



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 9, 2012

Dear Elected Official:

I am writing to inform you of a new State law that will require you to participate in an electronic training on the Open Meetings Act (OMA), 5 ILCS 120/1 *et seq.* (West 2010). As a result of this law, all elected or appointed members of public bodies must successfully complete an electronic training curriculum. My office provides this training curriculum online. The goal of this short, easily accessible training program is to provide you with an overview of the general principles of the Open Meetings Act and to offer some hypothetical situations relating to specific provisions in the law, so that you can become familiar with how the law works in practice.

Under the new law, with one exception, elected or appointed members of public bodies will only be required to take this training once as long as they remain in their positions. The exception applies to elected or appointed members of public bodies who are also designated by the public body as the Open Meetings Act Designee. If you are the OMA Designee for a public body, you must successfully complete the electronic training annually. This letter focuses on the new training requirement for elected or appointed members of public bodies who are not also the OMA Designee.

The new law requiring training for all elected or appointed members of public bodies, Public Act 97-0504, will take effect on January 1, 2012. Under this new law, all elected and appointed members of a public body subject to OMA must:

- Complete the electronic training curriculum developed and administered by the Public Access Counselor in the Attorney General's Office; and
- File a copy of the certificate of completion with the public body.

The deadline for completing the training is determined by when an elected or appointed member of a public body began serving in that role. If you are already serving as an elected or appointed member of a public body subject to OMA *on* January 1, 2012, you must complete the electronic training before January 1, 2013. Thus, elected or appointed members of a public body who began serving prior to January 1, 2012, have a twelve-month period starting on January 1, 2012, in which to complete the online training program. **Please note that completing the electronic training before January 1, 2012, will not satisfy the requirement of the new law.** My office will update the electronic training effective January 1, 2012.

If a person becomes an elected or appointed member of a public body subject to OMA *after* January 1, 2012, he or she must complete the electronic training no later than the 90th day after:

- Taking the oath of office, if an oath is required to assume his or her duties as a member of the public body; or
- Otherwise assuming the responsibilities as a member of the public body, if not required to take an oath of office.

If you are a member of a committee or subcommittee of a public body, or if you serve as an elected or appointed member of more than one public body, you only need to successfully complete the required training once to satisfy the training requirement. In addition, as mentioned above, you are not required to complete a training program every year unless you are also the Open Meetings Act Designee for the public body. All OMA Designees must complete the electronic training annually.

You may access the training, which should take approximately 50 minutes to complete, at: http://foia.ilattorneygeneral.net/electronic_foia_training.aspx.

Thank you for your cooperation with this new requirement. I hope you will find the training program informative and that your participation will help to ensure an open, honest and accountable government. For more information regarding recent changes to the Illinois Freedom of Information and Open Meetings Acts, please review the enclosed summary.

If you have any questions about these new laws or the OMA electronic training program, please contact the Public Access Counselor in my office at 877-299-3642 or PublicAccess@atg.state.il.us.

Very truly yours,

A handwritten signature in black ink that reads "Lisa Madigan". The signature is written in a cursive, flowing style.

Lisa Madigan
Attorney General

Freedom of Information Act and Open Meetings Act Amendments
97th General Assembly (2011)
Public Acts are available at www.ilga.gov

New Exemptions – Freedom of Information Act (FOIA), 5 ILCS 140/7 and 7.5

P.A. 97-0080

Effective July 5, 2011

Under this new law, the names and information of people who have applied for or received Firearm Owner's Identification Cards under the Firearm Owner's Identification Card Act, 430 ILCS 65/.01 *et seq.*, are exempt from inspection and copying under section 7.5(v) of FOIA.

P.A. 97-0342

Effective August 12, 2011

This law provides that personally identifiable information exempt from disclosure under subsection (g) of Section 19.1 of the Toll Highway Act, 605 ILCS 10/1 *et seq.*, is exempt from inspection and copying under section 7.5(v) of FOIA.

"Personally identifiable information" means any information that identifies or describes an electronic toll collection system user, including but not limited to travel pattern data, address, telephone number, e-mail address, license plate number, photograph, bank account information, or credit card number. 605 ILCS 10/19.1(a). Personally identifiable information generated through the Illinois State Toll Highway Authority's toll collection process that reveals the date, time, location, or direction of travel by an electronic toll collection system user shall be exempt from release under FOIA. 605 ILCS 10/19.1(g).

This exemption is not applicable to any information that concerns (i) the public duties of public employees and officials; (ii) whether an electronic toll collection system user has paid tolls; (iii) whether the Authority is enforcing toll violation penalties against electronic toll collection users who do not pay tolls; (iv) accidents or other incidents that occur on highways under the jurisdiction of the Authority; or (v) the obligation, receipt, and use of the funds of the Authority. 605 ILCS 10/19.1(g).

P.A. 97-0385

Effective August 15, 2011

This law exempts from disclosure names, addresses, or other personal information of minor participants and registrants in programs of park districts, forest preserve districts, conservation districts, recreation agencies, and special recreation associations; exemption also applies to participants and registrants where such programs are targeted primarily to minors. 5 ILCS 140/7(1)(dd).

P.A. 97-0452

Effective August 19, 2011

This law clarifies that correspondence and records that may not be disclosed under section 11-9 of the Public Aid Code or that pertain to appeals under section 11-8 of the Public Aid Code (305 ILCS 5/1-1 *et seq.*) are also exempt from inspection and copying under section 7(1)(dd) of FOIA.

Pre-Authorization Process – Freedom of Information Act (FOIA), 5 ILCS 140/9.5(b)

P.A. 97-0579

Effective August 26, 2011

This law eliminates the requirement that public bodies provide notice to the Public Access Counselor prior to asserting particular exemptions in response to a FOIA request. Specifically, public bodies are no longer required to notify or obtain the prior approval of the Public Access Counselor before asserting that requested records are exempt from disclosure under sections 7(1)(c) (personal privacy) or 7(1)(f) (deliberative process) of FOIA. Public bodies may assert, in appropriate circumstances, that information is exempt from disclosure under these sections without seeking the Public Access Counselor's pre-authorization. A FOIA requester may still ask the Public Access Counselor to review a public body's use of these exemptions in responding to a FOIA request.

Request for Review Process – Freedom of Information Act (FOIA), 5 ILCS 140/9.5(c)

P.A. 97-0579

Effective August 26, 2011

This law extends the time in which the Public Access Counselor may issue a binding opinion on a FOIA Request for Review. Specifically, in response to a Request for Review under FOIA, if a binding opinion is to be issued, it must be issued within 60 days of receipt of the request unless the Public Access Counselor extends the time by sending a written notice to the requester and the public body, including a statement of the reasons for the extension, within 30 business days, rather than 21 days, of receipt of the request.

Recurrent Requestors – Freedom of Information Act (FOIA), 5 ILCS 140/2 and 3

P.A. 97-0579

Effective August 26, 2011

This new law provides public bodies with an additional, reasonable period of time in which to respond to a FOIA request if the requester has submitted a large number of requests to that same public body within a specified period of time prior to submitting the new request.

The public body may consider a person to be a "recurrent requester" and may take additional time to respond to a new FOIA request if the person has submitted to the same public body:

- A minimum of 50 requests for records in the 12 months immediately preceding a FOIA request;
- A minimum of 15 requests for records within the 30-day period immediately preceding a FOIA request; or
- A minimum of 7 requests for records within the 7-day period immediately preceding a FOIA request.

The law makes it clear that when counting the number of FOIA requests, a "request" is the written document that is submitted to the public body and identifies the records the requester seeks. (The requester may submit the document via personal delivery, mail, fax, electronic mail, or any other means available to the public body.) One request may identify multiple records that the requester seeks. Thus, the law clearly prohibits a public body from counting each record sought in a single FOIA request as a separate request.

This new provision allowing additional time to respond to certain FOIA requests does not apply to requests made by news media and non-profit, scientific, or academic organizations when the principal purpose of the requests is:

- To access and disseminate information concerning news and current or passing events;
- For articles of opinion or features of interest to the public; or
- For the purpose of academic, scientific, or public research or education.

Within 5 business days after receiving a FOIA request from a recurrent requester, a public body shall notify the requester:

- That the public body is treating the request as a request from a recurrent requester;
- Why the public body is treating the request as a request from a recurrent requester;
- That the public body will send an initial response within 21 business days after receipt; and
- That the public body may assert the responses listed below.

A public body shall respond to a FOIA request from a recurrent requester within 21 business days after receipt by:

- Providing an estimate of the time required by the public body to provide the records requested and an estimate of the fees to be charged, which the public body may require the person to pay in full before copying the requested documents;
- Denying the request pursuant to one or more of the exemptions set out in this Act;
- Notifying the requester that the request is unduly burdensome and extending an opportunity to the requester to attempt to reduce the request to manageable proportions; or
- Providing the records requested.

Unless the records are exempt from disclosure, a public body shall comply with a FOIA request within a reasonable period considering the size and complexity of the request.

Commercial Requests – Freedom of Information Act (FOIA), 5 ILCS 140/6 and 9.5

P.A. 97-0579

Effective August 26, 2011

This law allows public bodies to charge additional amounts when responding to a commercial FOIA request. Specifically, when responding to a commercial request, a public body now may charge up to \$10 for each hour spent by personnel in searching for and retrieving a requested record, except that no fees shall be charged for the first 8 hours.

Additionally, when responding to a commercial request, a public body may charge the actual cost of retrieving and transporting public records from an off-site storage facility if the public records are maintained by a third-party storage company under contract with the public body.

If a public body imposes any of these new fees for a commercial request, it must provide the requester with an accounting of all fees, costs, and personnel hours in connection with the FOIA request for public records.

P.A. 97-0579

Effective August 26, 2011

This law also limits the extent to which a commercial FOIA requester may file a Request for Review with the Public Access Counselor. A person whose FOIA request is treated as a commercial request by the public body now may only file a Request for Review with the Public Access Counselor for the limited purpose of reviewing whether the public body acted properly in treating the FOIA request as a commercial request.

Training Requirement – Open Meetings Act (OMA), 5 ILCS 120/1.05

P.A. 97-0504

Effective January 1, 2012

This law requires that each elected or appointed member of a public body subject to OMA must complete the electronic training curriculum developed and administered by the Public Access Counselor, available at http://foia.ilattorneygeneral.net/electronic_foia_training.aspx, and file a copy of the certificate of completion with the public body.

Any person who is an elected or appointed member of a public body subject to OMA on January 1, 2012, must complete the electronic training between January 1, 2012, and January 1, 2013.

Any person who becomes an elected or appointed member of a public body subject to the Act after January 1, 2012, must complete the electronic training no later than the 90th day after:

- Taking the oath of office, if an oath is required to assume his or her duties as a member of the public body; or
- Otherwise assuming the responsibilities as a member of the public body, if not required to take an oath of office.

New Exceptions – Open Meetings Act (OMA), 5 ILCS 120/2

P.A. 97-318

Effective January 1, 2012

This law allows a public body to close a meeting 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. 5 ILCS 120/2(c)(28).

P.A. 97-0452

Effective August 19, 2011

Under this law, a public body may hold closed meetings under OMA to consider 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. 5 ILCS 120/2(c)(28).