the format specified in the request, if feasible. If not feasible, the records should be produced in the electronic format in which they are stored.



# So, what is a “Public Record”?

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- **"Public records"** means **all records**, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other 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, or under the control of any public body.**





# Can We Charge Fees for the Copies We Produce for a FOIA Response?

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- A public body may not charge any fee for the costs of any search for and review of records, or other personnel costs, except for commercial requests.
- A public body may charge fees for creating *paper* copies of documents. Such fees may not exceed 15 cents per page for black-and-white copies, and may not be charged for the first 50 pages.
- Copies provided in color, on paper other than letter or legal size, or in electronic format may include a fee for the actual cost of such copies.
- A fee of no more than \$1 may be charged for certification of a copied document.



# Additional Fees for Commercial FOIA Requests

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- When responding to commercial requests, the public body may charge a fee of up to \$10 for each hour spent by personnel in searching for or retrieving a requested record, but no such fee may be charge for the first eight hours.
- An additional fee may be charged for the actual cost of retrieving and transporting public records from an off-site storage facility.
- When these fees are assessed to commercial requesters, the written response must include an accounting of all such fees, costs and personnel labor hours. 5 ILCS 140/6(f)



# Beware the Public Access Counselor: Violate FOIA and the PAC-Man Will Eat You Alive!

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- A 2010 amendment to the FOIA established the an agency known as the Public Access Counselor (“PAC”), which is a branch of the attorney general’s office charged with the duty of enforcing the FOIA and the Open Meetings Act.
- Under that 2010 amendment, a public body was required to obtain a “pre-approval letter from the PAC before it could deny a FOIA request based on the “personal information” exemption. However, the need to obtain pre-approval letters was eliminated from the Act in a subsequent amendment in 2011.
- However, the PAC still has strong FOIA and OMA enforcement powers, and issues binding opinions any time a requester files a meritorious request for PAC review.



# PAC Opinions:

## How to Avoid Bad Ones by Requesting Good Ones

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- Although the FOIA no longer requires pre-approval letters from the PAC, and despite most of the PAC's binding opinions going against the public bodies, it still possesses the authority to issue non-binding advisory opinions on behalf of the public bodies.
- When requested in writing by the head of the public body (*i.e.*, a mayor or president) or its attorney (*i.e.*, Adam Lasker), the PAC will assist with an analysis of the FOIA request and the documents that might be responsive.
- When a public body obtains an advisory PAC opinion and response to the FOIA requester in good-faith reliance on the PAC's opinion, the public body is not liable for any penalties under the ACT. 5 ILCS 40/9.5(h)

# PAC Opinion 10-02

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



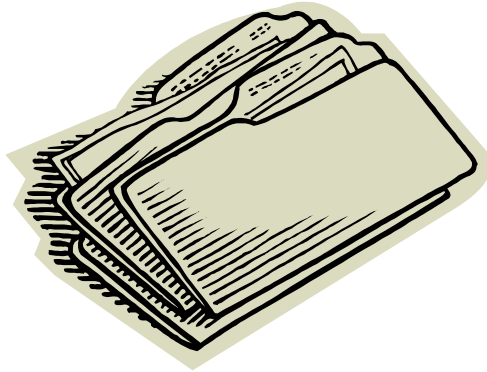
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# PAC Opinion 10-03

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Certain autopsy documents subject to review, but post-mortem photographs were exempt.



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# PAC Opinion 10-04

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Settlement agreements are subject to FOIA even if procured by an insurance company and in the insurance company's possession and control.



# PAC Opinion 11-001

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- Chicago Police Department
- Arrest Records – not exempt





# PAC Opinion 11-002

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- Chicago Police Department
- Number of police officers assigned – not exempt





# PAC Opinion 11-003

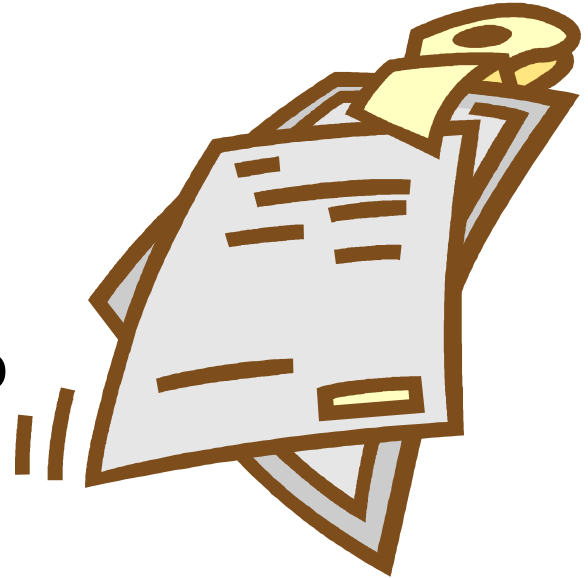
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- University of Illinois
- Unduly Burdensome Requests
- A request cannot be considered unduly burdensome unless the records were previously produced or unless the request is properly denied

# PAC Opinion 11-004

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- City of Des Plaines
- Settlement agreements – not exempt under self-insurance claim info exemption





# PAC Opinion 11-005

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- Department of Central Management Services
- Workers compensation records
- Individual reports containing nerve conduction velocity results were not “proprietary insurance or risk management documents” so not exempt.

# PAC Opinion 11-006

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- City of Champaign
- Text messages on personal devices – NOT exempt.
- Public business?



# PAC Opinion 11-007

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- Illinois Department of Natural Resources
- Offer to view documents on microfiche insufficient; copies must be provided.

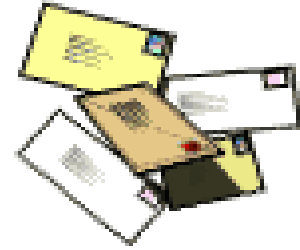


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# PAC Opinion 12-001

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- Village of Smithfield
- Improper classification of husband and wife as recurrent requesters
- Cannot add requests of husband and wife together when determining whether they qualify as “recurrent requesters”

# PAC Opinion 12-002

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- Chicago Board of Education
- Public bodies must respond to FOIA requests within 5 business days





# PAC Opinion 12-003

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- Chicago State University
- Names of students and graduation information are not exempt from disclosure



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# PAC Opinion 12-004

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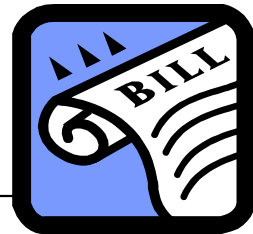
- Village of Smithfield
- FOIA request should have been personally accepted at a Village Board meeting



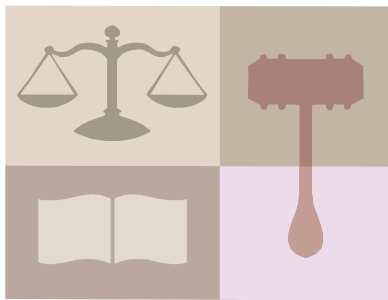
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# PAC Opinion 12-005



- O'Fallon Central School District #104
- Disclosure of Invoices for Legal Services
- Some info may be redacted, but school should have provided time worked on projects and hourly rates



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# PAC Opinion 12-006

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- Hillside Police Department
- Arrest records of a local public official should have been produced.



# PAC Opinion 12-007

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- Ignore the PAC at your own peril
- Not responding will result in a binding opinion against you and your municipality



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## PAC Opinion 12-009

Surprise  
Bonus!

- Cannot redact information unless exempt
- Ancillary information in document must be disclosed
- Bonus information for requester

# Non-PAC Opinions – Take it to Court

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- Late disclosure but prior to judgment = no attorney's fee award
- However, delayed compliance can still result in a fine



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## Special Considerations (Emails):

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- What if the e-mail is on a village computer or account?
  - If it is about village business, it is a public record
  - If it is not about village business, it is not a public record





# Special Considerations (Emails):

---

- What if the e-mail is on my home computer?
  - If it is about village business, it is a public record
  - If it is not about village business, it is not a public record



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## Special Considerations (Texts):

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- What if I text message from my village-issued or personal cell phone?
  - If it is about village business, it is a public record
  - If it is not about village business, it is not a public record
  - See binding PAC opinion from November 15, 2012, ordering Champaign to release text messages sent between city council members during meetings – later upheld by Circuit Court



# Thank you for participating with the CIMCO and MCI!

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## Questions?

**Please call:**

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