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Complying with the Illinois Freedom of Information Act (FOIA)

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Helpful Tips for FOIA

- FOIA (general tips)

- Most requesters are willing to work out alternative response dates
- Get your records in order
- Track EVERYTHING!
 - Utilize an excel spreadsheet to track all FOIA related actions;
 - Date received;
 - All calls or written communications with the requester;
 - Response due date
 - Actual response date
 - Keep a copy of the response with records produced (and records not produced/ redacted)



A close-up photograph of a hand holding a document, with a filing cabinet and other papers visible in the background. The image is partially obscured by a dark grey overlay on the right side.

FOIA in a Nutshell

- What is the FOIA?
 - The FOIA provides public access to government documents and records.
 - Recordings, reports, forms, writings, letters, memoranda, books, papers, maps, photos, etc.
- What is a FOIA request?
 - Written requests for records kept by a public body
- Generally, a public body has 5 days to respond to a FOIA request
 - Some extensions are allowed
- Must provide records and reasons for any redactions / exemptions
 - What are common reasons for exemptions?

Common Reasons for Exemptions

Information prohibited from disclosure by federal or State law

Private information, unless disclosure is otherwise required by the Act

Personal information contained within public records, which would constitute an unwarranted invasion of personal privacy

Trade secrets and commercial or financial information

Proposals and bids for any contract, grant, or agreement

Minutes of meetings of public bodies closed to the public as provided in the Open Meetings Act

The request is unduly burdensome

Who can Initiate of FOIA Request?

- Any individual, corporation, partnership, firm, organization or association, acting individually or as a group, may initiate a FOIA request.
 - Need not be a citizen or resident of Illinois, and in some cases, need not provide a name or reason for the request.

Complying with a FOIA Request

- Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 and 8.5 of this Act.
 - Copying means the reproduction of any public record by means of any photographic, electronic, mechanical (or other process) device or means not known or hereafter developed and available to the public body.
- What if a request is made to inspect a public record that contains information that is exempt, but also contains information that is not exempt?
 - Redactions

Common Redactions

- Information prohibited from disclosure by federal or State law
- Private information, unless disclosure is required by another provision of the Act, a State or federal law, or a court order
 - Examples: Unique identifiers, such as SSNs, home addresses, phone numbers, personal financial information, medical records, etc.
- Personal information contained within public records, the disclosure of which would be an unwarranted invasion of personal privacy
- Preliminary drafts, notes, memos, or other records in which opinions are expressed or policies or actions are formulated
- Proposals and bids for any contract, grant, or agreement, including any information which would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body
- Minutes of meetings of public bodies closed to the public

Denying a Request

- Each public body denying a request for public records shall notify the requester in writing of the decision to deny the request
 - Must include the reason(s) for the denial, names and titles/positions of each person responsible for the denial.
- Each denial must also inform the requester of the right to review by the PAC and provide the address and phone number of the PAC.
- Each notice must also inform requester of the right to judicial review under Section 11 of the Act.

2024 FOIA PAC Opinions

24-001

- PAC determined that, for Townships, settlement agreements with confidentiality clauses are still public record, and those clauses cannot prevent them from disclosing the agreement. Information in such agreements may be redacted if the information is exempt.
 - Section 2.20 of the Freedom of Information Act provides “All settlement and severance 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 under Section 7 of this Act may be redacted.”

2024 FOIA PAC Opinions

24-002

- PAC found that a village's failure to respond to a FOIA request regarding the village mayor's payments, care lease, and monthly credit card statements was a violation of FOIA.

2024 FOIA PAC Opinions

24-004

- Failing to respond to a request, even after the requested extended time period is a violation of FOIA.
- If a governmental organization is non-compliant with a FOIA request, they cannot then treat the FOIA request as “unduly burdensome or imposing copying fees for the responsive records.”

2024 FOIA PAC Opinions

24-005

- PAC concluded that video footage is public record if it related to public business and was in possession of the Sherriff's Office as part of an investigation.
 - The criteria the court uses to determine if a record qualifies as public record are, "first, the record must pertain to public business rather than private affairs. Second, the record must have been either (1) prepared by a public body, (2) prepared for a public body, (3) used by a public body, (4) received by a public body, (5) possessed by a public body, or (6) controlled by a public body." *Better Government Ass'n v. City of Chicago Office of the Mayor*, 2020 IL App (1st) 190038, ¶ 14.
- PAC further concluded that, while records relating to a public body's adjudication of employee grievances or disciplinary cases are exempt from FOIA, records that consist of investigatory information that predates and exists independently of any adjudication are not exempt from FOIA and must be disclosed.

2024 FOIA PAC Opinions

24-006

- PAC determined that in resolving the issue of a personal privacy exemption claim, a balancing test between the public's interest in disclosure of the specific information requested against the individual's (or their family's) interest in privacy is required. This determination, or balancing test, considers four factors: "(1) the [requester's] interest in disclosure, (2) the public interest in disclosure, (3) the degree of invasion of personal privacy, and (4) the availability of alternative means of obtaining the requested information." *National Ass'n of Criminal Defense Lawyers v. Chicago Police Department*, 399 Ill. App. 3d 1, 13 (2010).
 - PAC further concluded that the disappearance and death of a member of the community is a legitimate public concern.
 - Records that contain sensitive or graphic details, especially regarding the death of that person, may justify a governmental body withholding or redacting that information in a response to a FOIA request.
 - Further, personal information and witness details may be redacted in records sent in response to a FOIA request

2024 FOIA PAC Opinions

24-008

- PAC found that, to meet an exemption under section 7(1)(v), a record must consist of or depict a vulnerability assessment, security measure, or response policy or plan.
- The PAC further concluded that street addresses of the Chicago Housing Authority's Scattered Site properties do not consist of or depict vulnerability assessments, security measures, or response policies or plans that are designed to identify, prevent, or respond to potential attacks.

2024 FOIA PAC Opinions

24-009

- Barring an extension or denial of a FOIA request, a public body violates FOIA if they do not comply with the request within 5 business days of receiving the request.

2024 FOIA PAC Opinions

24-011

- PAC concluded that records relating to an investigation must be disclosed once the investigation is concluded, or even administratively closed.
 - A public body seeking an exemption under FOIA section 7(1)(d)(i), claiming disclosing requested records would interfere with an ongoing investigation, will be denied if it fails to specify clear and convincing evidence to justify the exemption.

2024 FOIA PAC Opinions

24-012

- PAC concluded that attorneys and law firms are not entitled to greater access to private information exempted from disclosure, emphasizing FOIA applies to all requesters equally.
 - Further, professional credentials or requesters have no bearing on if there can be an exception to the exemption of private information from disclosure.
- Additionally, in section 7(1)(d)(iv) applies to 911 callers as they are “persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies.”
 - The exemption of redacting a confidential source’s private information applies even if a 911 caller, or a person who calls a government agency voluntarily, and provides their information, with an understanding they may be contacted regarding their call and section 7(1)(d)(iv) still applies to those callers.
- PAC also determined that the term "identities" required to be disclosed under this exemption does not encompass witnesses' (or in this case, callers') "home or personal telephone numbers," as these are explicitly exempt from disclosure under section 7(1)(b).

2024 FOIA PAC Opinions

24-014

- PAC found that public body violated FOIA by not performing a reasonable search for records, and improperly denying a FOIA request.
 - The public body failed to explain in detail how it searched for responsive records, specifying which recordkeeping systems it searched, what methods it used to search, who it consulted, and why.
- A requester does not need to name the subject of the reports or records, only describe the contents.
- The public body did not fulfill the procedural requirements for treating the request as unduly burdensome. It did not assert the request was unduly burdensome, explain why, or give the requester an opportunity to narrow the request to manageable proportions.

2024 FOIA PAC Opinions

24-015

- Per section 3(d) of FOIA, public bodies must respond to requests within 5 business days, or seek an extension.

2024 FOIA PAC Opinions

24-016

- PAC concluded, using the four factors in resolving an issue between personal privacy and public interest (discussed in PAC opinion 24-006), that public interest in a record that may include allegations of misconduct by a public official would outweigh privacy concerns.
- A public agency cannot rely on the ongoing law enforcement exemption, permitted by section 7(1)(d)(iv), if they are not a law enforcement agency, or if they don't possess the records in relation to a law enforcement investigation.
- A public body that seeks to use the endangerment exemption in section 7(1)(d)(vi) must provide facts or demonstrate that disclosing the records would endanger someone's life or safety.
- PAC concluded that records in possession of a public body that were unsolicited and originate from third parties are not part of that body's deliberative process.
- PAC also concluded that records with such provenance would not be part of the public body's internal audit records.
- Public bodies can only claim nondisclosure of records is justified by section 7(1)(n) if there is a clear explanation that the records relate to the adjudication of an employee grievance.

2024 FOIA Case Law

International Association of Fire Fighters Local v. Village of Oak Brook

- The international (“Union”) claimed the Village of Oak Brook violated FOIA when they refused to disclose FOIA requested records. These related to the portion of a village meeting that was partially closed to the public.
- The village claimed an exception under FOIA section 7(1)(l), which provides meetings closed to the public under OMA can remain nondisclosed until the public body makes the minutes available under section 2.06 of OMA.
 - This court concluded this exemption did not apply as the village violated OMA by closing the meeting.
- The village also claimed that the requested records were exempt from FOIA disclosure as they were protected by attorney-client privilege, citing FOIA section 7(1)(m).
 - The trial court required the village to turn over all records relating to the closed portion of the meeting.
 - The appellate court concluded that the trial court erred when it did not consider the possibility that attorney-client privilege may apply to the requested records it required the village to turn over.



2024 FOIA Case Law

Woolsey v. Illinois State Police

- Woolsey requested documents relating to his own FOID card and application from the Illinois State Police under FOIA. The state police refused to disclose the requested information, citing section 7.5(v) of FOIA, which prohibits the disclosure of information about individuals who applied for a FOID card.
 - The trial court agreed with Woolsey who asserted that the exemption did not apply to requests for the individual's own FOID information.
- The appellate court reversed the lower court's decision and concluded that the exemption applies to FOIA requests for FOID information, even when made by the individual themselves, reinforcing that FOIA does not authorize disclosure of personal FOID card details.
 - The court also noted that individuals can obtain information about their own FOID card application directly from the Firearms Services Bureau.



2024 FOIA Case Law

Shehadeh v. City of Taylorville (Feb)

- The plaintiff, while in custody in jail, sent a letter to the mayor of Taylorville complaining about an attorney who represented the City in a lawsuit pending between the plaintiff and the City. The letter also included a request for a copy of the letter, which was couched as a request under FOIA.
- The City's FOIA officer denied the plaintiff's request for a copy of the letter.
- The trial court granted the City's motion to dismiss, and the appellate court affirmed.
 - The letter was not a "public record" because it did not "pertain to public business."
 - The mayor is not a public body, and the plaintiff's letter was not received by or under the control of or in possession of a public body.



2024 FOIA Case Law

Hickman v. Mann

- The plaintiff sent a FOIA request to a county requesting certain policies, and the county responded that no such documents existed.
- The plaintiff sued the county, seeking an order requiring it to turn over the documents.
- The county moved to dismiss. The motion was supported by an affidavit from an administrative assistant, who stated she reviewed documents and concluded that no documents responsive to the request existed.
- The appellate court rejected the plaintiff's argument that the trial court should have struck the assistant's affidavit because she was not the designated FOIA officer, noting that FOIA's plain language allows a public body's FOIA officer or their designee to perform required duties.



2024 FOIA Case Law

Gakuba v. Winnebago County Public Defender's Office

- Plaintiff requested all records relating to his criminal conviction from the Winnebago County Public Defender's office, the state's attorney's office twice, and the sheriff's department.
 - The PD's office denied the request as the records requested were part of the judiciary and not subject to FOIA.
 - The state's attorney's office denied the first request made to them claiming they could not find the records, and the second request for being overly broad and unduly burdensome.
 - The sheriff's office denied the request for lacking specificity and being unduly burdensome to comply with the request, as well as the potential of FOIA exemptions applying to some of the documents.
- The trial court dismissed Gakuba's claims against all three departments, finding valid reasons for their inability to produce the records, and because the Sheriff's department provided all available documents to the plaintiff. The appellate court affirmed.



2024 FOIA Case Law

Shehadeh v. City of Taylorville (March)

- The plaintiff sent a FOIA request to the city of Taylorville for “all communications” to and from the police chiefs of Taylorville and Kincaid.
- The City’s FOIA officer sent a response denying the request because, among other reasons, the request was unduly burdensome because the plaintiff failed to identify which specific communications he sought.
- The plaintiff filed suit, and the trial court granted the city’s motion to dismiss.
- The appellate court affirmed, finding that the request was “unquestionably categorical and ‘patently broad on its face.’”
- The appellate court noted that the city did not ask the plaintiff to narrow or clarify his request in its response, or explain the burden of compliance in detail.
- The appellate court stated it would have been “preferable” for the city to provide at least an estimate of the number of records, or the amount of time involved in obtaining and sifting through them and redacting exempt information.



2024 FOIA Case Law

Harsy v. Perry County Sherriff's Office

- Plaintiff claims the sheriff's office violated FOIA when the office disclosed records of personnel and police dispatchers with redactions, permitted by exemptions.
- The court found that the claim against the sheriff's office was moot as they released the records and explained the redactions.



2024 FOIA Case Law

Better Government Association v. City Colleges of Chicago

- City Colleges of Chicago refused to comply with a FOIA request for records related to their graduation rate, citing the Family Educational Rights and Privacy Act (FERPA), which restricts the disclosure of personally identifiable student information without consent.
- The trial court concluded that FERPA does not outright ban disclosure of the requested records, only that it conditions federal funding on compliance.
- The appellate court reversed the lower court as FERPA does specifically prohibit the release of personally identifiable student information without consent and that disclosing such records would violate federal law and potentially jeopardize the College's federal funding.



2024 FOIA Case Law

McBroom v. Logan County Sherriff's Office

- The plaintiff submitted a request to the Logan County Sheriff's Department for the preservation of evidence related to potential litigation, including food-related records and nutritional information. After receiving a FOIA response with limited information, the plaintiff filed a complaint seeking a full disclosure of the requested records, alleging that the documents provided were newly created and incomplete.
- The court found that the plaintiff's request effectively sought the creation of new records, such as nutritional calculations, which FOIA does not require. As a result, the plaintiff's claims for failure to provide documents and untimeliness were dismissed because the requested records either did not exist or had already been provided.
- The court found that the defendant complied with FOIA's five-business-day response requirement, and even if the response had been late, any dispute became moot once the records were provided.



Helpful Tips

(cont.)

- Get everything memorialized in writing
- Have the public body keep track all of its responses
- If the requested material is hyper-sensitive, consult your lawyer





Questions and Answers?

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