



Responding to a
FOIA request



Fees, formats and
exceptions to public
disclosure



Consequences for
not complying with
FOIA



Insight

Freedom of Information Act

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. 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.

The Freedom of Information Act (FOIA) 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 FOIA and hold government more accountable.

On January 1, 2010, key changes to the Freedom of Information Act took effect. The law's provisions codified the Public Access Counselor (PAC) position within the Illinois Attorney General's Office. A key part of the Public Access Counselor's job is to review the situation when a public body denies a request made under FOIA and to advise whether the denial was appropriate.

Anyone may make a request under FOIA, including individuals who are not residents of Illinois.

Who's who under FOIA

GENERAL INFORMATION

Each county in the state of Illinois, as a public body, is subject to FOIA. The judiciary is not subject to FOIA, but court records and proceedings generally are open to the public.

Anyone can file a FOIA request. This means that 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.

Every county must designate at least one person to act as the FOIA officer.

Counties may have more than one FOIA officer. In addition, every county must prominently display at its office and make available certain information, including the name(s) of its FOIA officer(s). The office must also make available:

- Information on how to submit a Freedom of Information Act request; and
- A brief description of the office, including its purpose, budget and number of employees.

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

What are the consequences if a county fails to designate a FOIA officer?

Failure to do so is a violation of the Freedom of Information Act and will be considered by the Public Access Counselor (PAC), as well as courts, when a request or litigation is filed.

Public Access Counselor (PAC)

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

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

Public Body

"Public body" is defined in FOIA as "all legislative, executive, administrative or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees thereof." FOIA provides that "public body" does not include a child death review team or the Illinois Child Death Review Teams Executive Council.

Public Records

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."

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. **NOTE:** *Information can be available in electronic as well as paper format.*

FOIA Officer

A FOIA officer is appointed by the public body and has the responsibility to receive FOIA requests from the public and to send responses in compliance with FOIA.

Each public body must appoint one or more FOIA officers who must complete an electronic training developed by the Attorney General's PAC. **Training must be completed annually.**



Responding to FOIA requests

How many days does the county have to respond?

Five (5) business days from the day after the county 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 produced without unduly burdening the county government or interfering with its operations; or
- The request requires the county to consult with another public body that has substantial interest in the subject matter of the request.

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

What is a “business day” or “working day”?

A “business day” or “working day” is a regular day of the week (Monday through Friday) when public offices are open. Saturdays, Sundays and legal holidays are not business days and cannot be counted in the 5 business day time period. FOIA does not have any exceptions for vacations or winter breaks, other than for Saturdays, Sundays and legal holidays.

When does the 5 business day time period start?

Day 1 of the 5-day timeline is the first business day after the request is received by the public body. **The date that the request was received by the public body does not count as Day 1.** The 5 working day response timeline begins the day after any employee or official of the public body receives the request for information. Employees and officials of a public body must immediately forward all requests for information to the FOIA officer(s) to maximize the response time.

When is a FOIA request sent by e-mail “received”?

If a FOIA request sent by e-mail appears in the recipient’s mailbox during normal working hours, it is received on that day – not when it is opened by the recipient. If it is e-mailed after business hours, including on a weekend or legal holiday, it is “received” on the following business day.

Can a requester and a county agree to extend the deadline?

Yes, but the agreement must be in writing. The agreement will also relieve the county of having to comply with other legal deadlines in FOIA.

Can a county 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.



“UNDULY BURDENSOME” REQUESTS

A county has the option of treating a request as “unduly burdensome” under FOIA. However this treatment only applies in limited situations.

- The request must be categorical in nature and incapable of being narrowed or reduced.
- The burden on the county to produce the information must outweigh the public interest in the information. Before denying a request as unduly burdensome, the county must give the requester an opportunity to reduce the request to manageable proportions.

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. FOIA also 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.

Redactions under FOIA

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 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.

CIVIL PENALTY

A court ultimately could impose a civil penalty of between \$2,500 and \$5,000 per FOIA violation. In the event a public body fails to respond within 5 business days (or 10 days if an extension was requested), it cannot charge for reproduction costs at a later time, or treat the request as unduly burdensome.



FOIA officer responsibilities

DOCUMENT FORMATS AND FEES

Each county may charge fees for copies, but the charges are limited.

For black and white, letter or legal sized copies (8 1/2 x 11 or 8 1/2 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.

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

Can a county charge for electronic copies?

Yes, but only for the actual cost of the recording medium. For example, if information is produced on a removable drive, the county may only charge the actual cost of purchasing the drive. When a person requests a copy of a record maintained in an electronic format, the county must provide it in the electronic format specified by the requester, if it is feasible for the county to do so. A county may waive or reduce copying fees at any time if disclosure is in the public interest.

A county can require receipt of the payment from the requester before making the requested copies.

Can the designated FOIA officer 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 the 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 county required to make available?

Each FOIA officer must develop and make available upon request a list of documents that the county will immediately provide to a requester. In addition, each county 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 county must make this list available for inspection and copying.

Can you 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. 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?

Yes. A requester is not required to provide his or her name. For instance, e-mail requests are often submitted anonymously. Also, a requester is not required to state that a request for public documents is being made pursuant to FOIA. If a request is made for public documents, the county 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. A public body must allow you to inspect and obtain copies of public documents.

Ordinances are public documents that should be available without a FOIA request.

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.



Exemptions to public record

What kind of information is not public?

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

- **Private information**, which is defined as “unique identifiers, including a person’s social security number, driver’s license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal e-mail addresses.” Under FOIA, “private information also includes home addresses and personal license plate numbers, except as otherwise provided by law or when compiled without possibility of attribution to any person.”
- **Personal information** that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the person who is the subject of the information. Under FOIA, the “unwarranted invasion of personal privacy” means the “disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject’s right to privacy outweighs any legitimate public interest in obtaining the information.” Disclosing information that relates to the public duties of public employees is not considered an invasion of personal privacy.
- **Law enforcement records** that, if disclosed, would interfere with a pending or reasonably contemplated proceeding or that would disclose the identity of a confidential source.
- **Information that**, if disclosed, might endanger anyone’s life or physical safety.
- **Preliminary drafts** or notes in which opinions are expressed or policies are formulated, unless the record is publicly cited and identified by the head of the public body.
- **Business trade secrets** or commercial or financial information that is proprietary, privileged or confidential and disclosure would cause a competitive harm to the person or business.
- **Proposals and bids** for any contract, until a final selection is made.
- **Requests** that are “unduly burdensome.”

FOIA contains an exemption for records that, if disclosed, would result in a “clearly unwarranted invasion of personal privacy.” The disclosure of information that relates to public duties of public employees is NOT considered an invasion of personal privacy.



COMMERCIAL REQUESTS AND REDACTIONS

A commercial request is when the requester seeks to use part or all of the public records for sale, resale, or solicitation or advertisement for sales or services.

Requests by the news media, not-for-profit organizations, scientific or academic institutions are not considered commercial information requests.

Are they treated differently?

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

If a record contains information that is exempt from disclosure under FOIA, a county can remove or black out that exempt information from the public records.

But the county must produce the remaining information. Although there may be legitimate reasons to redact or withhold certain types of information, the only information that FOIA 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.

POLICY: A county may adopt its own policies and procedures to govern its implementation of FOIA as long as they are consistent with and do not conflict with FOIA. A county may adopt more strict standards, for example, requiring a FOIA response within 3 working days, instead of 5 working days.

RESOURCES



Illinois Attorney General 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 Freedom of Information Act. We encourage you to check this site routinely as new materials are made available.

Illinois State Bar Association 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

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



If a public body doesn't respond to a FOIA request within 5 business days of receiving it, that inaction is considered a denial.

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. 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 PAC in the Attorney General's office, with the PAC's contact information, as well as the right to seek judicial review by filing a court case.

Request for Review

The PAC can request any information that is necessary to decide whether a FOIA violation has occurred.

Timeline: 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.

Outcomes: 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.
- Review the issue in the FOIA dispute and determine no further action is necessary.
- Issue a binding opinion – the PAC must issue that opinion with 60 calendar days.

Advice: A public body can ask the Attorney General's PAC to issue an advisory opinion regarding compliance with FOIA. 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.

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