

Freedom of Information Act

Illinois Freedom of Information Act

Frequently Asked Questions By the Public

The Illinois Freedom of Information Act (FOIA) is designed to ensure that Illinois residents can obtain information about their government. In 2009, Attorney General Lisa Madigan worked with legislators and a diverse group of individuals and organizations to strengthen FOIA and hold government more accountable. Beginning on January 1, 2010, key changes to the Freedom of Information Act will take effect and in turn will provide Illinois residents with a more open and accountable government. These Frequently Asked Questions describe the FOIA provisions that will take effect on January 1, 2010.

WHO'S WHO UNDER FOIA

Public Access Counselor (PAC) – is an attorney in the Attorney General's office whose responsibility is to ensure compliance with FOIA. The Public Access Counselor is part of the Public Access Bureau in the Attorney General's office, which includes several Assistant Attorneys General and professional support staff members working to respond to FOIA and Open Meetings Act issues raised by the public and government officials. Working under the direction and supervision of the Attorney General, the PAC has the authority to review requests for documents under FOIA and determine whether those documents should have been produced under FOIA. The PAC also has the authority to determine whether a public body has violated the Open Meetings Act. As part of this Public Access work, the Attorney General has subpoena power, may issue advisory opinions to guide public bodies, may issue binding opinions in FOIA disputes and may sue to enforce binding opinions.

Public Body – is defined in FOIA as "all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof and a School Finance Authority created under Article 1E of the School Code." FOIA provides that a "[p]ublic body" does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act."

FOIA Officer – is a person appointed by the "public body." The FOIA officer's responsibility is to receive FOIA requests from the public and to send responses in compliance with FOIA. FOIA requires that each public body appoint one or more FOIA officers who must complete an electronic training developed by the Attorney General's PAC. The initial training must be completed by July 1, 2010; trainings must be completed annually after that date. The Attorney General's office will make the electronic training

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available to all FOIA officers.

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Public Records – are defined in FOIA as “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.” A few examples of public records available under FOIA are: orders; rules; reports or studies; contracts; names, titles and salaries of public employees; and the voting records of public bodies. Information can be available in electronic as well as paper format.

GENERAL INFORMATION

What is FOIA?

The Freedom of Information Act (FOIA) is a state statute that provides the public the right to access government documents and records. The premise behind FOIA is that the public has a right to know what the government is doing. The law provides that a person can ask a public body for a copy of its records on a specific subject and the public body must provide those records, unless there is an exemption in the statute that protects those records from disclosure (for example: records containing information concerning trade secrets or personal privacy).

Who is subject to FOIA?

Public bodies are subject to FOIA. The judiciary is not subject to FOIA, but court records and proceedings generally are open to the public.

Who can file a FOIA request?

Anyone. Any person, group, association, corporation, firm, partnership or organization has the right to file a FOIA request to any state or local public body, including any city, township or county office.

HOW TO MAKE A FOIA REQUEST

I need information from a public body but I am not quite sure where to start or what to request. What can I do?

If you would like to obtain information from a public body, you should begin by writing down a list of the information you are seeking. Then prepare a letter to that public

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body's office. If you are not sure to whom to address the letter, contact the public body's main office and request the contact information for the FOIA officer.

Your letter should include your name, your address, the date and a daytime phone number so that the public body can contact you if they have any questions. Describe the information you are seeking with sufficient detail so that the public body can find the requested records. Providing as much information as possible in your request on the subject matter may expedite the public body's search process.

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□ You do not need to describe the document specifically and accurately by the same name the public body uses. As long as the public body understands what is being requested, they must release that information, even if the requestor does not call it by the same name the public body uses.

Public bodies cannot require that the public submit FOIA requests on a specific form or in a specific format. Public bodies, however, can require that FOIA requests be submitted in writing. Public bodies must accept requests by mail, personal delivery, fax, e-mail, or other means available to the public body. Public bodies may accept oral FOIA requests but are not required to do so.

Additionally, each public body must develop and make available upon request a list of documents that the public body will immediately provide to a requester. Each public body also must maintain a reasonably current list of all types or categories of records under its control, and the list should be reasonably detailed in order to aid persons in obtaining access to public records. This list must be available for inspection and copying.

What should I include in the FOIA request?

On your written request, include your name, address, the date and a daytime phone number so that the public body can contact you if they have any questions. Provide as much information as possible on the subject matter. This will help expedite the search process.

Can a public body require that a FOIA request must be submitted on a certain form or in a certain format?

No. Public bodies can require that FOIA requests be submitted in writing, but they must accept requests by mail, personal delivery, fax, e-mail, or other means available. While public bodies may offer a form for FOIA requests, they cannot require that you use a specific form to make your request. Public bodies may accept oral FOIA requests but

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are not required to do so.

To whom do I submit a FOIA request?

FOIA requests should be submitted to the public body's designated FOIA officer.

Every public body must prominently display at its office and make available certain information, including the name(s) of its FOIA officer(s). In addition, the public body must display and make available:

Information on how to submit a FOIA; and

A brief description of the office, including its purpose, budget and number of employees.

Any public body that has a website must also post this information on that website.

How do I know who within a public body should receive my FOIA request?

Each public body must prominently display and make available upon request a directory designating the FOIA officer(s) for that body and the address where FOIA requests

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□ should be sent. This information must also be posted on the public body's website, if it has one.

What if I don't use the same name for a document that the public body uses? Can the public body deny my request for that reason?

No, the public body cannot deny the request just because you called the document by a different name. You do not need to describe the document specifically and accurately by the same name the public body uses. As long as the public body understands what you are requesting, they must release that information, even if you do not call it by the same name the public body uses.

How many days does the public body have to respond to my FOIA request?

A public body must respond to a FOIA request within 5 business days after the public body receives the request. Day 1 of the 5-day timeline is the first business day after the request is received by the public body. The date that the request was received by the public body does not count as "Day 1." That time period may be extended for an additional 5 business days from the date of the original due date if:

The requested information is stored at a different location;

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The request requires the collection of a substantial number of documents;

The request requires an extensive search;

The requested records have not been located and require additional effort to find;

The requested records need to be reviewed by staff who can determine whether they are exempt from FOIA;

The requested records cannot be produced without unduly burdening the public body or interfering with its operations; or

The request requires the public body to consult with another public body who has substantial interest in the subject matter of the request.

If additional time is needed, the public body must notify the requestor in writing within 5 business days after the receipt of the request of the statutory reasons for the extension and when the requested information will be produced.

When does the 5 business day time period start?

On the first business day after the public body receives the request.

What is a "business day" or "working day"?

A "business day" or "working day" is a regular day of the week (Monday through Friday) when public offices and most businesses are open. Saturdays, Sundays and state holidays are not business days and cannot be counted in the 5 business day time period.

What is the incentive for a public body to respond to my request within 5 business days (or 10 business days if extended)?

Aside from the potential that a court ultimately could impose a civil penalty of between \$2,500 and \$5,000 per violation, public bodies have an additional incentive to respond within the time limits set forth. In the event a public body fails to respond within 5

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□ business days, it cannot charge for reproduction costs at a later time or treat the request as unduly burdensome.

Can I make an agreement with the public body to extend the deadline to respond?

Yes, but the agreement must be in writing. The agreement will also relieve the public

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body of having to comply with other legal deadlines in FOIA.

Can the public body ask me why I want the information?

No, except to determine if the request is for commercial reasons. See below for more details on commercial requests.

FEES

Can the public body charge for copies?

Yes, but the fees are limited. For black and white, letter or legal sized copies (8 1/2 x 11 or 11 x 17), the first 50 pages are free, and any additional pages can cost no more than 15 cents a page. For color copies or abnormal size copies, the public body can charge the actual cost of copying.

Can a public body charge for electronic copies?

Yes, but only the actual cost of the recording medium. For example, if information is produced on CDs, the public body may only charge the actual cost of purchasing the CDs.

Is it possible for a public body to waive the copying fees?

Yes. Public bodies may waive or reduce copying fees if disclosure is in the public interest. A waiver or reduction may be available if:

The request is for information on the health, safety and welfare or the legal rights of the general public;

There is an intent to disseminate the information; or

No personal or commercial benefit will be received from document disclosure.

GETTING INFORMATION IN AN ELECTRONIC FORMAT

Can I request the documents in electronic form?

Yes, and the public body must provide you those electronic documents in your requested format, if that is feasible for the public body. If that format is not available to the public body, they must provide the documents in the electronic format in which they are kept or in paper, at the option of the requestor.

If the public body has a database and the information I am seeking requires that the public body do a search of that database, does the public body have to conduct that search?

Yes and the public body cannot charge you for that search.

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Are e-mails subject to FOIA?

Yes. All electronic communications (as long as they do not fall within an exemption) are subject to FOIA.

FOIA OFFICERS

What is a "FOIA officer"?

A FOIA officer is a person appointed by the public body to ensure that the public body complies with FOIA. The FOIA officer's responsibility is to receive FOIA requests from the public and to send responses in compliance with FOIA. FOIA requires that each public body appoint at least one FOIA officer and that the FOIA officer(s) complete an electronic training developed by the Attorney General's PAC. The initial training must be completed by July 1, 2010; trainings must be completed annually thereafter.

Is every public body required to have a designated FOIA officer?

Yes. Every public body must prominently display at its office certain information, including the name(s) of its FOIA officer(s). In addition, the office must display:

· Information regarding how to submit a FOIA; and

· A brief description of the office, including its purpose, budget and number of employees.

Any public body that has a website must also post this information on its website.

If the public body does not display the FOIA officer's information, what should I do?

Contact the Attorney General's Public Access Counselor at 217-558-0486. The public body must post the name(s) of the FOIA officer(s), along with information concerning how to make a FOIA request, at the office of the public body as well as on any websites maintained by the public body.

WHAT TO DO IF THE PUBLIC BODY DOES NOT RESPOND

What can I do if the public body doesn't respond to my FOIA request?

If the public body does not respond to your request within 5 business days after receiving it, then their inaction is considered a denial of your request. If that occurs, you can either file a Request for Review with the Attorney General's PAC or file a case in court.

WHAT TO DO IF YOUR FOIA REQUEST IS DENIED

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What must the public body include in a denial?

The denial must be in writing, and reference a specific legal reason under FOIA to justify the non-disclosure. A public body has the burden of proving by clear and convincing evidence that the information is exempt from disclosure. The denial must also inform the requestor of the right to seek review of the issue by the Public Access Counselor (PAC) in the Attorney General's office, with the PAC's contact information, as well as the right to seek judicial review by filing a court case.

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What can I do if the public body denies my request for information?

You can either file a Request for Review with the Attorney General's PAC or file a lawsuit in court.

How to File a Request for Review with the Public Access Counselor (PAC)

First, what is a Request for Review?

A Request for Review is a letter that a requestor may submit to the PAC if they believe that the public body has not followed FOIA. This letter is a formal way of asking the PAC to take a look at the request and the public body's response (or lack thereof) and determine if a FOIA violation has occurred. The request must be in writing, must be signed by the requestor, and must include a copy of the FOIA request for access to records and any responses from the public body. It must be submitted within 60 calendar days of the public body's final response (or date upon which the response was due).

Is there a deadline for submitting a Request for Review?

Yes. The requestor must submit a Request for Review to the PAC within 60 calendar days after the date of the final denial from the public body (or the date upon which the response was due).

How do I contact the Public Access Counselor in the Attorney General's Office?

The Public Access Counselor is a part of the Public Access Bureau in the Attorney General's Office. Here is the contact information:

Public Access Bureau
500 S. 2nd Street
Springfield, Illinois 62706
217-558-0486

publicaccess@atg.state.il.us

What does the PAC do with my Request for Review?

The PAC will review your request and will do one of three things:

1. Decide that no further action is necessary. If the PAC decides that the alleged

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violation is unfounded and no further action is necessary, the PAC will inform you and the public body of that decision.

2.

Request more information from the public body. If more information is needed to review the issue, the PAC may, within 7 working days after receiving the Request for Review, send a copy of the Request to the public body and ask for any records the PAC needs to complete the review. The public body has 7 working days to provide the requested information. The Attorney General, through the PAC, has the authority to issue a subpoena if the public body fails to fully respond.

3.

The PAC may also try to resolve your FOIA dispute with the public body through mediation or other informal efforts.

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When will the PAC issue a final decision?

If the PAC decides to issue a binding opinion, the PAC will issue that opinion within 60 calendar days after receiving all the information needed to decide the matter. The PAC may extend the 60-day time period by 21 working days by sending a written notice to the requestor and the public body. This written notice must include the reasons for the extension.

What are the different possible outcomes of a Request for Review by the PAC?

There are multiple ways the PAC may respond to a Request for Review:

Work to resolve your FOIA dispute with the public body. (5 ILCS 140/9.5(f)) The PAC may choose to mediate the dispute or resolve the matter by means other than the issuance of a binding opinion. The PAC's decision to decline to issue a binding opinion is not reviewable.

Review the issues in your FOIA dispute and determine that no further action is necessary. (5 ILCS 140/9.5(c)) If the PAC decides that the alleged violations of FOIA are unfounded, the PAC will advise the requestor and the public body of that decision. The PAC will not conduct any further review.

Issue a binding opinion to resolve the FOIA dispute. (5 ILCS 140/9.5(f)) After obtaining and reviewing any information needed to analyze the FOIA dispute that you have with the public body and any additional information that you or the public body chose to provide, the PAC may issue a binding opinion. If the opinion orders the public body to produce records, the public body may appeal the opinion to the circuit court. If the public body does not appeal the opinion and fails to disclose the records as ordered by the opinion, the Attorney General's office may sue the public body to enforce the opinion. If the opinion concludes that the records fall within a FOIA exemption and need not be disclosed, you may appeal the opinion to the circuit court.

Can the PAC issue Advisory Opinions to Public Bodies?

Yes. The PAC may assist any public body by issuing an advisory opinion to provide guidance on how to comply with FOIA. (5 ILCS 140/9.5(h)) The public body may request an advisory opinion to obtain guidance on FOIA compliance. The request must contain sufficient accurate facts from which a determination can be made. The PAC

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may request additional information from the public body to facilitate the review. A public body that relies in good faith on an advisory opinion of the PAC is not liable for penalties in a subsequent lawsuit, so long as the facts upon which the opinion is based have been fully disclosed to the PAC.

Do I have to file a Request for Review with the PAC before I file a FOIA lawsuit in court?

No. You can file a FOIA lawsuit in court after you receive a denial from the public body, or after the PAC concludes a review of the matter. If the PAC decides to issue a binding opinion and you disagree with the opinions of the PAC, you can appeal the PAC's decision to the circuit court. You should be aware that if you ask the PAC to review a

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□ matter and then decide, before the PAC completes the review, to go ahead and file a lawsuit without waiting for the PAC's decision, the PAC will immediately stop working on your Request for Review to allow your lawsuit to move forward.

What's the difference between my two appeal options: filing a Request for Review with the PAC or filing a suit in court?

If the PAC issues a binding opinion deciding your case, then that opinion carries significant weight. If the losing party decides to appeal it to court, the court must give deference to the PAC's opinion and can only overturn it if it is clearly erroneous. If you decide not to seek assistance from the PAC and instead go straight to court, the public body has the burden to show that its denial was correct through clear and convincing evidence.

EXEMPTIONS – RECORDS THAT ARE NOT PUBLIC

What is considered a "public record"?

"Public records" are defined in FOIA as "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." (5 ILCS 140/2(c)) Given this broad definition, FOIA is intended to cover any document, regardless of form, that pertains to government business.

Does "public record" include electronic information?

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Yes. FOIA defines public records to include electronic documents and communications.

When a person requests a record that is maintained in an electronic format, the public body must provide it in the electronic format specified by the request, if that is feasible for the public body. If it is not feasible, the public body must present the information in the format in which it is maintained by the public body or in a paper format at the option of the requestor. The public body may charge a fee for the actual cost of purchasing the recording medium, such as the CD, but may not charge a fee for its search for or review of the information.

What kind of information can I not get access to?

The FOIA law has a presumption that all information is public, unless the public body proves otherwise. There are several exceptions to public disclosure that include but are not limited to:

Private information – "Private information" is exempt from disclosure under FOIA. FOIA defines "private information" as "unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal e-mail addresses." Under FOIA, "private information also includes home

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addresses and personal license plate numbers, except as otherwise provided by law or when compiled without possibility of attribution to any person."

Personal information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the person who is the subject of the information. Under FOIA, the "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." Disclosing information that relates to the public duties of public employees is not considered an invasion of personal privacy.

Law enforcement records that, if disclosed, would interfere with a pending or reasonably contemplated proceeding or that would disclose the identity of a confidential source.

Information that, if disclosed, might endanger anyone's life or physical safety.

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Preliminary drafts or notes in which opinions are expressed or policies are formulated, unless the record is publicly cited and identified by the head of the public body.

Business trade secrets or commercial or financial information that is proprietary, privileged or confidential and disclosure would cause competitive harm to the person or business.

Proposals and bids for any contract, until a final selection is made.

Requests that are "unduly burdensome." (See next question.)

What does "unduly burdensome" mean?

An exemption exists for requests that are unduly burdensome. A request may be considered unduly burdensome if there is no way to narrow the request, and the burden on the public body to produce the information outweighs the public interest in the information. However, before relying on this exemption, the public body must first give the requestor an opportunity to reduce the request to a manageable size. If it is still unduly burdensome, the public body must explain in writing the reasons why the request is unduly burdensome and the extent to which compliance will burden the operations of the public body. Such a response is considered a denial.

What is a "clearly unwarranted invasion of personal privacy"?

FOIA contains an exemption for records that, if disclosed, would result in a "clearly unwarranted invasion of personal privacy." An "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." Under FOIA, disclosing information that relates to the public duties of public employees is not considered an invasion of personal privacy.

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□ COMMERCIAL REQUESTS

What is a request for information made for a commercial purpose?

A commercial request is when the requestor seeks to use part or all of the public records for sale, resale, or solicitation or advertisement for sales or services. Requests by the news media, not-for-profit organizations, scientific or academic institutions are not

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considered commercial information requests.

Are commercial information requests treated differently?

Yes. A public body has 21 business days to respond to a request for information that is made for a commercial purpose. The public body can either: (1) provide the requested records; (2) advise when the records will be provided and the costs; (3) deny the request (if it falls under an exception); or (4) advise the requestor that the request is unduly burdensome.

Can the public entity charge fees for copies of the information?

Yes, but the fees are limited. For traditional black and white, letter or legal sized copies (8 ½ x 11 or 11 x 17), the first 50 pages are free, and any additional pages can cost no more than 15 cents a page. For color copies or abnormal size copies, the public body can charge the actual cost of copying.

REDACTIONS

Can a public body remove or black out information from produced documents?

Yes, if a record contains information that is exempt from disclosure under FOIA, a public body can remove or black out that exempt information from the public records. This is called "redaction." But the public body must produce the remaining information.

Is there any information that a public body MUST withhold or redact? Although there may be legitimate reasons to redact or withhold certain types of information, the only information that the Freedom of Information Act requires a public body to redact are the home addresses, home/private telephone numbers and social security numbers of employees noted on certified payroll records that are required to be submitted to a public body under the Prevailing Wage Act.

OTHER FOIA QUESTIONS

Does a request for a copy of an ordinance require a FOIA request?

No. Ordinances are public documents that should be immediately available to the public without a FOIA request.

Can a public body allow you to inspect but not copy public documents?

No. They must allow you to inspect and obtain copies of public documents.

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Can a public body ask the Attorney General's PAC for advice regarding compliance with FOIA?

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Yes, a public body can ask the Attorney General's PAC to issue an advisory opinion regarding compliance with FOIA. For example, if a public body expects to receive FOIA requests for a certain record or category of records that it maintains and is not certain if those records must be disclosed under FOIA, the public body can ask the PAC for an advisory opinion regarding whether the record(s) must be disclosed under FOIA or fall under a FOIA exemption. The Attorney General's PAC is not required by law to issue an advisory opinion in response to a request.

To ask for an advisory opinion from the Attorney General's PAC, the head of the public body or its attorney must send a written request to the PAC. The request must contain sufficient accurate facts for the PAC to make a determination. The PAC may request additional information from the public body to assist in the review of the issue.

What happens if the public body relies on an advisory opinion from the PAC in responding to a FOIA request but still ends up being sued by a requestor?

A public body that relies in good faith on an advisory opinion of the Attorney General's PAC in responding to a request is not liable for penalties under FOIA, as long as the public body fully and fairly disclosed to the PAC the facts upon which the opinion is based.

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