



Open Meetings Act  
frequently asked  
questions



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# Insight

## Open Meetings Act

**Each state has some variety of law mandating that government business be conducted in open meetings. Under the Illinois Open Meetings Act (OMA) all governmental bodies, including counties, are required to open their meetings to the public so that citizens may observe the decision-making process of the body. Over the years, the State of Illinois has implemented a number of reforms to strengthen the OMA.**

The Illinois Open Meetings Act (OMA) is designed to ensure that the public has access to information about government and its decision-making process. As a public servant, you have a duty to ensure that Illinois residents can obtain information about their government.

In 2009, the Attorney General's Office worked with legislators and a diverse group of individuals and organizations to strengthen transparency laws in Illinois and hold government more accountable.

On January 1, 2010, key changes to the Open Meetings Act took effect. The law's provisions codified the Public Access Counselor (PAC) position within the Attorney General's Office which gives the PAC binding opinion authority.

The law also requires public bodies to appoint OMA designees and requires all elected or appointed members of a public body to complete OMA electronic training once during their terms.



# Who's who under OMA

## TRAINING FOR OFFICERS AND EMPLOYEES

**Each county must designate employees, officers or members to receive training on compliance with the Open Meetings Act. The county must provide a list of designated individuals to the Public Access Counselor (PAC).**

The PAC provides an electronic training program for these individuals to take which must be completed annually. At any time, a county may designate new or additional individuals to receive training on compliance with OMA. Those individuals must complete the training within **30 calendar days** of their designation.

**All elected or appointed members of a county subject to OMA must also complete electronic training and file a copy of the certificate of completion with the county once during their term of office or appointment as follows:**

- Any elected or appointed member of a county subject to the Act on Jan. 1, 2012, must have completed the training between Jan. 1, 2012, and Jan. 1, 2013.
- Any person who becomes an elected or appointed member of a public body after Jan. 1, 2012, must complete the electronic training no later than the 90th day after taking the oath of office or, if not required to take an oath, after otherwise assuming responsibilities as a member of the county.

Elected or appointed members need not complete the electronic training on an annual basis, unless they are also designated to receive training on compliance with the OMA.

## Public Access Counselor (PAC)

The Public Access Counselor is an attorney in the Attorney General's Office who works to ensure compliance with OMA and the Illinois Freedom of Information Act (FOIA). The Public Access Counselor oversees the Public Access Bureau in the Attorney General's Office, which includes several Assistant Attorneys General and professional support staff members working to respond to OMA and FOIA issues raised by the public and government officials.

The PAC has the authority to determine whether a public body has violated the Open Meetings Act. The PAC also has the authority to review requests for documents under FOIA and determine whether those documents should have been disclosed. As part of this Public Access work, the Attorney General has subpoena power, may issue advisory opinions to guide public bodies, may issue binding opinions in OMA and FOIA disputes, and may sue to enforce binding opinions.

## Public Body

The Open Meetings Act defines "public body" to include "all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof."

"Public body" also includes tourism boards and convention or civic center boards located in counties that are contiguous to the Mississippi River with populations of more than 250,000 but less than 300,000. OMA specifically provides that "public body" does not include a child death review team, the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act, or an ethics commission acting under the State Officials and Employees Ethics Act.

## Meeting

The Open Meetings Act defines a "meeting" to include "any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business. Accordingly, for a 5-member public body, 3 members of the body constitute a quorum and the affirmative vote of 3 members is necessary to adopt any motion, resolution, or ordinance, unless a greater number is otherwise required."



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# Frequently asked questions

## How many members of the county board have to be present before OMA requirements apply?

A “meeting” under OMA is a gathering of a majority of a quorum of the members of a public body for the purpose of discussing public business. For example, for a 7-member county board with a quorum of 4, a majority of the quorum would be 3. Under OMA, 5-member bodies have a 3-member quorum and require the affirmative vote of 3 members to adopt any motion, resolution or ordinance, unless a greater number is otherwise required.

## Before a county board takes a vote on an issue at a meeting, what must it do?

Any vote, or final action, must be preceded by a public recital of the nature of the matter being considered and any other information that will inform the public of the business being conducted.

## If an item is not listed on the posted agenda for a regular meeting, is the county prohibited from taking action on the item?

Yes. OMA permits discussion during regular meetings of items not specifically set forth on the agenda. The Open Meetings Act, however, DOES NOT permit the taking of a vote on such a matter at that meeting.

## Is a county board required to provide members of the public with a copy of its “board packet” at an open meeting?

No. At the time of an open meeting, a county board is not required to disseminate or provide the public with copies of its “board packet” or reference information. It is important to note, however, that the information contained within a “board packet” is subject to the Freedom of Information Act (FOIA) and a member of the public can request copies of that material through FOIA.

## What is an agenda? Can the agenda be changed?

An agenda is a list of the items to be acted upon or discussed during a meeting. A county cannot change the agenda less than 48 hours before the meeting.

## Can the county board take action on items not on the agenda?

No. While the county board can discuss items that are not on the agenda of a regular meeting, the county board cannot take action or make any decision with regard to items or topics not on the agenda of a regular meeting. It is important to note that at a special or emergency meeting, unlike a regular meeting, a county board cannot even discuss items that did not appear on the agenda of the special or emergency meeting.

## Is the county required to allow a member of the public to speak at an open meeting?

Yes. The Open Meetings Act requires that public bodies give members of the public an opportunity to speak at a public meeting. Counties are authorized to adopt rules regarding the public comment portion of a meeting. Such rules may limit the time allotted for the public to speak.

## When and where does an open public meeting need to be held?

A county must hold a meeting at a specific time and place that is convenient and open to the public. A county cannot hold a meeting on a public holiday, unless the regularly scheduled meeting falls on that holiday.



## PUBLIC NOTICE OF A MEETING

**Every county is required to provide members of the public with notice of its meetings, regardless of the type of meeting. Giving public notice means that the county must provide the date, time and location of a meeting.**

At the beginning of each calendar or fiscal year, every county must create and make available to the public the schedule for regular meetings that year, including the dates, times, and location of the meetings. Notice shall be given by posting a copy of the notice at the principal office of the body holding the meeting or, if no such office exists, at the building in which the meeting is to be held. If the county has a website maintained by its own full-time staff, then notice of all meetings must also be posted on that website.

If the county changes this schedule, it must give **10 calendar days** notice of the change by publicizing the change in the newspaper and by posting information concerning the schedule change at the principal office of the county.

The county must post an agenda for the particular meeting at the principle office of the county, at the location of the meeting, and on the county’s website (if it has a website maintained by its own full-time staff) at least 48 hours in advance of the meeting.



Effective January 1, 2013, if a notice or agenda is not continuously available for the full 48-hour period due to actions outside of the control of the county, then the lack of availability does not invalidate any meeting or action taken at a meeting.

# Closed sessions

## RECORDING OF A MEETING

### Each county is required to take minutes of its open meetings? The minutes must include:

- the date, time and place of the meeting;
- a list of the members present and absent from the meeting, and whether they attended in person, by phone, or by video;
- a summary of discussion of all matters proposed, deliberated, or decided; and
- a record of any votes taken.

It is important to note that subsidiary bodies of the county (such as committees and subcommittees) are also required to take minutes of meetings.

A county must make minutes of the meeting available for public inspection and post them on the public body's website (if it has one) within 7 calendar days after the minutes are approved by the county. Typically, the minutes are approved at the next board meeting.

### May a member of the public record an open meeting?

Yes. Any member of the public can record the meeting by tape, film, or other means, subject to some reasonable restrictions.

### How can a county “close” a public meeting?

If a county wants to hold a closed session, the county must first meet in a properly noticed open meeting, then vote to close the meeting by a majority vote of a quorum present. The county must cite the specific exemption in the Open Meetings Act that applies and allows the closure of the meeting.

### Who can attend a “closed” session?

Only the members of the public body and others who are directly involved in the matter which is the basis for the closed meeting may attend the meeting. For example, witnesses giving testimony regarding a complaint against an employee may attend a meeting that is closed for purposes of discussing discipline of an employee.

### Can a county board take binding action in a closed session?

No. A public body may not take any final action in a closed session.

### How must a county record a closed meeting?

A county must make a verbatim record, by audio or video, of any closed session and take minutes of the meeting. Semi-annually, the county board must meet to review the minutes of any closed sessions that occurred and determine whether the minutes of those closed sessions need to remain confidential. If the county board determines that it is no longer necessary to have the minutes remain confidential, it must make the minutes available to the public.

### What can a member of the public do if he or she thinks the county board has violated OMA?

Within 60 calendar days from when the alleged violation occurred, a member of the public can file a Request for Review of the matter with the Public Access Counselor at the Office of the Attorney General, or can bring a civil action in circuit court against the county. In addition, the State's Attorney of the county in which the alleged violation occurred may bring a civil action in circuit court within 60 calendar days after the violation occurred or within 60 calendar days of the discovery of the violation by the State's Attorney.

## Attending a meeting by phone or video conference

A member of a public body may attend a meeting by telephone or video conference only in accordance with and to the extent allowed by the rules of the public body.

If a quorum of the members of the public body is physically present, then a majority of the public body may allow a member to attend by video or telephone conference if the member is prevented from physically attending because of (1) personal illness or disability; (2) employment purposes or the business of the public body; or (3) a family or other emergency.

If a member wants to attend the meeting by video or telephone conference, he or she must notify the recording secretary or clerk of the public body before the meeting, unless advance notice is impractical.



# Exceptions to Open Meetings



Section 2(c) of the Open Meetings Act provides that a public body can close a meeting to the public only when the following topics are to be considered:

- the appointment, employment, compensation, discipline, performance, or dismissal of a specific employee or legal counsel for the public body;
- collective negotiating matters or deliberations concerning salary schedules for one or more classes of employees;
- discipline or removal of an occupant of a public office or appointment of an individual to fill a vacant public office;
- evidence or testimony received in a hearing, provided that the body is a quasi-adjudicative body and prepares and makes available for public inspection a written decision setting forth its determinative reasoning;
- the purchase or lease of real property by the public body;
- the setting of a price for sale or lease of property owned by the public body;
- the sale or purchase of securities, investments, or investment contracts;
- security procedures;
- student disciplinary cases;
- the placement of individual students in special education programs and other matters relating to individual students;
- pending or probable litigation against, affecting or on behalf of the public body;
- the establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act;
- conciliation of complaints of discrimination in the sale or rental of housing;
- ongoing, prior or future criminal investigations, when discussed by public bodies with criminal investigatory responsibilities;
- professional ethics or performance when discussed by an advisory body to a licensing or regulatory agency;
- discussions regarding self-evaluation, practices and procedures or professional ethics with representatives of statewide associations;
- the recruitment, credentialing, discipline or formal peer review of physicians or other health care professionals for a hospital or other health care center;
- deliberations for decisions of the Prisoner Review Board;
- review or discussion of applications received under the Experimental Organ Transplantation Procedures Act;
- classification and discussion of confidential matters of the State Government Suggestion Award Board;
- discussion of the minutes of a meeting that was lawfully closed under OMA;
- deliberations of the State Emergency Medical Services Disciplinary Review Board;
- the operation by a municipality of a municipal utility or power agency or natural gas agency regarding contracts relating to the purchase, sale or delivery of electricity or natural gas, or the results or conclusions of lead forecast studies;
- meetings of a residential health care facility resident sexual assault and death review team;
- discussions involving internal or external auditors and governmental audit committees, finance committees, and their equivalents, when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews conducted in accordance with generally accepted auditing standards of the United States of America; and
- correspondence and records that may not be disclosed under Section 11-9 of the Public Aid Code, 305 ILCS 5/1-1 *et seq.*, or that pertain to appeals under Section 11-8 of the Public Aid Code.

*This list includes the primary exceptions for public bodies.*



## RESOURCES



### **Illinois Attorney General** [www.illinoisattorneygeneral.gov](http://www.illinoisattorneygeneral.gov)

On the pages of this website, you will find detailed information to help you as a government official and employees to understand and comply with the Illinois Open Meetings Act. We encourage you to check this site routinely as new materials are made available.

### **Illinois State Bar Association** [www.isba.org](http://www.isba.org)

The Illinois State Bar Association is the premier legal association in the state. As a voluntary organization the Association aims to assist Illinois lawyers in the practice of law and to promote improvements in the administration of justice.

### **Illinois General Assembly** [www.ilga.gov](http://www.ilga.gov)

The Legislative Information System site which contains the database of the Illinois Compiled Statutes and the Illinois Constitution.



If a member of the public believes that a public body has violated the Open Meetings Act, he or she can take action.

**Within 60 calendar days** from when the alleged violation occurred, a member of the public can file a Request for Review of the matter with the Public Access Counselor at the Office of the Attorney General, or can bring a civil action in circuit court against the public body.

### **What is a Request for Review?**

It is a letter sent to the Public Access Counselor which lays out the basis for an alleged violation of OMA. The request must be made in writing, must be signed by the requester and must include a summary of the facts supporting the allegation.

**Timeline:** When the Public Access Counselor (PAC) receives a written Request for Review from the member of the public, the PAC has seven working days to determine whether further action is warranted. If further action is warranted, the PAC must forward a copy of the Request for Review to the public body within 7 working days of receiving the request. At that time, the PAC can specify records or other documents that the public body must furnish to facilitate the PAC's review including any audio or video tapes of a closed meeting. The public body must provide the requested records within 7 working days of receiving the request from the PAC. The public body may, but is not required to, provide an answer to the allegations in the Request for Review. The answer may take the form of a letter, brief or memorandum.

**Criminal Penalties:** Under the law, a State's Attorney may bring a criminal action for a violation of the Open Meetings Act. A violation is a Class C misdemeanor, which is punishable by up to 30 days in jail and a fine of up to \$1,000.

**Civil Penalties:** In a civil lawsuit for a violation of OMA, a court may take a number of actions, including (1) ordering a public body to conduct an open meeting, (2) granting an injunction against future violations by the public body, (3) ordering the public body to make available to the public the minutes of a closed meeting, (4) declaring null and void any final action taken at a closed meeting in violation of OMA, or (5) awarding any other relief that the court deems appropriate. The court may require the public body to pay the attorney's fees and costs of the person who filed the civil lawsuit alleging the OMA violation.

### **Illinois Association of County Board Members and Commissioners**

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