

2021 Illinois Municipal Treasurers Institute

The Freedom of Information and  
Open Meetings Acts:

**Better Understanding and Compliance**

November 17, 2021  
Public Access Bureau  
Illinois Attorney General's Office

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**Public Access Counselor**

Position within the Attorney General's Office

- Created by amendments to FOIA effective January 1, 2010.
  - To provide advice and education with respect to FOIA and OMA;
  - To resolve complaints concerning compliance with FOIA and OMA without litigation.
- 15 ILCS 205(7)

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**FOIA/OMA Training Requirement**

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

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

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## Alternative OMA Training

- School Board Members
- Drainage District Commissioners
- Directors of Soil and Water Conservation Districts
- Park, Forest Preserve, Conservation, and Fire Protection District Members
- Conducted by Specified Organizations
- Certain Content Must Be Included
- Certificate Required

• **Municipality Members**  
See 5 ILCS 120/1.05 (c)-(g)

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## Freedom of Information Act

(5 ILCS 140/1 et seq.)

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## The Purpose of FOIA

“The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a **fundamental obligation of government** to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act.” (Emphasis added.)

5 ILCS 140/1

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## Presumption of Openness

Under FOIA, there is a presumption that all public records are **open to inspection or copying**:

“Presumption. All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by **clear and convincing evidence** that it is exempt.”  
5 ILCS 140/1.2 (added by 2010 amendments)

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## Definition of “Public Records”

The definition of “public records” includes:  
“**[A]ll** \* \* \* documentary materials **pertaining to the transaction of public business**, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, **in the possession of, possessed or under the control** of any public body.”  
5 ILCS 140/2(c)

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## What is a Public Record? Emails and Texts

- Electronic correspondence is subject to FOIA if it **pertains to the transaction of public business**.
- Even if sent on personal devices (texts on cell phones paid for by employee) or to/from personal email accounts.

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**Emails and Texts Pertaining to Public Business are Subject to FOIA**

*City of Champaign v. Madigan*, 2013 IL App (4th) 120662 (2013): Elected official's communications sent or received on a personal electronic device during a public meeting

*Ill. Att'y Gen. Pub. Acc. Op. No. 16-006* (August 9, 2016) (aff'd by Circuit Court of Cook County): Public employees' emails sent or received via personal accounts

*City of San Jose v. Superior Court of Santa Clara County*, 2017 WL 818506 (Cal. 2017): City employee's emails sent or received using a personal account

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**Emails and Texts Pertaining to Public Business are Subject to FOIA**

With respect to locating emails or texts on personal devices or emails in personal accounts, the public body may be able to fulfill its obligations under FOIA by asking personnel to search their e-mail accounts in good faith.

*Ill. Att'y Gen. Pub. Acc. Op. No. 16-006*, issued August 9, 2016.

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**Explanations and Questions**

- FOIA is not intended to compel public bodies to interpret or advise requesters as to the meaning or significance of the public records. [5 ILCS 140/3.3](#)
- A public body is not required to answer questions or generate new records in response to a FOIA request. *Kenyon v. Garrels*, 184 Ill. App. 3d 28 (4th Dist. 1989)

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## Need Not Create Public Records

FOIA does not require a public body to create records in order to respond to a FOIA request; rather a public body is required to make records within its possession or control available for inspection and copying. *Workmann v. Illinois State Bd. of Educ.*, 229 Ill. App. 3d 459, 464 (2d Dist. 1992).

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## Compiling Information Is Not Creating New Records

FOIA does not require public bodies to create entirely new records consisting of information that is not in its possession or custody, but a public body may be required to compile and re-organize information that it already maintains in the ordinary course of business.

*Hamer v. Lentz*, 132 Ill. 2d 49, 57 (1989).  
*Hites v. Waubensee Community College*, 2016 IL App (2d) 150836 (2016).

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## Designated Public Records

- Records documenting public funds spent or received: [section 2.5](#)
  - Arrest reports: [section 2.15](#): Arrestee name, age, address, and photograph if available; information detailing any charges relating to the arrest
  - Certified payrolls (pursuant to Prevailing Wage Act): [section 2.10](#)
  - Settlement and severance agreements: [section 2.20](#)
- Some redactions allowed

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## Records of Funds

"All records relating to the obligation, receipt, and use of public funds of the State, units of local government, and school districts are public records subject to inspection and copying by the public."  
5 ILCS 140/2.5



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## Records of Public Funds

- Paystubs, payment of severance, or overtime payments for public employees.
- Invoices for outside counsel or other legal services.
- Vendor information and payments for rent-related expenses for public housing.
- Wire Transfers made or received by a municipality.
- Money received or spent from public grants.
- Studies created for a municipality's economic development plan.

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## Records of Public Funds, cont.

- Adjustment letters associated with public pension investment performance.
- Public funds paid in conjunction with an employee's medical issue.
- Cell phone records for devices paid with public funds.
- Lists of residents with delinquent municipal sewer accounts.
- Expenses related to installing security cameras on CTA train platforms.

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## Record Held by Agent

A public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted *to perform a governmental function* on behalf of the public body, and that *directly relates to the governmental function* and is *not otherwise exempt* under this Act, shall be considered a public record of the public body, for purposes of this Act.

5 ILCS 140/7(2)

*Better Government Ass'n v. Illinois High School Ass'n*, 2017 IL 121124 (2017)

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## Record Held by Agent

Examples of public records in the possession of contractors:

- **External auditor's work papers and notes.** Ill. Att'y Gen. PAC Req. Rev. Ltr. 57836, issued September 10, 2019.
- **Engineering firm's records related to the design of a public sidewalk and curb improvement project.** Ill. Att'y Gen. Pub. Acc. Op. No. 13-018, issued December 3, 2013.
- **Sewer repair contractor's certified payroll records.** Ill. Att'y Gen. PAC Req. Rev. Ltr. 50115, issued November 16, 2017.
- **Attorney's records directly relating to the defense of the public body.** Ill. Att'y Gen. PAC Req. Rev. Ltr. 43089, issued October 6, 2017.
- **Emergency transport contractor's records regarding response and transport times.** Ill. Att'y Gen. PAC Req. Rev. Ltr. 45910, issued August 29, 2017.

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## FOIA Requests

- In writing, directed to the public body.
  - Oral requests *may* be honored.
  - Standard form *may not* be required.
  - Public body *may not require* requester to specify a purpose, *except* to determine whether the request is for a commercial purpose.
  - Forward immediately to FOIA officer.
- 5 ILCS 140/3(c)

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## Time for Responding

- 5 business days after receipt of a request (non-commercial).
- Public body may extend response time for an additional 5 business days for one of seven reasons specified in the Act.

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

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## Failure to Respond

Failure to respond to a request within the time permitted is considered a **denial** of the request.

- A public body that fails to respond to a request within the time permitted, but then provides copies of the requested public records **may not impose a fee** for those copies.
- A public body that fails to respond to a request received **may not treat the request as unduly burdensome** under section 3(g).

5 ILCS 140/3(d)

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## Reasonable Search

- When presented with a FOIA request, a public body is required to conduct a "reasonable search tailored to the nature of a particular request." *Campbell v. U.S. Department of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998).
- The adequacy of a public body's search for responsive records is judged by a standard of reasonableness and depends upon the particular facts of the case. *Better Government Ass'n v. City of Chicago*, 2020 IL App (1st) 190038, ¶31, \_\_\_ N.E.3d \_\_\_ (2020).
- "Although a public body is not required to perform an exhaustive search of every possible location, the body must construe FOIA requests liberally and search those places that are 'reasonably likely to contain responsive records.'" *Better Government Ass'n*, 2020 IL App (1st) 190038, ¶31, \_\_\_ N.E.3d \_\_\_ (quoting *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 373 F. Supp. 3d 120, 126 (D.D.C. 2019)).

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## FOIA Response

A FOIA request may be granted, denied, or granted in part and denied in part. *If denying* a request for public records the public body shall *notify the requester in writing of*:

1. The decision to deny the request,
2. The *reasons* for the denial, including a detailed factual basis for the application of any exemption claimed, and
3. The names and titles or positions of each person responsible for the denial.

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## FOIA Response, cont.

In addition, each notice of denial by a public body shall:

1. Inform the requester of his or her right to seek review by the Public Access Counselor,
2. Provide the address and phone number of the Public Access Counselor,
3. Inform the requester of his right to judicial review under section 11 of FOIA.  
5 ILCS 140/9(a)

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## Requests for Electronic Copies

- A public body must produce *records that are maintained in an electronic format* in the electronic format specified by the requester, if feasible.
- If not feasible, must disclose in the electronic format in which the records are maintained or in paper, at the option of the requester.

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### Records Maintained Online

A public body is not required to copy a public record that is published on the public body's website.

- Public body must **notify** the requester that the public record is available online and **direct** the requester to the website.
- Persons unable to reasonably access the record online may **re-submit the request**, public body must then respond as provided in section 3.

5 ILCS 140/8.5

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### Unduly Burdensome Requests

Section 3(g) permits a public body to deny a request if the burden of compliance on public body outweighs public interest in the information.

- Before invoking this section, public bodies must extend to requester an opportunity to **confer with it to reduce the request to manageable proportions**.
- Repeated requests by same person for same records identical to records previously provided or properly denied are unduly burdensome.

5 ILCS 140/3(g)

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### Unduly Burdensome - Examples

- ... manually locating and compiling large numbers of records from 93 separate facilities or systems over a 23-year time span.
- ... compiling all records, including financial records, school policies, and correspondence for a 12-year period.
- ... only two employees to gather, review, and redact thousands of records from several sources over a six-year span.

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## EXEMPTIONS

To enable public bodies to maintain certain types of sensitive public records confidentially, FOIA provides a number of exceptions to the requirement that public records be made available for public inspection. **The exemptions do not, however, prohibit the dissemination of information; rather, they merely authorize the withholding of information.** *Roehrborn v. Lambert*, 277 Ill. App. 3d 181, 186 (1st Dist. 1995), *appeal denied*, 166 Ill. 2d 554.

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## Exemptions are Narrowly Construed

The exemptions to disclosure under FOIA are to be narrowly construed.

*Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 408 (1997).

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## FOIA – Section 7(1)

When a record contains information that is exempt under section 7 or 7.5, but also contains information that is not exempt, the public body **may elect** to redact exempt information; remaining information shall be made available for inspection and copying. 5 ILCS 140/7(1)

See, e.g., Ill. Att’y Gen. PAC Rev. Ltr. 37563, issued October 20, 2016 (public body must redact exempt portions of video recordings and furnish non-exempt portions).

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## Section 7(1)(a)

Exempts from disclosure:

“Information **specifically prohibited** from disclosure by **federal** or **State** law or rules and regulations implementing federal or State law.”

5 ILCS 140/7(1)(a)

Note: 7(1)(a) does NOT include municipal ordinances. *City of Chicago v. Janssen Pharmaceuticals, Inc.*, 2017 IL App (1st) 150870, ¶24, 78 N.E.3d 446, 462 (2017).

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## Section 7(1)(a) – Information Exempt Under Other Laws

Examples:

- **Open Meetings Act** (5 ILCS 120/2.06(f))
- **Election Code** (10 ILCS 5/4-8; 10 ILCS 5/5-7)
- **Workers’ Compensation Act** (820 ILCS 305/6(b))

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## 7(1)(b) – Private Information

- Allows withholding of **private information**, unless required by another provision of FOIA, a State or federal law or a court order.
- Private information is defined in section 2(c-5) of FOIA.

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## 7(1)(b) – Private Information

5 ILCS 140/2(c-5) **Unique identifiers**, including:

- Social Security, Driver's License, and Employee Identification numbers
- Home or Personal Telephone Numbers
- Personal Email Addresses
- Biometric Identifiers (DNA, retina/iris scan, fingerprint, voiceprint, scan of hand)
- Personal Financial Information
- Passwords or Other Access Codes
- Medical Records

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## Private Information

5 ILCS 140/2(c-5) **Unique identifiers**, including:

- Home addresses
- Personal license plates
- **Except when compiled without possibility of attribution to any person**

### Other Unique identifiers

- Zip codes (when coupled with identifying information like name)
- Signatures

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## 7(1)(c) – Personal Information

Exempts “[p]ersonal information contained within public records, the disclosure of which would constitute a **clearly unwarranted invasion of personal privacy**, unless the disclosure is consented to in writing by the individual subjects of the information[.]”

5 ILCS 140/7(1)(c)

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### 7(1)(c) – Personal Information

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

5 ILCS 140/7(1)(c)

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### Exempt Personal Information

- Dates of birth
- Race
- Information related to unsuccessful candidates for employment
- Specific medical information (*i.e.* explanations for sick leave, descriptions of specific injuries)
- Victim names/identifying information
- Names of suspects not arrested, third parties mentioned incidentally in reports
- Graphic photos, descriptions of offenses/autopsies

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

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

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### 7(1)(f) – Deliberative Process

- Allows withholding of “records in which opinions are expressed, or policies or actions are formulated”
- Except when record is publicly cited by head of public body
- The purpose of the deliberative process exemption is to protect the predecisional communications process and encourage frank and open discussion *among agency employees*.

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### 7(1)(l) – Closed Session Minutes

“Minutes of meetings of public bodies closed to the public as provided in the Open Meetings Act until the public body makes the minutes available to the public under Section 2.06 of the Open Meetings Act.”

**5 ILCS 120/2.06(d) of OMA:** “Each public body shall periodically, but no less than semi-annually, meet to review minutes of all closed meetings. At such meetings a determination shall be made, and reported in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection.”

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### 7(1)(m) – Privileged Information

Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, or are prepared in anticipation of litigation.

➔ Requests for and provision of legal advice

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**7(1)(m) – Privileged Information**

Not all attorney/client communications are privileged:

- Invoices for legal services not exempt.  
Ill. Att’y Gen. Pub. Acc. Op. No. 14-002. issued April 15, 2014.

- Lists containing names and pay rate of outside counsel for State agencies not exempt.

Ill. Att’y Gen. Pub. Acc. Op. No. 15-010, issued October 21, 2015.

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**7(1)(kk)**

The public body's credit card numbers, debit card numbers, bank account numbers, Federal Employer Identification Number, security code numbers, passwords, and similar account information, the disclosure of which could result in identity theft or impersonation or defrauding of a governmental entity or a person.

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**Special Types of Requesters and Requests**

- Commercial (5 ILCS 140/2(c-10))
- Recurrent (5 ILCS 140/2(g))
- Voluminous (5 ILCS 140/2(h))

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# Open Meetings Act

5 ILCS 120/1 et seq.

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## OMA Public Policy

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

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

5 ILCS 120/1

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## What is a Public Body?

See Section 1.02



State Boards and Commissions



Municipalities



Counties



School Districts



All subsidiary bodies of the foregoing bodies

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**What Is Not Covered?**  
 General Assembly and its Committees or Commissions, also...



Condominium Associations



Individual Officers



Private Companies and Their Boards



Not-For-Profit Organizations

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**Openness Required**

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

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

5 ILCS 120/2(a)

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**The Meeting**

OMA defines a meeting as “[a]ny **gathering** of a **majority of a quorum** for the purpose of **discussing public business.**”

5 ILCS 120/1.02

Requirements of OMA apply.

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## Gathering

May be in person OR electronically – people may “gather” from remote locations through the use of telephones, audio- and video-conferencing, and the Internet, or other means of “contemporaneous interactive communication.”

5 ILCS 120/1.02

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## Majority of a Quorum

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

\*A quorum cannot include half-a-person.

\*\*Special rule for 5-member public body.

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## Purpose of “Discussing Public Business”

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



Be mindful of the appearance of impropriety.

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### Meeting Locations

OMA requires that all meetings of public bodies be held at specified times and places which are "convenient and open to the public."

5 ILCS 120/2.01

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

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### Meeting Locations

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

- Rule of reasonableness, not absolute accessibility.

*Gerwin v. Livingston Co. Bd.*, 345 Ill.App.3d 352 (4th Dist. 2003).

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### Attendance by Public Body Members

- Except in special circumstances, a quorum must be *physically present* at the meeting in order for the member to attend electronically. 5 ILCS 120/7(a).
- Before allowing a member to attend electronically, a public body must adopt a rule or regulation permitting electronic attendance. 5 ILCS 120/7(c).

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### Attendance by Other Means

If a public body has adopted rules allowing for electronic attendance, a member may attend a meeting electronically for these reasons only:

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

5 ILCS 120/7(a).

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### New OMA Section – Remote Meetings During Disasters

- Public Act 101-640, effective June 12, 2020, added [section 7\(e\)](#) to OMA
- Allows public body members to attend meetings by audio or video conference when certain conditions are met
- Requirements of “convenient and open to public” unchanged

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### Remote Meeting Conditions

- Declared public health disaster, head of public body determines in-person meeting impractical;
- Members of public can contemporaneously hear all discussion, testimony, and votes at meeting location or through alternative arrangements such as telephone or web-based link;
- One public body member, counsel, or administrator at meeting location, unless unfeasible;
- All votes by roll call;
- 48 hours notice, except for bona fide emergency;
- Verbatim recording of ALL meeting, available to public

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### Text of New Section 7(e)

(e) Subject to the requirements of Section 2.06 but notwithstanding any other provision of law, an open or closed meeting subject to this Act may be conducted by audio or video conference, without the physical presence of a quorum of the members, so long as the following conditions are met:

(1) the Governor or the Director of the Illinois Department of Public Health has issued a disaster declaration related to public health concerns because of a disaster as defined in Section 4 of the Illinois Emergency Management Agency Act, and all or part of the jurisdiction of the public body is covered by the disaster area;

(2) the head of the public body as defined in subsection (e) of Section 2 of the Freedom of Information Act determines that an in-person meeting or a meeting conducted under this Act is not practical or prudent because of a disaster;

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### Text of Section 7(e) (p.2)

(3) all members of the body participating in the meeting, wherever their physical location, shall be verified and can hear one another and can hear all discussion and testimony;

(4) for open meetings, members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the disaster, including the issued disaster declaration, in which case the public body must make alternative arrangements and provide notice pursuant to this Section of such alternative arrangements in a manner to allow any interested member of the public access to contemporaneously hear all discussion, testimony, and roll call votes, such as by offering a telephone number or a web-based link;

(5) at least one member of the body, chief legal counsel, or chief administrative officer is physically present at the regular meeting location, unless unfeasible due to the disaster, including the issued disaster declaration; and

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### Text of Section 7(e) (p.3)

(6) all votes are conducted by roll call, so each member's vote on each issue can be identified and recorded.

(7) Except in the event of a bona fide emergency, 48 hours' notice shall be given of a meeting to be held pursuant to this Section. Notice shall be given to all members of the public body, shall be posted on the website of the public body, and shall also be provided to any news media who has requested notice of meetings pursuant to subsection (a) of Section 2.02 of this Act. If the public body declares a bona fide emergency:

(A) Notice shall be given pursuant to subsection (a) of Section 2.02 of this Act, and the presiding officer shall state the nature of the emergency at the beginning of the meeting.

(B) The public body must comply with the verbatim recording requirements set forth in Section 2.06 of this Act.

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**Text of Subsection 7(e) (p.4)**

(8) Each member of the body participating in a meeting by audio or video conference for a meeting held pursuant to this Section is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

(9) In addition to the requirements for open meetings under Section 2.06, public bodies holding open meetings under this subsection (e) must also keep a verbatim record of all their meetings in the form of an audio or video recording. Verbatim records made under this paragraph (9) shall be made available to the public under, and are otherwise subject to, the provisions of Section 2.06.

(10) The public body shall bear all costs associated with compliance with this subsection (e).

(Source: P.A. 100-477, eff. 9-8-17; 101-640, eff. 6-12-20.)

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**Questions Raised By July 23, 2021, Disaster Proclamation**

- Prior disaster declarations specifically contained the finding that for purposes of section 7(e)(4), attendance of more than 10 persons at a meeting location was not feasible.
- July 23, 2021, did not contain same language.
- The head of the public body can continue to determine that an in-person meeting is not practical or prudent because of the disaster.
- At present, remote attendance by members must relate to COVID-19 pandemic.
- Considerations: the specific circumstances of the public body and how meetings are conducted, including infection rates and hospital capacity in community, building size and location

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**Are the Present Remote Meeting Requirements Permanent?**

- Public bodies should remain alert for new information and be flexible in their approach, change is likely for one or more of these reasons:
  - Continued rising rates of COVID variant infections, local mitigation measures;
  - Decreasing infection rates and relaxed mitigations, remote meetings may no longer be needed;
  - New Executive Orders and/or Disaster Proclamations that specifically address open meetings;
  - Legislation: Senate Bill 482 may be considered during veto session –would allow remote meetings without disaster declaration.

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## Mask Mandates?

- The Public Access Bureau has received complaints because masks were required, because masks weren't required, and because public body members weren't wearing masks.
- Question is whether the meeting is "convenient and open" to the public – "reasonable accessibility" required.
- OMA does not contain specific provisions concerning public safety at open meetings.

Ill. Att'y Gen. PAC Req. Rev. Ltr. 65724, issued December 8, 2020; (Complaint that mask required at in-person meeting did not allege an OMA violation.)

Ill. Att'y Gen. PAC Req. Rev. Ltr. 67055, issued August 11, 2021. (No further action on complaint that Board members did not wear masks, both in-person and remote access options for public. )

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## Best Practices for Remote Meetings

- When feasible, in-person attendance by public body members encouraged.
- Be specific about circumstances of the meeting in the notice/agenda. In-person? Remote? Hybrid? Remote access? Social distancing at meeting? Masks required?
- Provide multiple alternative methods for public comment when possible.
- Even if members meet in person, consider offering remote access to the public who can't attend.
- Remember the purpose of OMA – to include the public when deliberations and decisions occur.

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## Advance Notice of Meetings

Agenda to be posted:

- Regular meetings = 48 hours notice.
- Special meetings = 48 hours.
- Emergency meetings = as soon as possible.

[5 ILCS 120/2.02\(a\)](#)

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**Location of Notice**

- Public notice of the meeting must be posted at the principal office of the body holding the meeting.
- If no such office exists, notice must be posted where the meeting is held.
- Websites: Notice of *regular meetings* of a *governing body* must be placed on the website if the public body has a *full-time staff* that maintains the website.

[5 ILCS 120/2.02\(b\)](#)

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**Continuous Posting Requirement**

Notice and agenda for meeting must be continuously available for public review during entire 48-hour period preceding the meeting – website posting satisfies this continuous posting requirement.

[5 ILCS 120/2.02\(c\)](#)

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**Agenda Requirements**

- Agenda must state “general subject matter” of any resolution or ordinance that will be subject of final action. [5 ILCS 120/2.02\(c\)](#)
- A public body may discuss matters not on the agenda. *In re Foxfield Subdivision*, 396 Ill.App.3d 989 (2d Dist. 2009). However, it may not take final action on any matter not on the agenda.

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### “General Subject Matter”

- Agenda item must provide main element(s), specific details not required.
- Example of insufficient item:  
“Independent contractor agreement”  
(Fails to identify the general nature of the duties of the independent contractor.)
- Example of acceptable item:  
“Approve contract for City Manager”  
(Item not required to specify length or amount, although additional detail helpful.)

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### Final Action-Public Recital

Final action shall be preceded by:

- 1) Public recital of the nature of the matter being considered; and
- 2) Other information that will inform the public of the business being conducted.

5 ILCS 120/2(e)  
*See Board of Education of Springfield School District No. 186 v. Attorney General of Illinois, 2017 IL 120343, 77 N.E. 3d 625 (2017).*

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### Final Action Must Be Open

"[N]o public body in Illinois subject to the Open Meetings Act can take final action by merely circulating some document for signature and not voting on it publicly." *Howe v. Retirement Board of the Firemen's Annuity & Benefit Fund, Howe, 2013 IL App (1st) 122446, ¶29, 996 N.E.2d 664, 670 (2013)* (vacating the board's decision to deny disability benefits because the board had circulated the decision for signatures privately rather than voting on it in open session).

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### Meeting Minutes

Public bodies must keep written minutes of **all meetings**, whether open or closed, and a **verbatim recording** of all closed sessions in the form of audio or video recording.

[5 ILCS 120/2.06\(a\)](#)

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### Meeting Minutes

Minutes must include:

- Date, time, and place;
- Summary of discussion of all matters proposed, deliberated, or decided;
- Names of all members present and absent; and
- A record of any votes taken.

[5 ILCS 120/2.06\(a\)](#)

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### Approval and Posting of Minutes

Minutes of open meetings should be approved by the public body either:

- (1) Within 30 days after that meeting, or
- (2) At the public body's second subsequent

regular meeting, *whichever is later*.

- Available for public inspection within 10 days after approval, also posted on website if full-time staff maintains.

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## Exception to Open Deliberations

- Openness required
- Closed meetings are exceptions, because the rule is openness.
- Exceptions are to be *narrowly construed* – topics discussed must fit squarely within the cited exception



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## Closed Session Exceptions

Section 2(c) of OMA authorizes 36 exceptions for a public body to close an open session.

*Exceptions authorize but do not require the holding of a closed session.*

5 ILCS 120/2(c)

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## Closed Session Exceptions

- The section 2(c) exceptions relate to, among other things, employment, litigation, land acquisition, collective bargaining and student disciplinary cases.
- Many are quite specific; review to determine any that apply to your public body

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## Entering Closed Session

- Start meeting in open session.
- Vote to close.
- Cite to the specific exception(s) under section 2(c).
- Vote of each member and specific exception(s) must be disclosed at time of vote and recorded in minutes.
- Exclude the public and enter the closed session.

5 ILCS 120/2a

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## Closed Session

- Verbatim recording (must record by audio or video means).
- Must generate closed session minutes.
- NO FINAL ACTION!!!

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## Employment Exception

A closed session may be held to consider the "appointment, employment, compensation, discipline, performance, or dismissal" of "**specific** employees, **specific** individuals who serve as independent contractors in a park, recreational, or educational setting, or **specific** volunteers of the public body or legal counsel for the public body, including hearing testimony on a complaint."

5 ILCS 120/2(c)(1).

Must relate to **specific individuals**, not general budgetary matters. See, e.g., Ill. Att'y Gen. Pub. Acc. Op. No. 15-007, issued September 16, 2015; Ill. Att'y Gen. Pub. Acc. Op. No. 18-012, issued October 2, 2018

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## Litigation Exception

A closed meeting may be held to consider the "litigation, when an action against, affecting or on behalf of the particular public body has been filed and is **pending** before a court or administrative tribunal[.]"

5 ILCS 120/2(c)(11)

Discussion must be limited to the strategies, postures, theories, and possible consequences of the litigation itself. III. Att'y Gen. Op. No. 83-026, at 12-14.

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## Special Requirement for Threatened Litigation

Under same exception, may also enter closed session to discuss litigation that is **probable or imminent**:

- **"If the litigation has not yet been filed, the public body must: (1) find that the litigation is probable or imminent; and (2) record and enter into the minutes the basis for that finding.** Evidently, the legislature intended to prevent public bodies from using the distant possibility of litigation as a pretext for closing their meetings to the public." (Emphasis added.) *Henry v. Anderson*, 356 Ill. App. 3d 952, 956 (4th Dist. 2005).
- Failure to record basis in minutes is OMA violation. III. Att'y Gen. Pub. Acc. Op. No. 13-008, issued May 28, 2013

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## Ending Closed Session

When returning to open session, a public body must:

- Vote to adjourn closed session and return to open session.
- Call meeting back to order.
- If final action is to be taken, **must** be preceded by a public recital of the nature of the matter and other information informing the public of the business being conducted.
  - Any final action items must have been already listed on agenda.

5 ILCS 120/2(e)

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## Closed Session Minutes

- Minutes of closed session are exempt from disclosure under section 7(1)(l) of FOIA ([5 ILCS 140/7\(1\)\(l\)](#)) unless the public body votes to make them available.
- Closed session minutes must be reviewed at least twice a year to determine whether the need for confidentiality still exists. [5 ILCS 120/2.06\(d\)](#)
- OMA specifically allows access to closed session minutes (and verbatim recordings) to duly elected or appointed officials of the public body. [5 ILCS 120/2.06\(e\),\(f\)](#)
- **Approval of closed session minutes is a final action that must occur in open session.** Ill. Att’y Gen. PAC Req. Rev. Ltr. 55838, issued September 13, 2019.

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## Right to Record Meeting

Section 2.05 of OMA provides **any person** the right to record a meeting, subject only to reasonable rules of the authority holding the meeting. Because OMA specifically provides that meetings may be recorded, a public body would have a steep burden to overcome to show that *any* rule or policy requiring advance notice is reasonable.

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

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## Right to Address Public Officials

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

[5 ILCS 120/2.06\(g\)](#)

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## Public Comment Rules

Public bodies must establish rules governing that right. Those rules should be aimed encouraging, rather than discouraging public participation and may generally include:

- Reasonable time limits on comments;
- Setting aside a specific portion of the meeting for public comments;
- Other matters relating to decorum and procedure.

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## PAC Review of Rules Governing Public Comment

- May not require speakers to state their home addresses prior to speaking. Ill. Att’y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 7.
- May not require intended speakers to provide five days advance written notice to address county board. Ill. Att’y Gen. Pub. Acc. Op. No.14-012, issued September 30, 2014, at 6.

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## Rules Found to Violate OMA

- Ill. Att’y Gen. PAC Req. Rev. Ltr. 45349, issued March 16, 2017 (45-day limitation rule).
- Ill. Att’y Gen. PAC Req. Rev. Ltr. 38037, issued August 1, 2016 (rule limiting comment to agenda items).
- Ill. Att’y Gen. PAC Req. Rev. Ltr. 39069, issued April 5, 2016 (rule prohibiting “personal attacks against others” or “rude or slanderous remarks” overbroad and subject to arbitrary application).

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### Public Comment at Remote Meetings

- Public must still be allowed to address the public body during remote meetings (Section 2.06(g)).
- Public bodies encouraged to allow multiple alternative methods such as call-in numbers, web-based links, and reading aloud e-mailed comments to facilitate public participation.

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### Review of OMA Violations

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

[5 ILCS 120/3.5](#)

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

[5 ILCS 120/3](#)

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### PAC Review Process

- Determine whether further action is warranted
- If unfounded, advise public body and requester, no further action.
- Otherwise, send Request for Review to public body and request response; requester has opportunity to reply.
- Follow up with additional questions as necessary.

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### Possible OMA Resolutions

If the Public Access Bureau finds that an OMA violation has occurred, it may, depending on the violation, direct the public body to:

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

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### PAC Review Process

- Determine whether further action is warranted.
- If unfounded, advise public body and requester, no further action.
- Otherwise, send to public body and request records and response; requester has opportunity to reply.
- Follow up with additional questions as necessary.

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### Resolution of Requests for Review

The Public Access Counselor may:

- Issue a binding opinion, which is subject to administrative review under section 11.5 of FOIA, or
- Resolve a request for review by mediation or by a means other than the issuance of a binding opinion. 5 ILCS 140/9.5(f)
- Other means – determination letter.

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**Judicial Review**

Any person denied access to inspect or copy any public record by a public body may file suit for injunctive or declaratory relief.

5 ILCS 140/11(a)

If the requester files suit under section 11 \*\* \* the Public Access Counselor shall take no further action with respect to the request for review and shall so notify the public body.

5 ILCS 140/9.5(g)

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**Contact Information**

**Office of the Attorney General  
Public Access Counselor**

500 South Second Street  
Springfield, Illinois 62706  
877-299-3642

NEW E-MAIL: [public.access@ilag.gov](mailto:public.access@ilag.gov)

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