

ILGL 25th Annual Conference

RECENT DEVELOPMENTS IN FOIA/OMA

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Handout Materials

1. 10 Things to Know about FOIA
2. 10 Things to Know about OMA
3. Summary of PAC Binding Opinions (OMA)
4. Summary of PAC binding Opinions (FOIA)

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10 Things To Know About FOIA

Julie A. Tappendorf, Ancel Glink

1. **PRESUMPTION OF OPENNESS:** The presumption of FOIA is open records and transparency – remember the “spirit” of the law is to provide members of the public with access to inspect or copy records.
2. **APPLIES TO RECORDS:** Although it’s called Freedom of Information Act, it applies to public records, not information. So, you need not answer questions under FOIA, nor do you need to explain what public records mean. You also do not need to create a record to respond to FOIA. For example, in a recent case, a reporter asked for a timeline of each medical license complaint – court said that this was not required by FOIA, although records would still need to be released.
3. **FORMAT:** A record must be provided in the format requested if it exists in that format – for example, if you maintain a record in Excel format, and the requester asks for it in Excel format, it is not enough to provide a PDF version.
4. **REASONABLE SEARCH:** According to a Public Access Counselor opinion, a public body must conduct a search “of all records systems likely to contain responsive records” in response to a FOIA request. That meant that a public body has to demonstrate that it searched all of its recordkeeping systems to justify a denial.
5. **UNDULY BURDENSOME:** There is a case upholding a public body’s denial of records under the unduly burdensome exemption – it involved the Attorney General as the public body using that exemption (9,000 records). Whether a request is “unduly burdensome” will depend on the scope of the request and the nature of the public body (i.e., staffing).
6. **EXTENSIONS:** FOIA provides a 5 day “by-right” extension, but you can always agree to a longer extension period with the requester.
7. **EMAILS:** E-mails and text messages sent by members of a public body on their private devices might be releasable under FOIA if (1) sent to a majority of a public body; (2) forwarded to or from an official public body email account; or (3) sent or received during a public meeting.
8. **FEES:** You cannot charge a fee to make a copy for your internal file or to scan in and redact. You also cannot pass on third party costs (i.e., what your engineer or attorney charges you to search and provide records). However, there are special fee rules that apply to commercial and voluminous requests, and to recurrent requesters.
9. **PAC REVIEW:** In responding to a PAC request for review, be prompt, courteous, and helpful. Cite to applicable opinions and cases.
10. **FOIA POLICY:** Consider adopting a policy to help administer FOIA more easily – identify the FOIA officers who receive and respond to requests and adopt forms to make it easier to respond (denial, extension, request to narrow, notice to recurrent and voluminous requesters, etc.)

10 Things To Know About the OMA

Julie A. Tappendorf, Ancel Glink

1. **PRESUMPTION OF OPENNESS:** The presumption of the OMA is that the business of public bodies must be conducted in a transparent manner at meetings that have been noticed to the public and that the public can attend.
2. **DEFINITION OF “MEETING” IS KEY:** The OMA defines a meeting as a *gathering of a majority of a quorum of a public body for the purpose of discussing public business*. Staff meetings, political rallies, and social events generally do not fall under the OMA.
3. **ELECTRONIC COMMUNICATIONS:** Emails, texts, and social media communications, if contemporaneous, can trigger a “meeting” requiring compliance with the OMA. Members of public body should not send or respond to emails that involve a majority of a quorum of the public body (ex: 3 members on a 7 member board) and should also avoid the use of “reply to all” whenever possible.
4. **ELECTRONIC PARTICIPATION:** Members of a public body can participate in a meeting electronically but only if the body has a policy authorizing electronic participation; the member is absent because of illness, business, or an emergency; a quorum is physically present at the meeting; and the body approves the member’s electronic attendance.
5. **ANNUAL SCHEDULE OF MEETINGS:** Each public body must adopt an annual schedule of its regular meetings. This is usually done in December for the following year or in January. If a public body fails to adopt an annual schedule, its meetings will be considered special meetings and subject to additional notice obligations.
6. **CONTENT OF AGENDA:** Agenda items must be sufficiently descriptive to inform the public of the general subject matter of an item that is the subject of final action. If an item is not listed on the agenda, it can be discussed (at a regular meeting) but not voted on.
7. **ELECTED OFFICIAL EMAILS:** The OMA requires a public body to post on its website a hyperlinked single email address or individual email addresses of elected officials for members of the public to contact the officials by email.
8. **CLOSED SESSIONS:** The OMA authorizes (but does not require) closed meetings to discuss certain topics such as pending litigation, certain personnel matters, among others. The public body must cite to the applicable exception in the motion to go into closed session, and that motion must be approved by a roll call vote.
9. **RECORDINGS:** Closed sessions must be recorded, and those recordings must be kept for at least 18 months. Open meetings do not have to be recorded. Before a public body can destroy a closed session recording, it must approve minutes for that closed session (but the minutes do not have to be released to the public).
10. **PUBLIC COMMENT:** A public comment period must be provided at every meeting of a public body, including subsidiary bodies. The PAC has interpreted the public comment statute to require public bodies to adopt a written public comment policy. It is important that a written policy be in place if the public body places any limitations on public body, such as time limits for public comment or a designation of the public comment period.

Summary of PAC Binding Opinions – FOIA

(2010-2017)

2010

PAC Opinion 10-001 (copies)

An individual filed a FOIA request seeking a copy of a public body's water meter card showing reading for a six month period. The public body responded that the requestor could inspect a copy of the records, but the public body was not obligated to provide a copy of the records. On appeal, the PAC determined that the public body violated FOIA by not furnishing copies of the records as required by Section 3(b) of FOIA.

PAC Opinion 10-002 (fees for copies)

An individual filed a FOIA request for certified payroll records and contracts with various contractors. The public body charged a fee for the copies that were provided to the requestor as well as a fee for duplicate copies that were retained by the public body. The individual appealed the duplicate fee charges to the PAC. The PAC determined that although FOIA requires a public body to retain a copy of the original request and response, the public body is not entitled to pass on duplicate copy costs to the requestor. In short, the PAC determined that the public body violated FOIA.

PAC Opinion 10-003 (autopsy reports)

Reporters filed a FOIA request for autopsy records of Christopher Kelly (fundraiser for former Governor Blagojevich) and Michael Scott (President of the Chicago Board of Education), both suicide victims. The requested documents included photographs, toxicology reports, police reports, and various other records. The public body requested pre-authorization from the PAC to deny the request based on the "personal privacy" exemption, arguing that the privacy interests of the victims' families outweighed the public's interest in the release of these records. The PAC denied the pre-authorization request except as it related to post-mortem photographs, ordered the public body to release the records, and determined that the public body violated FOIA by not releasing the records.

PAC Opinion 10-004 (settlement agreement)

A reporter filed a FOIA request for a copy of a settlement agreement in an employment discrimination case. The public body denied the request, stating that it did not have a copy of the settlement agreement because the lawsuit was defended by the public body's insurance carrier. The PAC determined that Section 2.02 of FOIA expressly states that settlement agreements are public records subject to release to the public and that the public body violated FOIA by not providing a copy of the settlement agreement.

2011

PAC Opinion 11-001 (arrest records)

An individual filed a FOIA request seeking arrest records and a gunshot residue test report. The request was denied based on the criminal history record exemption under Section 2.15 and because the public body did not possess the report. On appeal, the PAC first determined that since the gunshot residue report was not in the public body's possession, the denial was permissible. However, the PAC also determined that the arrest records were not exempt under FOIA and, therefore, the public body violated FOIA by improperly denying the records.

PAC Opinion 11-002 (police officer assignments)

A reporter filed a FOIA request seeking records containing the number of sworn officers assigned to each district. The public body denied the request under Section 7(1)(v), claiming that the information related to the mobilization and deployment of police personnel. The PAC determined that the records were not exempt because the public body failed to demonstrate how the number of officers assigned to a district could reasonably be expected to jeopardize the effectiveness of security measures or safety of the officers or public. In short, the PAC found that the public body violated FOIA.

PAC Opinion 11-003 (unduly burdensome)

A reporter filed a FOIA request seeking various records relating to a university's presidential search. The university sought pre-authorizations to withhold certain information under Section 7(1)(c) as personal privacy information, which was partially denied by the PAC. The university then partially denied the FOIA request. A subsequent request was filed, seeking the documents previously denied and the university denied the subsequent request, asserting that providing the requested documents would be unduly burdensome and that the request was a "repeated request" from the same person for the same records. The PAC found that the university violated FOIA because the public body did not either (1) previously disclose the requested records or (2) properly deny the previous request.

PAC Opinion 11-004 (settlement agreements)

A reporter filed a FOIA request seeking a copy of a settlement agreement between a public body and a former employee. The public body denied the request under Section 7(1)(s) which permits a public body to withhold records relating to insurance or self-insurance claims and loss or risk management information because the settlement amount was paid by the public body's insurance carrier. The PAC determined that the settlement agreement was not exempt under FOIA because (1) FOIA was recently amended to expressly provide that settlement agreements are public records subject to release and (2) Section 7(1)(s) only protects proprietary information regarding policies, procedures, and practices of the self insurance or risk management pool or association, and not information relating to individual claims or losses, including the amount to settle a claim. In short, the PAC found that the public body violated FOIA.

PAC Opinion 11-005 (workers compensation records)

A reporter filed a FOIA request seeking 50 individual reports containing "nerve conduction velocity" results conducted as part of workers compensation claims involving employees at a particular correctional center. The requestor subsequently clarified his request to the public body that personal identifying information could be redacted. The public body denied the request, claiming that the tests were risk management records protected by Section 7(1)(s). Based on similar analysis as contained in PAC Opinion 11-004, the PAC found that the records were not "proprietary" insurance or risk management documents and that the public body violated FOIA.

PAC Opinion 11-006 (electronic records on private devices)

The PAC issued a binding opinion regarding the denial of reporter's FOIA request for text messages, emails, and other electronic records on public officials' personal cell phones and other devices. The public body had argued that the records were not "public records" subject to release, but the PAC disagreed and determined that the public body violated FOIA.

UPDATE: this was appealed to the circuit court, and then the appellate court in *Champaign v.*

Madigan, which upheld the PAC opinion that the text messages were releasable, but on more limited grounds. Text messages sent on private devices are releasable under certain limited circumstances: (1) if forwarded to an official account; (2) if sent during a meeting; or (3) if sent to a majority of the public body members.

PAC Opinion 11-007 (copies)

An individual filed a FOIA request for electronic and paper copies of mining plans with the Department of Natural Resources. The Department responded that the records were available on microfiche and invited the requester to schedule an appointment for inspection. The requester filed a request for review with the PAC, arguing that the Department's response was a denial of his request for a printed copy of the reclamation plan. The PAC agreed, finding that the Department violated FOIA by refusing to provide copies of the records.

2012

PAC Opinion 12-001 (recurrent requester)

On January 9, 2012, the PAC issued an opinion interpreting the new provision in the Freedom of Information Act that authorizes a municipality to classify an individual as a "recurrent requester" for purposes of responding to FOIA requests. In this case, a husband and wife had submitted numerous FOIA requests to a particular village over the course of a year. The village combined the couple's requests together, classifying them as "recurrent requesters" under Section 3.2 of FOIA. As a result, the village took the position that it had 21, rather than 5, business days to respond to the request. The PAC found that the village violated FOIA because the statute defines a requester as one "person." Therefore, the couple's requests could not be consolidated to fall within the statutory provision of 50 requests within the statutory time period.

PAC Opinion 12-002 (time for response)

A reporter submitted a request for disciplinary records for the years 2003-2006 from the Chicago Public Schools (CPS) but did not receive a response within 5 business days of the request. The reporter filed a request for review with the PAC. CPS responded to the PAC's inquiry that it was in the process of retrieving and compiling the records. The PAC determined that because CPS did not provide the records within 5 business days, it violated FOIA, ordered CPS to provide the documents at no charge to the reporter.

PAC Opinion 12-003 (privacy exemption)

A reporter filed a FOIA request to Chicago State University seeking the names of all freshman in 2005, names of all who graduated in 2011, and names of those who began school in 2005 who graduated in 2011. CSU submitted a notice of intent to deny to the PAC, asserting that release of the names would be an unwarranted invasion of personal privacy. CSU also claimed that the Family Educational Rights and Privacy Act prohibited release of the requested information. The reporter filed a request for review with the PAC, who concluded that CSU violated FOIA because (1) FERPA does not protect the requested information from disclosure; (2) the requested information is not "private information" under section 7(1)(b); and (3) release of the information would not be an unwarranted invasion of privacy.

PAC Opinion 12-004 (personal delivery of FOIA)

An individual hand-delivered a FOIA request to the village president at a board meeting. The village president denied the request, citing the new village policy that required all requests be submitted by mail, and the requester filed a complaint with the AG. The AG looked to Section 3(c) of the Act that provides that FOIA requests "may be submitted to a public body via personal

delivery, mail, telefax, or other means available to the public body.” Based on this language, the village could not adopt a policy refusing to accept hand-delivered FOIA requests. The AG did acknowledge that the opinion did not mean that personal delivery at any time or place is acceptable. Specifically, the opinion did not mean a “village officer” would be obligated to accept delivery of a FOIA request during a chance encounter on the sidewalk, or at his or her private residence or place of business.

PAC Opinion 12-005 (legal invoices)

A reporter filed a FOIA request requesting records of a school district’s legal expenses regarding a proposed TIF district in the City. The district denied the request, citing section 7(1)(m) which exempts communications between a public body and an attorney representing the public body that would not be subject to discovery in litigation. The district offered to provide records showing the amounts paid for legal work. The reporter filed a request for review with the PAC. The PAC determined that although certain types of billing records that indicate the type of work performed or matters discussed between the attorney and client are subject to the attorney-client privilege; however, other information on the invoices should be released such as the date on which work was performed, the attorneys who performed the work, the number of hours billed, and the amount billed. The PAC also opined that certain work descriptions that do not disclose privileged information could also be disclosed. The PAC concluded that the district violated FOIA by withholding the legal invoices in their entirety and should have provided redacted invoices.

PAC Opinion 12-006 (arrest records)

A reporter filed a FOIA request for all police incident reports related to a school board president and candidate for election to the General Assembly, including any batteries of a woman or paramedic assistance to a battered woman. The village denied the request pursuant to section 7(1)(c), as an unwarranted invasion of privacy. The reporter filed a request for review with the PAC. The PAC reviewed the records and determined that because they were “arrest records” they were subject to release under section 2.15(a) of FOIA. The analysis in the opinion centers on the individual being deemed an “arrestee,” even though the PAC itself acknowledges that this individual was not charged and he was released from custody the same day he was detained.

PAC Opinion 12-007 (investigative records)

An individual filed a request with the Illinois Department of Financial and Professional Regulation requesting records relating to an investigation of a real estate agent and realty company. There was no response and the individual filed a request for review with the PAC. The PAC found there was no valid exemption and ordered that the Department provide the records.

PAC Opinion 12-009 (redactions)

In this opinion, the PAC determined that the DuPage County Forest Preserve District violated FOIA by denying a request for all FOIA denial letters issued by the FPD. The FPD redacted the denial letters to protect private information and to redact information that was not “germane” to the FOIA request. The requester appealed the denial to the PAC. The PAC determined that the redactions of information that was not “germane to the request” was improper, and the FPD should have released the records with only the home addresses and personal e-mail addresses redacted.

PAC Opinion 12-012 (investigative records)

The PAC found that the Illinois State Police (ISP) improperly withheld investigatory records

involving the shooting death of a minor pursuant to FOIA. The ISP cited to section 7(1)(a) of FOIA which permits a public body to withhold records when federal or state law specifically prohibits disclosure. In support of its denial of the FOIA request, the ISP had cited multiple sections of the Juvenile Court Act (JCA) which prohibit disclosure of records regarding minors in certain situations. The PAC, however, determined that the JCA only applied to minors who had been arrested, taken into custody, or in cases in which a juvenile court proceeding was initiated. The minor was neither arrested nor taken into custody, and the PAC refused to extend the statutes despite the ISP's assertion that had the minor survived, he would have been the subject of criminal charges. The PAC did, however, allow the ISP to redact certain unique identifiers in the requested records, including the names and dates of birth of the victim's family members pursuant to various provisions of FOIA, including the protection of personal privacy and confidential sources.

PAC Opinion 12-014 (student test scores)

The PAC determined that a school district violated FOIA by failing to disclose math scores for the ITSB tests for fourth grade students. The district had cited the Illinois School Student Records Act which protects student records. The PAC rejected the district's argument that the data was exempt because the data could have been released in a format that would not include students' names or other identifying information. The PAC also rejected the district's argument that it would have to create a new record to respond to the request, finding that it could have redacted and scrambled the data before releasing it, and scrambling and re-ordering data is not the "creation" of a new record.

PAC Opinion 12-015 (definition of public body)

The PAC determined that the State Judicial Inquiry Board is not a public body required to comply with FOIA because that board is an entity within the judicial branch of government.

2013

PAC Opinions 13-001, 004, 005 and 009 (duty to respond)

In these virtually identical opinions, the Chicago Public Schools, the villages of Caseyville and Cleveland, and Chicago State University all violated sections 3(d) and 9(a) of the FOIA by failing to respond to a request for records within five business days. Each governmental body also failed to participate in the PAC's review process. PAC 13-004, PAC 13-005.

PAC Opinion 13-011 (internal investigations)

The City of Bloomington violated FOIA section 7(1)(n) by improperly withholding investigatory records and citations related to a traffic accident involving the city's assistant chief of police. The PAC found the city never "adjudicated" the underlying allegations against the police chief, and therefore the records related to the imposition of final discipline were *not* exempt from disclosure.

PAC Opinion 13-012 (possession of records)

The UNO Charter School Network ("UCSN") violated FOIA section 3 by failing to provide records that were in the possession and control of its subsidiary organization, UNO Advantage Charter School, Inc. ("UNO"). The PAC found that UCSN was the "governing body" of UNO, and both were subject to the FOIA pursuant to the Illinois Charter Schools Law. The two organizations were so closely related that the PAC ruled UCSN had control of documents that were in the possession of UNO, and therefore UCSN should have provided all requested documents from both entities.

PAC Opinion 13-013 (duty to respond)

In PAC 13-013, the City of Harvey violated FOIA sections 3(d) and 9(a) by failing *in part* to respond to a request for records within five business days. The city timely provided some of the requested documents, but additional records could not be located and therefore were not disclosed. The PAC ruled that failing to provide records that cannot be located is a denial of the FOIA request, and the city's failure to inform the requester of this denial violated the Act.

PAC Opinion 13-015 (preliminary or draft records)

The Illinois State Police violated FOIA by failing to turn over preliminary monthly crime report statistics submitted to the ISP by the Harvey Police Department. The ISP had denied the request based on the "draft document" exception, arguing that the statistics were still preliminary in nature, and had not yet been reviewed or published by the ISP. In PAC 13-015, the PAC disagreed, concluding that the mere fact that records are subject to review and further revision does not render them preliminary for purposes of the preliminary records exception.

PAC Opinion 13-017 (police report and discovery)

In PAC 13-017, the city denied a FOIA request for a police report, citing 7(1)(d) of FOIA that exempts law enforcement records because release would interfere with ongoing law enforcement proceedings and deprive a person of a fair trial. The PAC concluded that the City did not meet its burden of showing by clear and convincing evidence that FOIA prohibited disclosure because the City failed to provide enough detail about the ongoing investigation and how the disclosure of the records would deprive a person of a fair trial. The PAC also rejected the City's argument that the requester should obtain the records through discovery, stating that just because records might not be available through discovery does not mean that they should not be accessible through FOIA.

PAC Opinion 13-018 (outside consultant records and fees)

In PAC 13-018, a union group submitted a FOIA request seeking city records relating to a sidewalk/curb improvement project. Although the city provided copies of some of the records, it informed the requester that it would have to pay \$1,136.00 for copies of records held by the city engineering consultant to cover the city's actual costs. The PAC ruled against the City, finding that under the city's agreement with the private engineering firm and the FOIA statute, the requested records were public records and the city could not charge the requester for the costs of search and personnel time.

2014

PAC Opinion 14-002 (legal invoices)

The PAC found a public body in violation of FOIA for denying a request for legal invoices. The PAC first stated that the dates on which legal services were performed, the initials of the attorney performing the work, the number of hours billed, and the corresponding amount billed for each entry did not reveal any privileged attorney-client communication and was not, therefore, exempt under FOIA. The PAC did acknowledge that information contained in the billing descriptions or explanation of the work being performed could be exempt as an attorney-client communication, except for general descriptions that do not reveal any privileged information (i.e., holding a telephone conference, exchanging emails, or drafting and revising a memo).

PAC Opinion 14-004 (separation agreements)

The PAC interpreted FOIA to require the release of separation agreements even where the

agreements included confidentiality provisions prohibiting release by either contracting party. First, settlement agreements are public records under section 2.20 of FOIA. The PAC relied on a general principle that a contract provision that violates a state law contravenes public policy and is not enforceable to find that the county should have released the settlement agreements because the confidentiality provisions were unenforceable. Second, the PAC rejected the county's argument that the personal privacy exemption should protect the settlement agreements because the agreements resolved allegations of sexual harassment, finding that the public's right to know about the county's expenditure of public funds outweighs any personal privacy rights of a complainant or victim of sexual harassment.

PAC Opinion 14-005 (financial contract terms)

The PAC determined that the Illinois Department of Lottery violated FOIA by redacting financial information from contracts with the company that operates the lottery in Illinois. Specifically, the information that was redacted related to annual and monthly fees, pricing, and compensation paid to the contractor to operate the lottery. The PAC rejected the state's argument that this information was considered "confidential data" under the Illinois Lottery Act nor did it qualify as proprietary or financial information under Section 7(1)(g) of FOIA. Finally, the PAC rejected the contractor's argument that confidentiality provisions in the state's contract with the contractor prohibited release of the confidential data.

PAC Opinion 14-006 (duty to disclose records of student association)

The PAC determined that Chicago State University violated FOIA by failing to provide public records in its possession to a requester. Specifically, the requester asked the University to release information relating to the specific amount of money that was collected at a Homecoming dance and how that money was housed and appropriated. The university had denied the request, stating that the records are not records of a "public body" under FOIA because the records were records of the Student Government Association. The university further argued that the records are not related to the "transaction of public business" to constitute public records under FOIA. The PAC rejected the university's arguments. First, the PAC determined that because the SGA had distributed the records to the university, they were in the university's possession and, therefore, subject to release. Second, the PAC found that the university controls the funding of student associations, including the SGA, because of language in a student association publication that states that funds remaining in a student association account that are not expended by the end of the fiscal year revert to the university.

PAC Opinion 14-007 (reasonable search for athletic records)

In PAC Op. 14-007, a reporter filed a FOIA request with Chicago Public Schools (CPS) seeking various records relating to CPS athletic association records, including contracts, receipts, eligibility sheets, and ticket proceeds. CPS provided eligibility sheets, but did not respond or address the other requested records. The reporter filed a request for review with the PAC questioning CPS' response that it did not possess responsive records. In response, CPS stated that it had no central reporting requirement for ticket sales at athletic events, and no way of tallying that information. The PAC first noted that the CPS violated FOIA by failing to demonstrate that it had conducted an adequate search of the record systems of every one of the individual schools within the CPS system for the responsive documents. The PAC rejected CPS' argument that to do so would be unduly burdensome because CPS failed to extend an opportunity to the reporter to narrow the request.

PAC Opinion 14-008 (photographs of former employee)

In PAC Op. 14-008, the PAC found a public body in violation of FOIA for denying a reporter's request for photographs of a former employee. A reporter for Patch.com filed a FOIA request

with the Will County Sheriff's department for personnel records and photographs of a former deputy sheriff. The county denied the request for photographs of the deputy sheriff on the basis that the photographs constitute "private information" under section 7(1)(b) of FOIA because they contain "biometric identifiers" that could be used to identify biological attributes. The PAC first interpreted the term "biometric identifier," finding that it was limited to unique physical or behavioral characteristics that identify a person like a fingerprint or voice pattern. The PAC determined that a photograph of the former deputy sheriff's head, face and shoulders was no different than a photograph on a drivers' license, and therefore did not focus on any unique physical attribute of the former employee. The PAC also noted that the Biometric Information Privacy Act defines biometric identifier as "a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry" and expressly excludes "writing samples, written signatures [and] photographs." Further, the PAC noted that the definition of "private information" in FOIA did not specifically list photographs. The PAC concluded that photographs are not "biometric identifiers" exempt from release under 7(1)(b), and the county must release the photographs to the reporter.

PAC Opinion 14-010 (reasonable search for expense records for public officials)

The PAC found a public body in violation of FOIA in PAC Op. 14-010. There, a news reporter filed a FOIA request with Sauk Village asking for records pertaining the village clerk's and a trustee's trip to Washington DC for the "Building One America Summit." The Village responded that it had no responsive public records because the trip was not sponsored, approved, or funded by the Village and the trip did not "relate to official actions" nor did it involve the transaction of public business or affairs. The reporter filed a complaint with the PAC, and the PAC concluded that (1) the records were public records and (2) the Village failed to conduct a reasonable search, and ordered the Village to "search all recordkeeping systems - including the Village Clerk's records that are likely to contain responsive information concerning the summit and to provide those records" to the reporter. The Village responded again that there were no responsive records. Citing federal cases interpreting the federal FOIA, the PAC stated that a public body is required to conduct a "reasonable search tailored to the nature of a particular request." In this case, the PAC determined that the Village did not prove that it made any efforts to locate records responsive to the request.

PAC Opinion 14-011 (refusal to respond to FOIA request)

In PAC Opinion 14-011, a Chicago Tribune reporter filed a number of FOIA requests with the City of Harvey over a two week period seeking copies of contracts between the City and various companies and individuals. A month later, after repeated inquiries but still no response, the reporter filed four requests for review with the PAC claiming that the City failed to produce any records or respond to the FOIA requests. The PAC contacted the City, but the City still failed to respond to the FOIA request. Not surprisingly, the PAC found the City in violation of FOIA for failing to respond to any of the reporter's FOIA req

PAC Opinion 14-013 (records to prisoners)

In PAC Op. 14-013, the PAC determined that IDOC did not violate FOIA by refusing to make copies of Administrative Directives for a prisoner where those documents were available for inspection in the prison library. A little known FOIA provision exempts from disclosure "records requested by persons committed to the Department of Corrections if those materials are available in the library of the correctional facility where the inmate is confined." 5 ILCS 140/7(1)(e-5). That exemption is the subject of PAC opinion 13 for 2014. The PAC relied on legislative history demonstrating that the purpose of this exemption was to preclude inmates from using FOIA to obtain records that were already available to them in the library.

PAC Opinion 14-015 (employment applications and resumes)

An individual filed a FOIA request asking for a copy of the completed employment application and resume for a village employee. The village denied the request, citing section 7(1)(c) (personal information) and section 7.5(q) (information prohibited from disclosure under the Personnel Records Review Act). The Public Access Counselor found the village in violation of FOIA. The PAC determined that the "compelling public interest" in disclosure of a public employee's work experience, education, and credentials so the public can assess the employee's qualifications to perform his or her job outweighed the employee's privacy rights. The PAC also rejected the village's second argument, that the information was exempt under the personnel records review statute. The PAC noted that there is no provision in that law prohibiting a public body from disclosing resumes or employment applications. Third, the PAC rejected the village's argument that the records were exempt under 7(1)(f), as "inter- and intra-agency pre-decisional and deliberative material" because the records were used solely to assist the village in its deliberative process in considering and selecting the employee. Finally, the village argued that the records contained certain information that falls within the "private information" exemption under 7(1)(b) of FOIA. The PAC responded that this information can be redacted, but the remainder of the records must be released. The PAC concluded that the village must provide the resume and employment application to the requester, with proper redactions to protect the employee's private information, including his signature on the application.

PAC Opinion 14-016 (lease agreements)

In PAC Opinion 14-016, a reporter filed a FOIA request with the Metropolitan Pier and Exposition Authority (MPET) for copies of lease agreements for all conventions and trade shows at McCormick Place since January of 2011. MPET responded by asking the reporter to narrow his request because it would be unduly burdensome to provide 243 license agreements. MPET also asserted that certain information relating to financial and square footage data was exempt as confidential and proprietary under section 7(1)(g) of FOIA because release would put McCormick Place at a disadvantage in competing for conventions and trade shows. MPET further argued that it would undermine the show organizer's ability to freely negotiate pricing with other centers. The reporter declined to narrow his request, and instead filed a complaint with the PAC. The PAC rejected MPET's reliance on the "trade secret and commercial or financial information" exemption, finding that this exemption only protects information obtained from a person or business that would cause competitive harm to that business, not the public body. Further, the PAC argued that the Illinois constitution requires all records relating to the receipt and use of public funds to be open to the public. The PAC also rejected MPET's argument on appeal that the financial terms of the lease are exempt as valuable formula "when disclosure could reasonably be expected to produce private gain or public loss" under section 7(1)(i). The PAC asserted that this exemption does not apply to "basic lease agreement information" such as rental amounts or leased square footage. Finally, the PAC rejected MPET's argument that compliance would be unduly burdensome. Although the 235 lease agreements encompass 3,500 pages, because the PAC rejected all of MPET's cited exemptions, there would be no need to review and redact any information.

2015

PAC Opinion 15-001 (cooperation with PAC request for review)

In PAC Opinion 14-001, the PAC found a public body in violation of FOIA for refusing to provide records to the PAC for review and failing to adequately demonstrate that the records were exempt from disclosure. Mr. Holtz submitted a FOIA request to the Illinois Department of Financial and Professional Regulation (IDFPR) asking for a variety of records relating to a

complaint against licensed engineers. On appeal of the denial, the PAC requested the IDFPR to send the responsive records and any additional support for the exemptions. The IDFPR responded that disclosure of the records would violate a licensee's procedural due process rights and did not provide copies of the responsive records to the PAC. The PAC determined that the IDFPR's refusal to provide copies of the responsive records for confidential review violated section 9.5(c) of FOIA which requires a public body to "provide copies of records requested and...otherwise fully cooperate with the Public Access Counselor." Also, the PAC rejected all of the IDFPR's stated exemptions for denial of the request for records relating to the investigation of a licensee, because (1) it did not offer any detailed facts to support the cited exemptions and (2) it did not provide copies of the records for the PAC to review to determine whether the cited exemptions were valid. Finally, the PAC found the IDFPR in violation of FOIA for failing to conduct a "reasonable search" for records when it referred the requester to the IDFPR's website for meeting minutes.

PAC Opinion 15-002 (rebate agreements)

PAC Opinion 15-002 involved Rosemont's denial of a request for records pertaining to Garth Brooks' record-breaking concert at Allstate Arena. Specifically, a reporter had requested records relating to the village's alleged "rebate" to Brooks for the concert. The village responded but redacted the amount of the rebate, and the requester filed an appeal with the PAC. The village supported its denial based on a variety of FOIA exemptions as well as a local ordinance that allowed the village to withhold documents if the village believed the release would put village-owned entertainment venues at a competitive disadvantage. The PAC determined that the village was preempted from adopting an ordinance that would avoid disclosing records to the public. In addition, the PAC rejected the village's argument that the records amounted to "trade secrets," the release of which would place the village at a competitive disadvantage to private businesses that were not required to disclose financial records.

PAC Opinion 15-006 (doctors salary information not exempt)

In PAC Op. 15-006, a requester filed a FOIA request with Franklin Hospital for copies of the employment agreements between the hospital and five doctors. The hospital provided copies of the agreements, but redacted the doctors' salaries, incentives, and bonuses under the personal privacy and private information exemptions. The hospital also argued in the alternative that because the doctors did not have public duties, the agreements were not public records. The requester appealed to the PAC.

First, the PAC determined that the doctors, who were employees of the hospital, were performing public duties in providing medical care. Thus, their employment agreements fall within the definition of public record under FOIA.

Second, the PAC analyzed the two cited exemptions, "personal privacy" and "private information." The PAC rejected the hospital's argument that the doctors' compensation fell within "personal financial information" that is expressly exempt as "private information." The PAC did uphold the hospital's redaction of the doctors' home addresses as these are expressly protected as "private information" under FOIA, except for the one address which was a P.O. box. As to the argument that release of the doctors' compensation is an invasion of personal privacy, the PAC held that because the amount of their compensation "bears on the physicians' public duties as employees" of the hospital, there is no invasion of personal privacy in disclosure of this information. Moreover, the PAC stated that the public's "right to know the purposes for which public funds are expended" would trump any privacy rights the doctors might have.

2016

PAC Opinion 16-001 (response to FOIA request required)

In [PAC Op. 16-001](#), a reporter for the Chicago Sun-Times filed a FOIA request with the Chicago Police Department asking for "First Amendment-related worksheets" and emails and other communications relating to the Communist Party, Ferguson, the National Moment of Silence, and Black Lives Matter. Two weeks after he filed the request with the CPD, the reporter filed a complaint with the PAC claiming that the CPD failed to produce the records or respond to the request. Not surprisingly, the PAC found the CPD in violation of FOIA where the CPD did not produce the records or extend the time period for response within the 5 business days required for response under FOIA.

PAC Opinion 16-002 (post mortem photographs)

In [PAC Op. 16-002](#), the PAC found the Illinois State Police in violation of FOIA when it denied a FOIA request filed by the decedent's estate for post-mortem photographs of a decedent (including death-scene, autopsy, and other photographs) in the possession of the ISP. The ISP cited 7(1)(c) of FOIA in support of its denial of the request. That exemption protects from release certain personal information that, if released, would constitute a clearly unwarranted invasion of privacy. The PAC rejected the ISP's denial of the FOIA request, holding that an individual's personal privacy interests cease to exist upon death. The PAC directed the ISP to release the death-scene and autopsy photographs to the requester.

PAC Opinion 16-003 (response to FOIA request required)

In [PAC Op. 16-003](#), a requester filed a FOIA request with a school district asking for various emails and text messages of certain district employees, as well as employment interview records. The district responded that it would be extending the time frame for an additional 5 days. However, when the requester had not received the records 4 weeks later, she filed an appeal with the PAC. The PAC found the district in violation for (1) not extending the time period for response properly; (2) improperly calculating the time for response with the extension; and (3) not providing the documents to the requester.

PAC Opinion 16-004 (timely response to FOIA request)

On April 5, 2016, a newspaper reporter filed a FOIA request with the Chicago Police Department for various information relating to the department's staffing levels, as well as copies of all personnel orders issued by the department. The CPD extended the time period for response and requested an additional time frame for response from the requester. On May 12, 2016, the reporter had not yet received the requested records and filed a request for review with the PAC office. In [PAC Op. 16-004](#), the PAC found the CPD in violation of FOIA for failing to notify the requester of the extension within 5 business days, and for failing to provide the records to the requester, and directed the CPD to comply with FOIA and provide responsive records to the requester, subject to redactions.

PAC Opinion 16-005 (response to FOIA request required)

In [PAC Op. 16-005](#), the Public Access Counselor found a public body in violation of FOIA for a complete failure to respond to a FOIA request. The request had asked for records pertaining to employee salaries, independent contractor compensation, attorneys' fees, elected officials compensation, and debt records. The Village did not respond to the request, nor did the Village extend the time for response. When the requester filed a complaint with the PAC office, the Village did not respond to that complaint either. Not surprisingly, the PAC found the Village in violation, and ordered the Village to provide the records.

PAC Opinion 16-006 (emails on private devices)

In [PAC Op. 16-006](#), the PAC found the Chicago Police Department in violation of FOIA when it failed to provide copies of emails sent/received by Chicago police officers on their private accounts that related to the Laquan McDonald shooting. The City had provided the requester with emails that were sent/received on the officers' official City email accounts or were found on the City server. The City did not provide any emails on the officers' personal email accounts on the basis that the emails were not public records because the City did not have any control over the officers' personal devices, and the emails were not used by, received by, in the possession of, or under the control of a public body. The PAC ruled against the City, finding that "communications pertaining to the transaction of public business that were sent or received on the CPD employees' personal e-mail accounts are 'public records' under the definition of that term in section 2(c) of FOIA." The PAC noted that any other interpretation would be "contrary to the General Assembly's intent of ensuring public access to full and complete information regarding the affairs of government."

PAC Op. 16-008: (not unduly burdensome)

In [PAC Op. 16-008](#), the PAC found a public body in violation of FOIA for improperly denying a FOIA request as unduly burdensome. The request asked for digital copies of emails between a City official and planning consultants from June 1 through July 1, 2016. The FOIA officer responded that the request would be unduly burdensome as there were more than 50 emails, consisting of over 100 pages, plus attachments, and asked the requester to narrow the request. The requester responded by filing a complaint with the PAC, objecting to the denial. Although the PAC acknowledged that retrieval and review of 174 pages of documents might impose a burden, it concluded that the City failed to show that compliance "would so burden the operations of the City as to outweigh the public interest in the disclosure of the requested records."

PAC Op. 16-009: (privacy exemption under FOIA)

[PAC Op. 16-009](#), addressed five FOIA requests from reporters to a public body, which each sought police records and reports related to a former State Representative, who lives and works in the Village, and who had resigned from the Illinois House of Representatives in 2016 after allegations of an extortion scandal and evidence of inappropriate online activities. The opinion contains a variety of rulings regarding specific records, upholding the Village's use of the privacy exemption for certain investigatory records, and rejecting it for others.

PAC Op. 16-010: (failure to timely respond to FOIA is violation)

In [PAC Op. 16-010](#), the PAC found the Chicago Public Schools (CPS) in violation of FOIA for failing to timely respond to a FOIA request. The Sun-Times had filed a FOIA request seeking copies of all invoices submitted to CPS from an auditing company. The newspaper received an "automatic extension" email reply from CPS. A month after submitting the request to CPS, the newspaper filed a request for review with the PAC alleging that it still had not received a response to its FOIA request. The PAC found CPS in violation of FOIA for its complete failure to respond to the FOIA request. The PAC also did not object to CPS use of an "auto-extension" (that the extension was needed due to a high volume of FOIA requests) as a justification for the additional 5 day response time. Of course, the fact that CPS did not respond within the statutory time period, as extended, or properly deny the request, resulting in the PAC's finding that CPS violated FOIA.

PAC Op. 16-011: (failure to timely respond to FOIA is violation)

In [PAC Op. 16-011](#), the PAC found a public body in violation of FOIA for failing to "appropriately respond" to a FOIA request within 5 business days. PAC Op. 16-011. Although the Authority did work out a clarification of the request with the requester, the PAC found the Authority in violation for failing to respond to the clarified request either.

PAC Op. 16-012: (public employee salary information is releasable under FOIA)

In [PAC Op. 16-012](#), the PAC found a public body in violation of FOIA for improperly denying a FOIA request for the names and titles of staff members receiving raises and bonuses. The Authority denied the request, claiming the information was protected as private information, would constitute an invasion of privacy if released, and that the Personnel Records Review Act prohibited disclosure of this information. Not surprisingly, the PAC found the Authority in violation of FOIA. Consistent with past opinions, the PAC noted that records pertaining to a public employee's compensation (i.e., salary and bonuses) is a public record subject to release.

2017

PAC Op. 17-001 (public body must provide detailed factual basis for exemption)

The Illinois Attorney General (PAC office) recently issued its first binding opinion for 2017. In PAC Op. 17-001, the PAC found the Illinois State Police in violation of FOIA for improperly denying a request for an ISP field report referenced in an accident report the requester had previously received. The ISP had denied the request in its entirety, claiming release would interfere with a pending law enforcement proceeding. The requester filed a complaint with the PAC, which determined that the ISP failed to provide a "detailed factual basis" as to how the release would interfere with its law enforcement investigations. In the PAC's opinion, the mere existence of an open investigation is not enough to satisfy this exemption, and the ISP was required to explain, in some detail, why release would interfere with the open investigation.

PAC Op. 17-002 (public body must respond to FOIA)

The Public Access Counselor of the Illinois Attorney General's office issued its second opinion for 2017 last week. PAC Op. 2017-002. This opinion involved a FOIA request filed by a reporter seeking a copy of a police report of a police pursuit. The public body did not respond to the request, and the reporter filed a request for review. The public body's FOIA officer told the PAC that she had forwarded the FOIA request to the public body's attorney and police department for response, but neither the attorney nor the police department responded or provided the records to the requester. Not surprisingly, the PAC found the public body in violation of FOIA for not responding to the request or providing the requested record.

PAC Op. 17-003 (city improperly redacted financial information)

In [PAC Op. 17-003](#), the PAC found a public body in violation of FOIA for improperly redacting and withholding certain financial information from its response to a FOIA request. A city clerk filed a FOIA request with a sanitary district for copies of agreements, invoices, and other records relating to the district's agreement with a private company that managed and operated the district's wastewater facilities. The district responded to the request by providing 1,470 pages of records, some of which had been redacted. The district did not provide an explanation as to why the records had been redacted. The PAC determined that the district violated FOIA for the following reasons: (1) It failed to comply with section 9(a) which requires a written explanation for any denial of a FOIA request, including a partial denial that results in redactions of public records; (2) The redaction of the financial terms of the district's agreement with the private company was improper because the receipt and use of public funds is public information

under the Illinois constitution, so it is neither proprietary or privileged; and (3) The district's withholding of its annual budgets was also improper, as there is no exemption under FOIA that would require a public body's budget to be withheld.

PAC Op. 17-005 (statistical traffic count data not exempt)

In [PAC Op. 17-005](#), a requester filed a FOIA request seeking traffic counts from roadway monitoring operations at specific roads. The village denied the request, asserting that the traffic counts were "drafts" that had not been publicly released and were exempt under 7(1)(f). The PAC rejected the village's explanation for the denial, finding that "purely factual material" is not exempt under section 7(1)(f) of FOIA. In this case, the PAC determined that the statistical data requested by the requester did not reveal the village's reasoning or decision-making process, so it fell outside the "deliberative process exemption" even if the data was subject to later revision.

PAC Op. 17-006 (employee records not exempt)

In [PAC Op. 17-006](#), a reporter asked for records showing job titles, locations, and number of employees that the Department of Corrections considers "essential." The Department denied the request, first citing 7(1)(f) (deliberative process) and then later citing 7(1)(m) (attorney-client communication). First, the PAC noted that the Department failed to provide a detailed factual basis for the exemption, as required by section 9(a) of FOIA, and failed to provide records to the PAC for confidential review under section 9.5(c) of FOIA. Second, the PAC rejected the Department's use of the "attorney-client" exemption, and its argument that the determination of whether an employee is "essential" is a legal analysis that falls under the attorney-client privilege under section 7(1)(m) of FOIA. The PAC found that the Department failed to provide any support for its argument that these records constituted a communication between the Department and its attorney or that they were materials created in preparation for trial. The PAC also rejected the Department's reliance on the "deliberative process" exemption, finding that the Department failed to provide support for its argument that the records express opinions or formulate policies.

PAC Op. 17-007 (public body must respond on behalf of airport authority)

The City received a FOIA request seeking agendas and minutes for the Benton Airport for 2013, 2014, and 2015, and forwarded the request to the Airport Board. When the requester did not receive the requested information, she filed a Request for Review with the PAC claiming that the City violated FOIA. In response to the Request for Review, the City argued that since the FOIA request pertained to the Airport, it should be directed to the Airport, which the City claimed is a separate entity, and not to the City. [PAC Op. 17-007](#). The PAC first evaluated the extension, finding it inappropriate under Section 3(e) of FOIA, which does not allow a public body to unilaterally extend the time for response because of a lack of a designated FOIA officer. Further, the requester did not agree to any extension of time. Next, the PAC disagreed with the City's contention that the Airport is a separate entity. Although the Airport has its own board and adopts its own laws, the PAC found that the Airport was a City-owned property, and the Board was created by City ordinance. The Airport Board members are also appointed and may be removed by the City's mayor and Airport funds are maintained in the City treasury. Further, the PAC noted that the Airport Board submits reports to the City, and is listed as a City Board on the City's website. The PAC found that these facts showed that the City is responsible for responding to the FOIA request, just as it would be for other municipal departments. In sum, the PAC found that the City violated Section 3(d) of FOIA by failing to respond and ordered the City to comply with the request.

PAC Op. 17-008 (State must respond to request for Deputy Governor's emails and daily schedule)

In its 8th binding opinion of 2017, the PAC issued a ruling finding the Governor's office in violation of FOIA for not responding to a request for copies of the Deputy Governor's emails and daily schedule. [PAC Op. 17-008](#).

PAC Op. 17-009 (public body must comply with FOIA)

In [PAC Op. 17-009](#), the PAC issued an opinion finding a public body in violation of FOIA for its complete failure to respond to a FOIA request.

PAC Op. 17-010 (employee names on certified payroll releasable)

In the 10th binding opinion of 2017, the PAC office of the Attorney General found a municipality in violation of FOIA for redacting employee names from a certified payroll record provided in response to a FOIA request. [PAC Op. 17-010](#). A union representative had filed a FOIA asking for copies of payroll records for a particular construction project. The City provided the records, but redacted the contractor employees' names, addresses, social security numbers, and drivers' license numbers. The PAC found that the municipality should not have redacted the names. The PAC acknowledged that section 2.10 of FOIA authorizes a public body to redact from certified payroll records the contractor employees' addresses, telephone numbers, and social security numbers, but noted that this statute does not allow redaction of the employees' names. The PAC also stated that the contractor employees' names were not likely to qualify as "highly personal information" that would fall under the "personal privacy" exemption of 7(c) of FOIA.

PAC Op. 17-011 (9-1-1 tapes releasable)

In [PAC Op. 17-011](#), the PAC found a public body in violation of FOIA for denying a request made by a reporter for a 9-1-1 tape involving the death of a child. The public body had denied the request based on a number of FOIA exemptions, including that release of the tape would impede an active investigation into the child's death under section 7(d)(vii). That exemption exempts from release records compiled by a law enforcement agency that, if disclosed, would obstruct an ongoing criminal investigation. Although the public body provided a detailed explanation as to why the release of the 9-1-1 call that was made by a person of interest in the criminal investigation could impede that investigation, the PAC rejected that argument, finding that the public body had failed to provide clear and convincing evidence that the tape should be exempt. Interestingly, the PAC made its own determination that the tape was a "limited" part of the criminal investigation. The PAC also rejected the public body's use of the "private information" exemption. The public body had argued that the audio recording qualified as "biometric information" that is exempt under section 7(1)(b) of FOIA. The PAC rejected that argument, finding that an audio recording of a voice does not constitute a "voiceprint" that would qualify as biometric information since "voiceprint" is defined under state statute as an analysis or measurement of a person's voice.

PAC Op. 17-012 (audio tape recordings of open meetings are subject to release)

In [PAC Op. 17-012](#), the PAC found a public body in violation of FOIA when it denied a request to release audio recordings of meetings of the public body. A reporter requested, among other records, copies of audio recordings of all board meetings in 2017. The public body denied the request based on the preliminary records exemption of section 7(1)(f) of FOIA. The reporter appealed the denial of his request for the audio recordings to the PAC. The PAC first determined that 7(1)(f) applied only to records "that reflect the give and take of the deliberative process" and not to information that is "already public knowledge." The PAC rejected the public body's argument that the audio recordings were preliminary because they are used in the preparation of the official minutes of the meeting. The PAC also noted that FOIA permits a public body to withhold audio recordings of *closed* sessions, but that the statute does not contain similar language for recordings of *open* sessions.

2018

PAC Op. 18-001 (resignation letter releasable under FOIA)

In PAC Op. 18-001, a reporter had filed a request with a village for an unredacted copy of the resignation letter that had been submitted by the former village president. The village provided the letter to the reporter but had redacted one portion, citing 7(1)(f) of FOIA. The reporter filed a complaint with the PAC claiming that village violated FOIA by redacting the requested record. The village responded that the information was redacted because it was exempt under 7(1)(n) and 7(1)(f) of FOIA. The village supported its denial by stating that the redacted information related to a public body's adjudication of employee grievances and that information within the letter expressed opinions that are not final.

The PAC reviewed the unredacted record and determined that the village violated FOIA in redacting a portion of the resignation letter. The PAC rejected the village's argument that the redacted information was subject to the "deliberative process" exemption of 7(1)(f), finding that although the information may have been the former village president's opinion regarding his decision to resign, that opinion was not expressed as part of a "deliberative or decision-making process." The PAC then noted that the communication represented his "final decision" to resign, so it could not be part of a predecisional, deliberative process. It also was not part of the "give and take" of a decisional process. The PAC also rejected the village's argument that the redacted information was exempt under 7(1)(n) because it related to the adjudication of an employee grievance or disciplinary case because the village had not identified any ongoing or contemplated grievance, complaint, or disciplinary action that was or would be adjudicated. In sum, the PAC found the village in violation of FOIA and ordered the village to release an unredacted copy of the resignation letter to the reporter.

Summary of PAC Binding Opinions – OMA

(2010-2017)

2010

No OMA opinions issued

2011

No OMA opinions issued

2012

PAC Opinion [12-008](#) (convenient and open to the public)

On December 21, 2011, a school district board conducted a special meeting at the private home of the school superintendent to consider the annual tax levy. Notice of the meeting and its location were posted on the district's website, at the district's office, and at the middle school where the district's meetings were usually held. The superintendent stated that the meeting was held at the private residence because the custodians had worked during the day and the school building would be closed that evening. The superintendent also noted that the meeting was open to the public. At the meeting, the district board adopted the annual tax levy. A complaint was subsequently filed with the PAC challenging the meeting and the legality of the tax levy.

The PAC first noted that the OMA requires that meetings be at times and places that are "convenient and open to the public." Since the OMA does not define convenient or open, the PAC consulted the dictionary and determined that open means "not restricted to a particular group or category of participants" and convenient means "suitable" or "proper." Second, the PAC found that the district complied with the OMA notice requirements. Third, the PAC found that there was no indication that the district intended to prevent the public from attending the meeting or that the meeting was not open to the public. However, the PAC concluded that a private residence is "ill-suited" for a public meeting and could deter members of the public from attending. As a result, the PAC determined that the district violated the OMA by conducting the meeting at a private residence and directed the district to conduct future meetings in full compliance with the OMA.

PAC Opinion [12-010](#) (recording open meetings)

The PAC determined that a public body violated the Open Meetings Act when it refused to allow an individual to record a public meeting because he failed to advise the public body in advance of his intention to record the meeting. The county had adopted rules pursuant to Section 2.05 of the OMA requiring persons to notify, in advance, the county clerk of his or her intention to record a meeting. The rationale behind the advance notice was to ensure that the individual could bring recording equipment through the security checkpoint at the county building. The person had informed both a representative of the county board and of the sheriff's office of his intention to record the meeting. The county refused to allow the individual to record the meeting, however, because he had not notified the county clerk in accordance with the county's rules.

The individual filed a complaint with the PAC's office. The PAC determined that although the OMA allows a public body to adopt reasonable rules concerning recording of meetings, the

advance notification requirement in the county's rules was not "reasonable" because it placed a burden on people who want to record meetings and restricts their ability to do so.

Although the PAC's binding opinions are limited to the circumstances surrounding the request for review - in this case, the application of the county's advance notice requirement to this individual - there is a bit of cautionary advice in the opinion as to how the PAC views advance notice rules in general. For example, the opinion notes that it would be difficult to enforce and administer an advance notification requirement because many people carry cell phones capable of recording meetings. The opinion further notes that any public body applying an advance notice requirement would have a "steep burden" to overcome in demonstrating that the requirement was reasonable, given the statutory right afforded to individuals to record public meetings. Given the PAC's position, it will be very difficult for any public body to justify an advance notice requirement.

PAC Opinion 12-011 (budget discussions during closed meetings)

On July 11, 2012, the PAC found that a Village Board violated the Open Meetings Act where the personnel and finance committees discussed budgetary matters in a closed meeting. A news reporter had filed a complaint with the AG alleging that the two committees had improperly discussed the Village's budget in closed session. The committees had cited the "personnel" exemption to go into closed session to discuss individual employees. The reporter claimed that the committees also discussed budget cuts. The AG reviewed the minutes and recordings of the closed session meetings and concluded that the personnel exemption did not extend to discussion of fiscal matters even if that discussion would directly or indirectly impact Village employees.

Based on this opinion, it appears that the AG would require a Village Board to go in and out of executive session to discuss layoffs of individual employees due to budgetary constraints. For example, if the public body is discussing the relative merits of individual employees in considering layoffs, that discussion may be conducted in closed session. However, the underlying budgetary discussion leading to the layoff decision must be conducted in open session.

PAC Opinion 12-013 (probable and imminent litigation exception)

Last week, the PAC found a county board committee in violation of the OMA when it held a closed session to discuss a landfill siting ordinance. The committee had relied on the "probable or imminent litigation" exemption to go into closed session based on a letter from the landfill siting company stating that the company "may be left with no alternative except to file suit" if the county failed to address its concerns with the ordinance.

Notwithstanding the threat of litigation in the letter, the PAC found that the committee had no reasonable basis to believe that litigation was imminent or more likely than not to be filed. The PAC also determined that the committee failed to disclose the required finding that litigation was probable or imminent and to record it in the minutes. Moreover, the committee failed to record the closed session as required by the OMA. The PAC further determined that the closed session discussions went beyond the "strategies, posture, theories, and consequences of the litigation itself" in discussing the ordinance and hosting agreement.

Finally, the PAC determined that the committee violated the OMA by taking final action in closed session – in this case, by recommending approval of the ordinance and hosting agreement to the full county board. The PAC's finding was in direct conflict with the State's Attorney's opinion that the committee had not taken any formal action. According to the State's Attorney, the

committee had chosen not to oppose the ordinance and agreement by informal consensus and did not take any action in closed session. According to the PAC, an informal consensus of the committee *not* to do something (i.e., not oppose the ordinance and hosting agreement) constituted final action that must be voted on in open session.

2013

PAC Opinion 13-002 (improper final action)

The Chicago Park District Board of Commissioners took improper final action by voting to increase admission fees at three museums, when that topic was not on the agenda for the open meeting. The agenda stated: "Communications and Reports: Committee on Programs and Recreation," without identifying the particular subject matter from the earlier committee meetings that would be addressed with final action by the board.

PAC Opinion 13-003 (final action)

The Western Illinois University Board of Trustees violated section 2(e) of the OMA by taking final action in a closed meeting. Although the board was authorized to discuss the employment of a tenured faculty member during closed session, the board improperly took final action by voting in the closed meeting to terminate the employee.

PAC Opinion 13-006 (secret ballots)

The Edgar County Airport Advisory Board violated OMA section 2(e) when it voted by secret ballot to recommend to the county a candidate to fill a vacant seat on the advisory board. The board read aloud the names of candidates during a public meeting, the members voted on paper ballots, and the results of the vote were stated publicly, without disclosing the members' individual selections.

PAC Opinion 13-007 (closed session issues)

The Board of Education for Springfield Public School District No. 186 violated OMA section 2(e) by taking final action on an employment separation agreement in closed session. The board signed the agreement in closed session on February 4, but did not vote on the matter in an open meeting until March 5, some five days after the PAC sent notice to the board of the complaint filed against it. The board also failed to record some of its closed sessions in violation of section 2.06(c), and it failed to summarize the closed-session discussions in violation of section 2.06(e)(3).

PAC Opinion 13-008 (basis for litigation)

The New Lenox Public Library District Board of Trustees violated the OMA by failing to record and enter into its closed-session minutes the basis for asserting that litigation was probable or imminent. The PAC found that the board's reasons for believing the litigation was probable or imminent were justified and the closed-session discussions were appropriate, but the failure to record those reasons in the minutes violated section 2(c)(11) of the Act.

PAC Opinion 13-010 (nature of the matter)

In a rare decision in favor of a governmental entity, the PAC determined the Board of Education for Springfield Public School District No. 186 did *not* take final action in a closed session, as alleged by the complaining party, nor did it violate section 2(e) of the OMA because it adequately informed the public of the nature of the business being conducted before it voted in an open meeting to appoint an interim superintendent. The board properly discussed candidates

in closed meetings and "informally agreed" on the likely appointee, but the board followed those discussions with a duly noticed open meeting during which it voted on the candidates.

PAC Opinion 13-014 (location of meetings)

The Board of Trustees of the Broadlands-Longview Fire Protection District violated OMA section 2.01 by holding a special meeting at a location that was not "convenient and open" to the public. The board held the meeting at its attorney's law office in Springfield, which is some 26 miles from the board's regular meeting place at the fire station in Broadlands.

PAC Opinion 13-016 (description of final action)

A school district in violation of the Open Meetings Act because it failed to name the employee when it took final action to terminate the employee in open session. The PAC rejected the district's argument that it was protecting the reputation and privacy of the employee by not disclosing the employee's name in its vote, concluding that taking "final action" without disclosing the name of the employee terminated by the school district board deprived the public "of any meaningful information concerning the practical effect of the Board's decision."

UPDATED 4/9/2012: Under state law, the Public Access Counselor of the Office of the Illinois Attorney General, is authorized to issue binding opinions in response to requests for review submitted by members of the public. The PAC was granted this authority in 2010 when the General Assembly amended both the OMA and FOIA. A request for review can be filed when a Freedom of Information Act request has been denied by a public body or when a public body has allegedly violated the Open Meetings Act. According to a [story](#) published by the Chicago Tribune today, most of the complaints filed with the PAC involve FOIA requests rather than open meetings. For example, last year, the PAC handled more than 5,200 new matters regarding public access, but only about 200 were for allegations of open meetings violations.

2014

PAC Op. 14-001 (adequate public recital)

This particular opinion has some history at the PAC. In 2013, a reporter filed a complaint with the PAC alleging that the Springfield Board of Education had violated the Open Meetings Act when it approved a separation agreement with the former superintendent. The PAC issued binding opinion [PAC 13-007](#) finding the School District in violation of the OMA because it signed the agreement in executive session. The Board appealed to the circuit court, and the court overturned the PAC, finding that the act of *signing* the agreement in closed session was not a violation of the OMA since the Board had formally acted on the agreement in open session. The court then remanded back to the PAC the issue of whether the Board's actual vote on the separation agreement was preceded by an adequate "public recital." You can read about the 2013 PAC ruling and court decision on the blog [here](#).

Although there was some discussion about the separation agreement by individual Board members before the vote, and the agreement itself was posted on the District's website as part of the meeting agenda, the PAC still determined the Board violated the OMA because it did not publicly discuss or summarize the terms of the agreement, including the amount of the lump sum payment to the superintendent or the reasons leading to the decision to terminate the supervisor. The PAC based its decision on Section 2(e) of the OMA requiring a public body to (1) publicly recite the nature of its action; and (2) provide such other information as will inform the public of the business being conducted before taking final action. In the PAC's opinion, the Board President's statement about the nature of the separation agreement, the individual Board

members' discussions about the agreement, and releasing a copy of the agreement to the public in advance, were not an adequate "public recital" before the vote.

UPDATE:

On appeal by the Springfield BOE, the Illinois Supreme Court determined that the Public Access Counselor's office of the Illinois Attorney General was wrong when it found a public body in violation of the Open Meetings Act in connection with the approval of a separation agreement. [Board of Ed. of Springfield Sch. Dist. 186 v. Attorney General of Illinois, 2017 IL 120343](#). In its decision, the Court interpreted language in the OMA's requiring that final action be "preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." In sum, the Illinois Supreme Court rejected the PAC's interpretation of that provision to require a public body to explain the significance of its action prior to taking a vote. The Court also rejected the PAC's interpretation that the public body must summarize the "key terms" of the item being voted on, finding no such language in the statute. Instead, the Court held that section 2(e) of the OMA simply requires a public body to announce the matter under consideration and identify the particular transaction or issue prior to taking a vote on that matter.

PAC Op. 14-003

In PAC Op. 14-003, issued on May 5, 2014, the PAC determined that the St. Clair Township Board did not violate the Open Meetings Act when it amended its agenda less than 48 hours prior to the Board meeting. The Board had posted its agenda for a regular Board meeting at least 48 hours before the meeting; however, the Board posted an amended agenda on the same day of the Board meeting. The amended agenda relocated two agenda items relating to a collective bargaining agreement and personnel matters to place the items under executive session, but for discussion only. A complaint was filed alleging that the amendment of the agenda to add these "new" agenda items violated the OMA requirement that agendas be posted at least 48 hours before the meeting. The PAC disagreed, finding in favor of the Township Board. Specifically, the PAC found that a public body is under no obligation to take final action on a matter listed on the agenda because the agenda is an "informational guideline of what the public body anticipates considering at a meeting." Moreover, a public body is not obligated to formally amend an agenda to delete items it no longer will take action on - in this case, the Township's decision to post an amended agenda actually provided greater transparency for members of the public.

PAC Op. 14-009 (public comment – cannot require disclosure of address)

The PAC held that a public body cannot require an individual to disclose his or her home address during public comment. The Lemont Village Board held a meeting on April 14, 2014. The Board had a practice of asking members of the public who wished to speak during public comment to provide their home address prior to addressing the Board. Ms. Hughes initially declined to provide her address, but then provided it before speaking during public comment. She subsequently filed a complaint with the PAC office.

The PAC reviewed section 2.06(g) which provides individuals with an opportunity to address public officials under rules established and recorded by the public body. The PAC acknowledged that although the statute does not specifically address the types of rules public bodies may adopt, public bodies can generally adopt reasonable "time, place, and manner" rules that are necessary to further a significant governmental interest, citing federal cases that did not interpret the OMA but involved First Amendment claims. The PAC then reviewed Lemont's public comment rules that had been previously enacted by ordinance, and found that they did not expressly require members of the public to provide their home addresses before

speaking. The PAC rejected Lemont's "custom and practice" of requiring individuals to state their address, stating that all limitations on public comment must be detailed in the rules.

Although the opinion could have concluded here - that the Lemont Village Board cannot enforce a limitation that is not recorded in a written policy (the address disclosure) - the PAC went a step further and stated its opinion on the address disclosure requirement. In the PAC's opinion, "section 2.06(g) does not support a requirement that a person must provide his or her complete home address prior to being allowed to make public comment." Even if Lemont had included the address disclosure requirement in its established and recorded rules, "such a rule would impermissibly exceed the scope of the rulemaking contemplated by section 2.06(g)." Implying that the issue is related to an individual's right to freedom of speech under the First Amendment (rather than a statutory right under the OMA), the PAC concluded as follows:

Requiring a member of the public to provide his or her complete home address prior to speaking may have a chilling effect on individuals who wish to speak at public meetings. Therefore, we conclude that requiring speakers to state their home addresses prior to addressing public bodies violates section 2.06(g) of OMA, even if such a rule is established and recorded by the public body.

PAC Op. 14-012 (registration in advance for public comment violates OMA)

The PAC found a county board in violation of the OMA for refusing to allow a person to speak during public comment because he did not register 5 days in advance of the meeting as required by the county board's rules. [PAC Op. 14-012 \(Sept. 30, 2014\)](#). The McLean County Board had established various rules for public comment at county board meetings, including a rule requiring members of the public and county employees to sign up at least 5 days in advance of a board meeting if they want to speak at the meeting. The complainant was denied the right to speak for failing to comply with the rules (he signed up 4 days in advance) and filed a request for review with the PAC.

Although the PAC acknowledged that the OMA allows a public body to adopt rules governing public comment such as those adopted by the county board, it found that the advance registration rule to be unreasonable because it "does not take into account the fact that the public has a statutory right to address the Board." The PAC determined that the advance sign-up requirement "imposed substantial obstacles for those who wish to speak at the Board's meetings," particularly because the OMA does not require a public body to post agendas until 48 hours before a meeting.

The county board's refusal to allow the individual to speak at the meeting even though he filed a request 4 days in advance of the meeting probably played into the PAC's opinion. However, the board rules did contain a separate provision authorizing a board member to request that a person be allowed to speak at the meeting - in essence, a waiver of the advance registration rule. The PAC did not issue any ruling on that rule, however, and instead struck down the 5 day registration rule as unreasonable.

2015

PAC Opinion 15-003 (compensation of employees in closed session)

In PAC Op. 15-003, a reporter filed a complaint with the PAC alleging that the Waubensee Community College board of trustees violated the OMA by discussing improper topics in closed session. The PAC determined that although the board did discuss issues relating to the

compensation of employees, it also discussed general budgetary matters that were not proper topics for closed session in violation of the OMA.

PAC Opinion 15-005 (personnel exemption closed session)

In PAC Op. 15-005, the PAC determined that the Village of Blue Mound violated OMA when it discussed a police services contract in closed session and voted to approve that contract in open session without the item being listed on the agenda. The PAC noted that the "personnel" exemption applies only to discussions about specific employees. Although the Board did discuss the termination of the Police Chief as a result of the contract, the bulk of the Board's discussions centered on the terms of the contract, not a specific employee.

PAC Opinion 15-007 (personnel exemption for closed session)

In PAC Op. 15-007, the PAC found a finance committee of a county board in violation of the OMA relating to a closed session. A reporter filed a complaint arguing that the committee did not state the reason why it was going into closed session. Second, the reporter claimed that the topics discussed in closed session were not appropriate subjects. The committee responded that it discussed two matters in closed session: (1) a county employee hiring freeze and (2) the termination of an employee position. The PAC held that "a mere reference to 'personnel' does not adequately identify any exception that authorizes a public body to close part of a meeting."

2016

PAC Op. 16-007: (closed session)

In [PAC Op. 16-007](#), the PAC found a public body in violation of the OMA for discussing imminent litigation in closed session. Although the PAC acknowledged that the majority of the closed session related to the board's discussion of the possibility of a lawsuit to challenge a bond sale, nevertheless the PAC rejected the public body's argument that the potential for an injunction or other legal action justified the closed session. The PAC ordered the public body to release a copy of the verbatim recording

PAC Op. 16-013: (personnel exemption under OMA improperly used)

In [PAC Op. 16-013](#), a reporter filed a request for review with the PAC alleging that a City Council violated the Open Meetings Act when it went into closed session to discuss pay raises for City employees. The City Council argued that it was authorized to go into closed session under section 2(c)(1) of OMA, which allows a public body to go into closed session to discuss the "compensation" of employees. The PAC rejected the City's argument, however, finding that this particular exemption only applies to discussion of compensation of specific employees, and the City Council discussed an "across the board" pay raise rather than raises for named employees. The City also argued that the closed session was authorized under section 2(c)(2) of OMA, which allows a public body to discuss "deliberations concerning salary schedules for one or more classes of employees" in closed session. The PAC rejected that argument, however, because the City Council did not cite that exception when it went into closed session. The PAC concluded that the City Council violated OMA.

PAC Op. 16-014: (advance notice rule for recording meetings unreasonable)

In [PAC Op. 16-014](#), a watchdog group filed a complaint with the PAC alleging that the local school district board violated the Open Meetings Act when it prohibited him from recording the board's open session. The board had rejected his request made 10 minutes before the meeting based on a local board policy that required a person to notify the board president or superintendent in advance. Although the board's recording policy was silent on what advance

notice was required, the board had applied the policy to require 24 hours advance notice. The board explained that the advance notice was required to ensure that the recording equipment was properly placed to avoid recording the images of students in attendance at a school board meeting. The PAC rejected the board's arguments and ruled that the school board's "advance notice" requirement for recording board meetings was not reasonable under the OMA. The PAC noted that the board had not cited any compelling reason for requiring advance notice (the PAC did not accept the board's argument that children may be present, instead stating that the board could simply move its meetings if it were concerned about student privacy).

PAC Op. 16-015: (final action on item not on agenda violates OMA)

In [PAC Op. 16-015](#), a village trustee filed a complaint with the PAC alleging that his board violated the OMA by voting on an item that was not on the agenda. At a board meeting, one of the board members made a motion to approve a settlement agreement under the agenda item identified as "Old Business." The minutes showed that the board attorney had cautioned the board that it could not take action on the agreement because it was not on the agenda. Nevertheless, the board took a vote and the motion passed. The PAC found the board in violation of the OMA for taking final action on a matter that was not identified on the agenda.

2017

PAC Op. 17-004: (closed session)

The PAC found a municipality in violation of the OMA for improperly discussing an intergovernmental agreement in closed session. A city council had gone into closed session to discuss an intergovernmental agreement with an adjacent municipality that would share revenues and expenditures in a designated commercial and industrial area adjacent to both communities. The public body relied on the "pending or probable" litigation exception but the PAC rejected that and noted that the newspaper had reported that no lawsuit was pending and that the mayor had stated that he did not expect a lawsuit to be filed. Citing an Attorney General's opinion from 1983, the PAC concluded that the city council did not have reasonable grounds to believe a lawsuit was more likely than not to be instituted or was "close at hand."

PAC Op. 17-013 (closed session not proper to discuss board member conduct)

The PAC issued its 13th opinion in 2017 last week, finding a public body in violation of the Open Meetings Act. In PAC Op. 17-013, the PAC determined that a Village Board could not go into closed session to discuss a Board member's alleged racist comments made at a previous Board meeting because a Village Board does not have the power to remove one of its members from office, in the PAC's opinion.

A portrait of Julie A. Tappendorf, a woman with long brown hair, smiling and wearing a black top. She is standing in front of a blurred background of modern glass skyscrapers. The image is part of a header banner with a green and blue gradient bar at the bottom.

Julie A. Tappendorf

Equity Partner

Julie Tappendorf is an equity partner with Ancel Glink in Chicago. For 20 years, she has focused her practice on representing and advising municipalities, libraries, park districts, townships, and other units of local government on general government, litigation, and land use issues.

Julie has published books on government use of social media, land use, and other topics. She has also published articles and regularly conducts trainings on compliance with FOIA and the Open Meetings Act. She is a frequent speaker at local and national conferences on FOIA, OMA, ethics, social media, and other local government topics.

Julie currently serves as Village Attorney for Gilberts, Lindenhurst, Campton Hills, Cary, and Wadsworth and City Attorney for Park Ridge. She also serves as general counsel to a number of library districts and municipal libraries and special counsel to other government bodies in a variety of matters, including compliance with FOIA and OMA.

Prior to her law career, she served in the U.S. Army, Military Intelligence Branch, as a Korean cryptologic-linguist.

Julie is the author and moderator of the popular local government blog [Municipal Minute](http://www.municipalminute.ancelglink.com), where she writes about local government issues.

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