Illinois Freedom of Information Act

PAC. Training must be completed annually. The Attorney General's office has made the electronic training available to all FOIA officers.

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.

Is every public body required to have a designated FOIA officer?
Yes. Every public body must designate at least one person to act as the FOIA officer. Public bodies may have more than one FOIA officer. In addition, every public body must prominently display at its office and make available certain information, including the name(s) of its FOIA officer(s). The office also 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 its website.

What are the consequences if a public body fails to designate a FOIA officer?
FOIA requires that every public body designate a FOIA officer. Failure to do so is a violation of the Act and will be considered by the PAC, as well as courts, when a request for review or litigation is filed.

RESPONDING TO FOIA REQUESTS

How many days does the public body have to respond to a FOIA request?
5 business days from the day after the public body receives the request. However, 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;
- 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 produ

When is a FOIA request sent by e-mail "received"? When it appears in the electronic mailbox or when it is opened by the recipient?
If a FOIA request sent by e-mail appears in the recipient's mailbox during normal working hours, it is received on that day. If it is e-mailed after business hours, including on a weekend or legal holiday, it is "received" on the following business day.

If a public body's office is closed for vacation (for instance, a public school is closed for winter break), are FOIAs submitted during that time considered received?
Yes. FOIA does not have any exceptions for vacations or winter breaks, other than for Saturdays, Sundays and legal holidays.

What are the consequences if the public body does not respond to the FOIA 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 FOIA 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 business days (or 10 days if the extension was properly requested), it cannot charge for reproduction costs at a later time, or treat the request as unduly burdensome.

Can a requester and a public body agree to extend the deadline to respond beyond 10 days?
Yes, but the agreement must be in writing. The agreement will also relieve the public body of having to comply with other legal deadlines in FOIA.

Can a public body require that a FOIA request be submitted on a certain form or in a certain format?
No. Public bodies can require that FOIA requests be submitted in writing, but public bodies must accept requests by mail, personal delivery, fax, e-mail, or other means available. Public bodies may create a FOIA form that requesters may use for convenience, but public bodies cannot require that requesters use a specific form for the request. Public bodies may choose to accept oral FOIA requests but are not required to do so by the law.

To whom should the requester submit a FOIA request?
To a designated FOIA officer. Every public body must designate at least one FOIA officer and prominently display at its office certain information, including the name(s) of its FOIA officer(s).

Does the public body have to identify the FOIA officer?
Yes. 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 record requests should be sent. If the public body has a website, this information must also be posted on it.

Does a public body still have the option of treating a request as "unduly burdensome" under the new FOIA?
Yes. However, this treatment only applies in limited situations: (1) the request must be categorical in nature and incapable of being narrowed or reduced; and (2) the burden on the public body to produce the information must outweigh the public interest in the information. Before denying a request as unduly burdensome, the public body must give the requester an opportunity to reduce the request to manageable proportions.

I have received a request that does not fit the "unduly burdensome" standard, yet cannot reasonably be completed within the maximum 10 working days' response period. Does FOIA offer any options?
Yes. The Act allows the public body and the requester to reach a written agreement to extend the time in which to respond to a request.

I work for a public body that is being harassed by repeated FOIA requests from the same individual or entity. Does FOIA make any provisions for this?
FOIA provides that repeated requests from the same person for the same records that are unchanged or identical to records previously provided or properly denied shall be deemed unduly burdensome and may be denied on that basis.

What information must a public body withhold or redact under the Freedom of Information Act?
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.

I am the designated FOIA officer for a public body. Will I be held personally liable for any civil penalties that a court may impose in a FOIA lawsuit?
No. Only the public body may be liable for civil penalties under FOIA. If a court finds that a *public body* willfully and intentionally failed to comply with the Act or otherwise acted in bad faith, the court shall impose a civil penalty upon the *public body*.

Does a requester need to specifically and accurately describe the document he or she is looking for?
No. The requester does 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, it must release that information, even if the requested information is not called by the same name the public body uses.

What information is a public body required to make available?
Each FOIA officer for a public body must develop and make available upon request a list of documents that the public body will immediately provide to a requester. In addition, each public body must maintain a reasonably current list of all types or categories of records under its control and this list should be reasonably detailed so that it aids people

in obtaining access to public records. The public body must make this list available for inspection and copying.

Can the public body ask why the requester wants the information?
No, except to determine if the request is for commercial reasons or to determine if a fee waiver applies. *See below for more details on commercial requests.*

Even though we cannot ask about the purpose of a request, can we assist the requester in narrowing their request so that they can get the information they are seeking?
Yes. Public bodies are encouraged to work with a requester to clarify or narrow the scope of a request. A public body can ask "what" the requester is looking for in an attempt to ensure that responsive documents are produced. A public body cannot ask "why" the requester is seeking the documents.

Can a request be made anonymously? For instance, e-mail requests are often submitted anonymously.
Yes. A requester is not required to provide his or her name.

Is a requester required to state that a request for public documents is being made pursuant to FOIA?
No. If a request is made for public documents, the public body should treat it as a request pursuant to FOIA. A requester is not required to include the words "Freedom of Information Act" or the acronym "FOIA" in a request.

FEES

Can the public body charge for copies?
Yes, but the charges are limited. For black and white, letter or legal sized copies (8 ½ x 11 or 8 ½ x 14), 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 for 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 at any time if disclosure is in the public interest. For example, 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.

Can we pass a vendor copy fee on to a requester?
Only in certain circumstances. FOIA limits the copying charge to $.15 per page for black and white copies on regular size paper, after the first 50 pages, which are free to the requester. A public body may only charge the actual cost of reproduction for oversized or color copies.

Can the public body require receipt of the payment from the requester before making the requested copies?
Yes.

GETTING INFORMATION IN AN ELECTRONIC FORMAT

Can the requester request the documents in electronic form?
Yes, and the public body must provide the electronic documents in the requested format, if that is feasible for the public body. If that format is not available to the public body, it must provide the documents in the electronic format in which they are kept or in paper, at the option of the requester.

If a public body must purchase a program to make certain information available in the electronic format requested by the requester, does the public body have to make that purchase?
No. When a person requests a copy of a record maintained in an electronic format, the public body must provide it in the electronic format specified by the requester, if it is feasible for the public body to do so. If it is not feasible to furnish the public record in the specified electronic format, then the public body must furnish it in the format in which it is maintained by the public body, or in paper format, at the option of the requester.

If the public body has a database and the requested information 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 the requester for that search.

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

LAW ENFORCEMENT FOIA REQUESTS

A police and/or incident report is prepared in connection with a domestic violence call that includes the name of the neighbor who called the police. Charges are not filed and subsequently the alleged abuser submits a FOIA request to obtain the documents that contain the complainant's information. Can that information be redacted?
The police department may redact information that is exempt under Section 7(1)(d) of the Act. Section 7(1)(d)(iv) allows police departments to redact (or withhold) information

that unavoidably discloses the identity of persons who file complaints with the police. Section 7(1)(d)(vi) exempts information which, if disclosed, would endanger the life or physical safety of law enforcement personnel or any other person.

CONSEQUENCES FOR NOT COMPLYING WITH FOIA

What are the penalties for a public body for not complying with FOIA?
In addition to the potential that a court ultimately could impose a civil penalty of between $2,500 and $5,000 per FOIA violation, if a public body does not respond within the time limits provided, it cannot subsequently charge for reproduction costs or treat the request as unduly burdensome.

REQUESTER'S OPTIONS IF THE PUBLIC BODY FAILS TO RESPOND OR DENIES HIS/HER REQUEST

What happens if the public body doesn't respond to a FOIA request?
If the public body does not respond to a request within 5 business days of receiving it, that inaction is considered a denial of the request. If that occurs, a requester can either file a Request for Review with the Attorney General's Public Access Counselor or file a case in court.

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 also must inform the requester of the right to seek review of the issue by the Public Access Counselor 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.

What can the requester do if the public body denies the request for information?
The requester can file a Request for Review with the Attorney General's Public Access Counselor within 60 calendar days from when the alleged violation occurred. Alternatively, the requester may file a civil action in the circuit court within two years after the alleged violation took place.

What is a Request for Review to the Public Access Counselor?
A Request for Review is a letter that a requester may submit to the PAC if he or she believes 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 of a response) and determine if a FOIA violation has occurred. The request must be in writing, be signed by the requester, and include a copy of the FOIA request and any responses from the public body. It must be submitted to the PAC within 60 calendar days of the public body's final response (or the date upon which the response was due).

Is there a deadline for submitting a Request for Review?
Yes. The requester 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's Office?
The Public Access Counselor is a member of the Public Access Bureau in the Attorney General's Office. Here is her contact information:

Sarah Pratt
Public Access Counselor
Public Access Bureau
500 S. 2nd Street
Springfield, Illinois 62706
E-mail: SPratt@atg.state.il.us
FOIA Hotline: 1-877-299-FOIA (1-877-299-3642)

What happens if someone submits a Request for Review with the PAC and what are the responsibilities of the public body?

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 the Request for Review from the requester. The PAC may extend the 60-day time period by 30 working days by sending a written notice to the requester 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 the FOIA dispute with the public body and the requester. (5 ILCS 140/9.5(f)) The PAC may choose to try to resolve the dispute through mediation or 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 the 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 requester and the public body of that decision. The PAC will not conduct any further review.

Issue a binding opinion. (5 ILCS 140/9.5(f)) The PAC will review any information needed to analyze the FOIA dispute between the requester and the public body and any additional information that the requester or the public body chose to provide. If the PAC decides to issue a binding opinion, the PAC must issue that opinion within 60 calendar days after receiving the Request for Review. 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, the requester may appeal the opinion to the circuit court.

Can a public body ask the Attorney General's PAC for advice regarding compliance with FOIA?
Yes. A public body can ask the Attorney General's PAC to issue an advisory opinion regarding compliance with FOIA. (5 ILCS 140/9.5(h))

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