



THE ILLINOIS FREEDOM OF INFORMATION ACT

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The Freedom Of Information Act

The Illinois Freedom of Information Act (FOIA) is a powerful tool for monitoring state and local government. This presentation provides an overview of FOIA and provides practical advice about the FOIA process. This presentation does not address every set of circumstances, and the law may have changed since the time of the last update to this presentation. Please contact Matt Topic at Loevy & Loevy any time with questions about your particular FOIA situation.

The Freedom Of Information Act

- Lay Of The Land: What Is FOIA?
- Nuts And Bolts: How to FOIA
- Remedies for FOIA Denials

The Freedom Of Information Act

Lay Of The Land: What Is FOIA?

What is FOIA?

“This Act shall be the exclusive State statute on freedom of information, except to the extent that other State statutes might create additional restrictions on disclosure of information or other laws in Illinois might create additional obligations for disclosure of information to the public.”

Why do we have FOIA?

“Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that **all persons are entitled to full and complete information regarding the affairs of government** and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is necessary **to enable the people to fulfill their duties of discussing public issues fully and freely,** making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.”

What is FOIA?

“Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act.”

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Who is a “public body”?

- State of Illinois
- Counties
- Cities, towns, villages, municipal corporations
- School districts, state universities and colleges
- Legislative, executive, administrative, and advisory bodies of these
- Boards, bureaus, committees, commissions, departments and subsidiaries of these
- Need not receive or spend tax revenue

Who is a “public body”?

- Federal agencies are subject only to federal FOIA (not covered by this presentation)
- Courts are subject to other open records laws
- Cook County Clerk of Court takes position it is not subject to FOIA; other county clerks of court (e.g., Sangamon) have FOIA procedures and forms and appear to believe they are subject to FOIA
- Illinois Supreme Court recently ruled State’s Attorneys are subject to FOIA
- Individual legislators are not public bodies (must FOIA the legislative body)

Who is a “public body”?

- Non-profits, public-private partnerships, private companies: public funding is relevant but generally not enough – must consider:
 - (1) whether the entity has a legal existence independent of government resolution (e.g., separately incorporated)
 - (2) the nature and functions performed by the entity
 - (3) the degree of government control exerted over the entity (must be “substantial, day to day supervision”; more than ability to “influence”)
- If the entity may have sent documents or communications to a public body, request them from that public body

Who is a “public body”?

- “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.”
 - Request should be directed to the public body for records in the possession of the contractor, not to the contractor
- Charter schools and their governing bodies are subject to FOIA.

What Is FOIA?

“Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act.”

Who can FOIA?

- “Any individual, corporation, partnership, firm, organization or association, acting individually or as a group”
- Need not be a citizen or resident of Illinois
- Need not provide a name, although in practice some public bodies might insist
- Purpose of the request need not be provided except to request fee waiver or to specify it is not a commercial request
- Attorney General’s opinion is that the identity of FOIA requesters is exempt under FOIA and one case found names exempt under privacy exemption under the facts of that case, but many public bodies are posting FOIA requests online, including the identity of requesters and alleged “costs” of responding

Who can FOIA?

- Commercial requests are subject to different rules regarding charges and timing
- “Commercial purpose means the use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services.”
 - Excludes news media and non-profit, scientific, or academic organizations when request is for those purposes
 - “News media means a newspaper or other periodical issued at regular intervals whether in print or electronic format, a news service whether in print or electronic format, a radio station, a television station, a television network, a community antenna television service, or a person or corporation engaged in making news reels or other motion picture news for public showing.”

What Is FOIA?

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How are records copied or inspected?

- “Copying means the reproduction of any public record by means of any photographic, electronic, mechanical or other process, device or means now known or hereafter developed and available to the public body”
 - Should include scanning paper documents into PDFs
- Can charge fees reasonably calculated to approximate actual cost of copying up to \$.15 per B&W page after 50 or the electronic media (CD)
- Must be a “standard scale of fees”
- The imposition of a fee not consistent with the provisions of FOIA is treated as a denial

How are records copied or inspected?

- “Documents shall be furnished without charge or at a reduced charge, as determined by the public body, if the person requesting the documents states the specific purpose for the request,” which must be “to access and disseminate information regarding the health, safety and welfare or the legal rights of the general public”
- No copying charges allowed if response to request was late
- No search costs (unless commercial request, does not include media)
- Other statutes may impose further charges for particular types of records

How are records copied or inspected?

- “When a person requests a copy of a record maintained in an electronic format, the public body shall furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to furnish the public records in the specified electronic format, then the public body shall furnish it in the format in which it is maintained by the public body, or in paper format at the option of the requester.”
- Public body cannot lock an electronic record to prevent “manipulation” or produce a PDF instead of original format
- Some public bodies incorrectly claim that running a database query is creation of a new record that is not required under FOIA or exaggerate the work involved (e.g., “programming”)

How are records copied or inspected?

- No FOIA obligation to create documents or answer questions, but public body must provide:
 - Brief description of the public body, block diagram, total operating budget, number and location of offices, approx. number of full and part time employees, membership of boards/councils/etc. (and must post on website if have one)
 - Methods by which public can request documents
 - Identification of FOIA officer
 - A reasonably current and detailed list of all types or categories of documents under the public body's control
 - Copies of all notices of denial, indexed according to the type of exemption asserted and, to the extent feasible, according to the types of records available
 - Some other things

How are records copied or inspected?

- Record retention is governed by Local Records Act – destruction of records generally requires written approval of Local Records Commission pursuant to Commission regulations
- Records can also be inspected at the public body's offices, and you should be able to take your own pictures/scans of the documents
 - will generally need to be scheduled in advance
 - public body cannot charge for copies used for redactions on documents to be inspected
- “Notwithstanding any other law, a public body may not grant to any person or entity, whether by contract, license, or otherwise, the exclusive right to access and disseminate any public record as defined in this Act.”

What Is FOIA?

“Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act.”

What are “public records”?

Three elements:

1. “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 . . . regardless of physical form or characteristics” (very broad)
2. “Pertaining to the transaction of public business”
3. “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”

What are “public records”?

- Can include records of legislative bodies pertaining to the transaction of public business on personal devices and in personal emails if:
 - the document was forwarded to enough members of public body to constitute a quorum for that specific body
 - the document was sent during a meeting of the public body
 - perhaps under other circumstances
 - not yet settled for non-legislative officials
 - does the public body have a “no official business on personal device rule”? (should defeat “not a public record” argument)
- Public bodies must develop “a list of documents or categories of records that the public body shall immediately disclose upon request”

What are “public records”?

- Certified payroll records of government contractors submitted to a public body under the Prevailing Wage Act are public records subject to disclosure with certain redactions
- “All settlement agreements entered into by or on behalf of a public body are public records subject to inspection and copying by the public, provided that information exempt from disclosure . . . may be redacted.”
- “Copies of all notices of denial shall be retained by each public body in a single central office file that is open to the public and indexed according to the type of exemption asserted and, to the extent feasible, according to the types of records requested.”

What are “public records”?

- Certain arrest report information must be furnished within 72 hours of arrest:
 - (1) identifying information of individual (including photo if available); (2) charges; (3) time and location; (4) law enforcement agency; (5) bail/bond; (6) time and date individual was received into, discharged from, or transferred from arresting agency custody
 - Subject to exemptions for interference with investigation, endangering safety, and correctional facility security

What are “public records”?

- Under the Local Records Act: “Reports and records of the obligation, receipt and use of public funds of the units of local government and school districts, including certified audits, management letters and other audit reports made by the Auditor General, County Auditors, other officers or by licensed Certified Public Accountants permitted to perform audits under the Illinois Public Accounting Act and presented to the corporate authorities or boards of the units of local government, are public records available for inspection by the public.”
- Similar provisions in FOIA and IL Constitution

What is FOIA?

“Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act.”

What information is exempt?

- **General propositions applicable to exemptions:**
 - “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.”
 - Only information specifically exempted by statute is exempt (courts cannot create new exemptions) and exemptions must be “narrowly construed”
 - “The public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying.”
 - Courts have required public bodies redact names and scramble the order of data rather than deny requests on the basis of privacy exemptions
 - “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.”
 - Watch the “but only” and “to the extent” language

What information is exempt?

- **Private information:** unique identifiers such as SSNs, home address/ phone/email, personal financial information, medical records, driver's license number, etc.
 - Attorney General contends signatures, and sometimes zip codes are exempt
- **Personal privacy:** information that “would constitute a clearly unwarranted invasion of personal privacy.”
 - “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.”
 - “Unless the disclosure is consented to in writing by the individual subjects of the 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.”
 - No longer any “per se” categories exempt under this provision – must be individually analyzed (*e.g.*, public employee personnel files no longer per se exempt)

What information is exempt?

- **Law enforcement/administrative enforcement records:**
 - Must be “in the possession of any public body created in the course of administrative enforcement proceedings” or “in the possession of . . . any law enforcement or correctional agency for law enforcement purposes” and one of:
 - “interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request” or with “active administrative enforcement proceedings conducted by the public body that is the recipient of the request”
 - “create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing”
 - “unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies” but does not include witnesses to traffic accidents (with some exceptions)
 - (cont’d)

What information is exempt?

- **Law enforcement/administrative enforcement records (cont'd):**
 - Must be “in the possession of any public body created in the course of administrative enforcement proceedings” or “in the possession of . . . any law enforcement or correctional agency for law enforcement purposes” and one of:
 - “disclose unique or specialized investigative techniques” and would result in demonstrable harm to the public body that is the recipient of the request
 - does not include polygraphs, use of traffic cameras to track vehicles, other techniques readily known (*e.g.*, through internet search)
 - “disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct,” and would result in demonstrable harm to the public body that is the recipient of the request
 - “endanger the life or physical safety of law enforcement personnel or any other person” or
 - “obstruct an ongoing criminal investigation by the agency that is the recipient of the request”

What information is exempt?

- **Other law enforcement exemptions:**
 - Records “maintained by one or more law enforcement agencies and specifically designed to provide information to one or more law enforcement agencies regarding the physical or mental status of one or more individual subjects.”
 - “A law enforcement record created for law enforcement purposes and contained in a shared electronic record management system if the law enforcement agency that is the recipient of the request did not create the record, did not participate in or have a role in any of the events which are the subject of the record, and only has access to the record through the shared electronic record management system.” (likely means the LEADS system)
 - “Records that relate to or affect the security of correctional institutions and detention facilities.”
 - Restrictions on requests made by persons committed to Dept. of Corrections (cannot request information available in library or through administrative request to DOC, staff-related records)

What information is exempt?

- **Deliberative process:** Pre-decisional records “in which opinions are expressed, or policies or actions are formulated”
 - opinions must be expressed (as opposed to purely factual information not “inextricably intertwined” with opinions)
 - must be actually pre-decisional and actually part of a deliberative process (as opposed to final decision or unrelated opinions)
 - “working law” and “working rules” are considered non-exempt final decisions if actually followed in practice
 - not limited to draft documents, but does not apply to “unverified” facts/data
 - does not apply “when the record is publicly cited and identified by the head of the public body”
 - applies to “all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents”
 - can include deliberations with outside consultants

What information is exempt?

- **Attorney and auditor records:**
 - communications with attorneys or auditors that would not be discoverable in litigation
 - materials prepared at request of attorney in anticipation of civil, criminal, or administrative proceedings
 - “materials prepared or compiled with respect to internal audits of public bodies”
 - law firm invoice amounts, billing attorneys, and general description of work are non-exempt; details that would disclose attorney advice are usually exempt
- **Proposals and bids:**
 - where disclosure “would frustrate procurement or give an advantage” to a bidder
 - only “until an award or final selection”
 - also includes “information prepared by or for the body in preparation of a bid solicitation” until an award or final selection is made

What information is exempt?

- **Trade secrets/confidential proprietary information:**
 - obtained from a person or business
 - furnished to public body under a claim that they are proprietary, privileged or confidential, and
 - disclosure would cause competitive harm to the person or business
 - but certain information about private companies and private equity funds in a public pension fund must be disclosed
 - another exemption covers valuable formulae, designs, data, etc. “when disclosure could reasonably be expected to produce private gain or public loss”

What information is exempt?

- **Education-related exemptions:**
 - test questions and scoring keys (also for professional license and employment exams)
 - educator peer-review records
 - “information concerning a school or university's adjudication of student disciplinary cases, but only to the extent that disclosure would unavoidably reveal the identity of the student”
 - faculty course/research materials
 - additional exemptions through Illinois School Student Records Act, Federal Family Educational Rights & Privacy Act, other statutes and regulations
- **Records relating to a public body's adjudication of employee grievances or disciplinary cases:**
 - but not the final outcome of cases in which discipline is imposed
 - does not include investigatory records
 - police complaint registers and repeater lists are not exempt

What information is exempt?

- **Collective bargaining records:**
 - but final agreements are not exempt
- **Security plans and vulnerability assessments:**
 - “designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community”
 - “but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public”

What information is exempt?

- **Minutes of meetings properly closed under Open Meetings Act:**
 - OMA allows closed meetings (i.e., “executive session”) in certain circumstances
- **Information specifically prohibited from disclosure by other laws, rules, and regulations:**
 - Section 7.5 also contains exemptions deriving from other specific statutes
- **Many others (these are short-hand descriptions):**
 - construction-related technical records unrelated to publicly funded projects, computer system technical information that could jeopardize system if disclosed, real estate negotiation records while pending, certain insurance/self-insurance records, certain financial/insurance regulation records, certain utility-related information, identities of people registered in certain park district programs, and others

Other useful provisions & doctrines

- “The General Assembly recognizes that this Act imposes fiscal obligations on public bodies to provide adequate staff and equipment to comply with its requirements. The General Assembly declares that providing records in compliance with the requirements of this Act is a primary duty of public bodies to the people of this State, and this Act should be construed to this end, fiscal obligations notwithstanding.”
- “The General Assembly further recognizes that technology may advance at a rate that outpaces its ability to address those advances legislatively. To the extent that this Act may not expressly apply to those technological advances, this Act should nonetheless be interpreted to further the declared policy of this Act that public records shall be made available upon request except when denial of access furthers the public policy underlying a specific exemption.”

Other useful provisions & doctrines

- Many court decisions state that “the purpose of FOIA is to open governmental records to the light of public scrutiny” and apply that purpose to interpret the statute.
- Disclosure of material to some may constitute a waiver of exemptions when requested by others, depending on the extent and nature of the disclosures (*i.e.*, when disclosed to many others without any restrictions on use of the information).
- FOIA can be used during other pending litigation (except eminent domain)
- Public bodies are (with limited exception) not required to assert exemptions
- Some public bodies redact “non-responsive” information that is not exempt. Law remains somewhat unsettled. To avoid, include in request: “Do not redact any nonresponsive information. I want the complete copy of any record with any responsive information.”

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Nuts And Bolts: How to FOIA

How to FOIA

1. Find the right place and procedure
2. Write the request
3. Public body responds

Find the right place and procedure

- Public bodies must designate FOIA officers, who must undergo annual FOIA training and certification
- Public body must “prominently display” at its offices, make available, and post on its website
 - “brief description of the methods whereby the public may request information and public records”
 - “a directory designating the Freedom of Information officer or officers”
 - the address where requests for public records should be directed
 - a schedule of copying fees
- “Each public body shall furnish upon request a description of the manner in which public records stored by means of electronic data processing may be obtained in a form comprehensible to persons lacking knowledge of computer language or printout format.”

Find the right place and procedure

- “Requests for inspection or copies shall be made in writing and directed to the public body. Written requests may be submitted to a public body via personal delivery, mail, telefax, or other means available to the public body.”
 - includes email
 - fax and email are best – quickest and verifiable
 - public body can elect to honor oral requests
- Large bodies (e.g., City of Chicago) often have different FOIA officers for different departments
- If you can’t find a FOIA officer, address it to “FOIA Officer” and send to the main administrative address, email, fax, etc.

Writing FOIA requests

- “A public body may not require that a request be submitted on a standard form or require the requester to specify the purpose for a request, except to determine whether the records are requested for a commercial purpose or whether to grant a request for a fee waiver.”

Writing FOIA requests – some options on format and approach

- General requests: “All documents related to _____”
- Specific requests: “The contract between the village of _____ and _____”
- Parameter-based: “All of the mayor’s emails sent or received the second week of August 2011”
 - could add “containing the word _____”
- Database queries: “All entries in your complaint log database in March 2013 from people in zip code 60607 regarding potholes”
- Convert questions into document requests by preceding the question with “Documents sufficient to show . . .”
- “Policies and procedures related to _____”
- “Reports, studies, analyses, etc. of _____”

Writing FOIA requests - sample

Under FOIA, I request the following public records, also including contractor public records under FOIA Section 7(2):

1. The RFP package sent or made available to potential bidders for the village's IT upgrade RFP last August.
2. All materials submitted by or on behalf of any bidders in response to that RFP.
3. All documents related to the evaluation of responses to and selection process for that RFP.
4. All formal or informal policies, procedures, practices, directives, etc. applicable to that RFP, including but not limited to the disclosure and evaluation of conflicts of interest, the identity of categories of required paperwork, due diligence procedures, and the identities of all persons involved in the evaluation and selection process.
5. All communications between the village and the winning bidder of that RFP from January through September of last year, including communications through agents like attorneys or lobbyists, containing the word "donation" or "campaign."

Please send electronic, audio, and video documents in their original format. Please scan paper documents into PDFs. Please deliver the documents to this email address, over a cloud sharing service, or if those are impossible, mail me a CD to _____. This is not a commercial request. To the extent there are any copying charges, I request a fee waiver because I am making this request to learn more about the RFP in furtherance of my efforts to evaluate whether the village followed proper procedures in the RFP and to tell other residents of my results. If you do not grant a fee waiver, contact me for authorization before assessing copying charges over \$10. Do not redact any nonresponsive information; I want the complete copy of any record with any responsive information. Produce emails and attachments together.

Public body's response

- “Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended”
- Public body may extend response by another five business days if:
 - records are stored at other locations
 - substantial number of specified records
 - request is categorical and requires an extensive search
 - records have not been located yet and require more searching
 - records “require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt”
 - undue burden or interference with operations
 - need to consult with other public bodies or components of public body, “which shall be conducted with all practicable speed”
- Requester may agree to additional time, which then supersedes the statutory deadlines

Public body's response

- “Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information.”
 - Only applies to a categorical request (“all documents related to ___”)
 - “Before invoking this exemption, the public body shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions.” – when this happens, ask the public body to explain what options are available
 - Must be asserted in writing and supported by specific reasons and the extent to which it would burden operations
 - “A public body that fails to respond to a request received may not treat the request as unduly burdensome”
 - “A public body that requests an extension and subsequently fails to respond to the request may not treat the request as unduly burdensome.”
 - Could be addressed by allowing additional time to respond or breaking into pieces

Public body's response

- Failure to respond by the deadlines the same as a denial
- Personnel issues are not an excuse for tardiness
- “A public body that fails to respond to a request within the time permitted for extension but thereafter provides the requester with copies of the requested public records may not impose a fee for those copies.”
- Public body is not required “to interpret or advise requesters as to the meaning or significance of the public records.”

Public body's response

- Denials must be in writing and notify the requester of:
 - decision to deny the request
 - exemptions asserted
 - the reasons for the denial, “including a detailed factual basis for the application of any exemption claimed” and “citation to supporting legal authority”
 - the names and titles or positions of each person responsible for the denial
 - the right to seek review by the Attorney General’s Public Access Counselor
 - the right to seek judicial review (i.e., to file a lawsuit)

Public body's response – “recurrent requesters”

- Response deadlines are expanded for “recurrent requesters”
- Defined as “a person that, in the 12 months immediately preceding the request, has submitted to the same public body (i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of 7 requests for records within a 7-day period
 - does not apply to requests by news media or non-profit, scientific, or academic organizations when the requests pertain to those functions
 - “request” means “a written document (or oral request, if the public body chooses to honor oral requests) that is submitted to a public body . . . that identifies the particular public record the requester seeks. One request may identify multiple records to be inspected or copied”
 - public body cannot aggregate requests of spouses or a group

Public body's response – “recurrent requesters”

- Entitled to same records, but subject to different deadlines:
 - within 5 business days – public body must notify the requester that it is treating the requester as recurrent requester, the reasons, and that the public body will send an initial response with 21 business days of the request
 - within 21 business days – public body must (1) provide an estimated time to provide the records and estimate of copying charges (which public body can require to be paid in advance), (2) deny the request based on any asserted exemptions, (3) assert undue burden and invite the requester to narrow the request, or (4) produce the requested records
 - within a “reasonable period” considering the size and complexity of the request – public body must provide non-exempt public records responsive to the request

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Remedies for FOIA Denials

Remedies

- Sometimes public bodies will reconsider if you push back or ask for a more detailed explanation.
- Other elected officials representing the same area (e.g., state representatives, alderman) can sometimes be helpful.
- Media and public meeting attention may also help.
- If not, legal options are:
 - file a request for review with PAC
 - file litigation

Remedies - PAC

- Bureau within Illinois Attorney General's Office
- Can issue binding or non-binding opinions
 - binding opinions are rare, PAC must issue within 60 days (can be extended to 90), some aspects are subject to court deference, AG participates in suit if opinion not followed
 - if non-binding opinion is not followed, requester must file own suit
- Process (see <http://foia.ilattorneygeneral.net/>)
 - Must be initiated within 60 days of denial
 - Submit a written request for review
 - Public body responds, you reply to the response
 - Usually takes several months

Remedies - PAC

- Optional and free
- At least one PAC decision allowing a FOIA denial has been overturned in litigation
- Growing trend of some public bodies ignoring non-binding opinions against them

Remedies - lawsuit

- Court can enter an injunction
- Court must award attorney's fees and costs to a prevailing requester
- Court can also award civil penalties for willful and intentional violations
- FOIA matters are supposed to receive expedited treatment on the court's docket
- Public bodies must prove exemptions by clear and convincing evidence based on a detailed factual justification

Resources

- **Illinois FOIA Statute:** 5 ILCS 140, available at www.ilga.gov
- **Illinois Courts** (includes published opinions, somewhat searchable): <http://www.state.il.us/court/>
- **Public Access Counselor** (opinions, training module, and other materials):
 - the author of this guide believes some PAC interpretations are inaccurate in favor of public bodies, but generally accurate and persuasive on common issues
 - <http://foia.ilattorneygeneral.net/>
- **Better Government Association** (various resources): www.bettergov.org
- **Federal FOIA:** www.foia.gov
- **Illinois Municipal League FOIA Materials:** <http://foia.iml.org/>
 - resource for government officials, generally pro-public body
 - statements that are pro-disclosure should be persuasive to cite in response to denial

Endnotes

- **Clerks of Court** – <http://www.cookcountyclerkofcourt.org/gifs/PUBLICACCESS.pdf> (citing Copley Press, Inc. v. Administrative Office of the Courts , (1995), 271 Ill. App. 3d 548, appeal denied, 163 Ill. 2d 551; see also Illinois Attorney General Opinion No. 99-005 (March 15, 1999))
- **State’s Attorneys** – Nelson v. County of Kendall, <http://www.state.il.us/court/opinions/SupremeCourt/2014/116303.pdf>
- **Legislators** – Quinn v. Stone, 211 Ill. App. 3d 809 (1991)
- **Subsidiary bodies** – Hopf v. Topcorp., Inc., 628 N.E.2d 311, 314-315 (Ill. App. 1993); Rockford Newspapers, Inc. v. Northern Illinois Council on Alcoholism & Drug Dependence, 64 Ill.App.3d 94 (1978)
- **Database queries** – http://foia.ilattorneygeneral.net/pdf/FAQ_FOIA_Public.pdf (page 5)
- **Personal scanners** – Cf. Newman, Raiz & Shelmadine, LLC v. Brown, 394 Ill.App.3d 602 (2009) (requiring clerk of court to permit use of personal portable scanners to copy court records)
- **Records on personal devices** – City of Champaign v. Madigan, 2013 IL App (4th) 120662

Endnotes

- **Police CRs/repeater lists** – Kalven v. City of Chicago, 2014 IL App (1st) 121846
- **Deliberative process** – Harwood v. McDonough, 344 Ill.App.3d 242, 247, 279 Ill.Dec. 56, 799 N.E.2d 859 (2003); Enviro Tech Intern. Inc. v. EPA, 371 F.3d 370 (7th Cir, 2004); Tax Analysts v. I.R.S., 294 F.3d 71, 78 (D.C. Cir. 2002)
- **Statutory purpose** – Stern v. Wheaton-Warrenville Community Unit School District 200, 233 Ill. 2d 396, 405, 910 N.E.2d 85, 91 (2009); Bowie v. Evanston Community Consolidated School District No. 65, 128 Ill. 2d 373, 378, 538 N.E.2d 557, 559 (1989)
- **Waiver** – Chicago Alliance for Neighborhood Safety v. City of Chicago, 348 Ill.App. 3d 188 (2004)
- **Anonymous requests** – http://foia.ilattorneygeneral.net/pdf/FAQ_FOIA_Government.pdf (page 6)
- **Names of requesters** – Chicago Alliance for Neighborhood Safety v. City of Chicago, 348 Ill.App.3d 188 (2004)
- **Personnel issues no excuse** - Ill. Att'y Gen. Pub. Acc. Op. No. 13-001; Ill. Att'y Gen. Pub. Acc. Op. No. 13-005

Endnotes

- **Recurring requester/spouses** – 2011-PAC 16877
- **Data scrambling** - Bowie v. Evanston Community Consol. School Dist. No. 65, 128 Ill.2d 373 (1989)
- **Database query** – Hamer v. Lentz, 132 Ill.2d 49 (1989)
- **Extensions/burden alleviated** - PAC 2014 Training (slide 20)
- **Copy charges/inspection/redaction** - PAC 2014 Training (slide 23, 25)
- **Exemptions must be read narrowly** - Southern Illinoisan v. Illinois Department of Public Health, 218 Ill. 2d 390, 416 (2006)
- **Documents must be produced unless an exemption applies** – Illinois Education Association v. Illinois State Board of Education, 204 Ill. 2d 456 (2003)
- **Exemptions are not prohibitions** - Roehrborn v. Lambert, 277 Ill. App. 3d 181, 186 (1st Dist. 1995)
- **Law firm invoices**– People ex rel. Ulrich v. Stukel, 294 Ill. App. 3d 193, 203-204 (1st Dist. 1997)
- **Pending litigation** – Ill. Att'y Gen. Pub. Acc. Op. No. 13-017
- **Unverified data not exempt as draft** – Ill. Att'y Gen. Pub. Acc. Op. No. 13-015