

Illinois Open Meetings Act *Frequently Asked Questions for Public Bodies*

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

In 2009, Attorney General Lisa Madigan worked with legislators and a diverse group of individuals and organizations to strengthen transparency laws in Illinois and hold government more accountable. On January 1, 2010, key changes to the Open Meetings Act took effect to provide Illinois residents with a more open and accountable government.

WHO'S WHO UNDER OMA

Public Access Counselor (PAC) – An attorney in the Attorney General's Office who works to ensure compliance with OMA and the Illinois Freedom of Information Act (FOIA). The Public Access Counselor oversees the Public Access Bureau in the Attorney General's Office, which includes several Assistant Attorneys General and professional support staff members working to respond to OMA and FOIA issues raised by the public and government officials. Working under the direction and supervision of the Attorney General, the PAC has the authority to determine whether a public body has violated the Open Meetings Act. The PAC also has the authority to review requests for documents under FOIA and determine whether those documents should have been disclosed. As part of this Public Access work, the Attorney General has subpoena power, may issue advisory opinions to guide public bodies, may issue binding opinions in OMA and FOIA disputes, and may sue to enforce binding opinions.

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

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

"Meeting" – The Open Meetings Act defines a "meeting" to include "any gathering, whether in person or by video or audio conference, telephone call, electronic means (such

as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business. Accordingly, for a 5-member public body, 3 members of the body constitute a quorum and the affirmative vote of 3 members is necessary to adopt any motion, resolution, or ordinance, unless a greater number is otherwise required.”

GENERAL INFORMATION

What is the Open Meetings Act (OMA)?

The Open Meetings Act is a state law that requires that meetings of public bodies be open to the public except in certain specific, limited situations (discussed in more detail below) where the law authorizes the public body to close a meeting. OMA also provides that the public must be given advance notice of the time, place and subject matter of the meetings of public bodies.

What is the difference between the Freedom of Information Act (FOIA) and OMA?

FOIA applies when a member of the public is seeking access to public records. OMA is intended to ensure that the actions of public bodies are conducted in the open, through public meetings, and that the public is able to observe the deliberations behind those actions.

What type of “public body” is covered by OMA?

The “public bodies” covered by OMA include all legislative, executive, administrative or advisory bodies of:

- the State
- counties
- townships, cities, villages, or incorporated towns
- school districts
- all municipal corporations

“Public bodies” also includes all committees, subcommittees and subsidiary bodies of public bodies. Examples of “public bodies” include everything from park district boards to city councils to civic commissions. “Public bodies” includes, but is not limited to, any entity that is supported in whole or in part by tax revenue or which expends tax revenue.

What information is the public body required to provide to the Public Access Counselor?

Each public body must designate employees, officers and/or members to receive OMA electronic training provided by the Public Access Counselor. The public body must provide a list of these designated individuals to the Public Access Counselor.

TRAINING FOR EMPLOYEES, OFFICERS, AND MEMBERS

Who needs to complete the Public Access Counselor's electronic OMA training?

Each public body must designate employees, officers or members to receive training on compliance with the Open Meetings Act. The Public Access Counselor must provide an electronic training program for these individuals to take. These individuals must complete the Public Access Counselor electronic training annually.

In addition, beginning January 1, 2012, all elected or appointed members of a public body subject to OMA must also complete the electronic training and file a copy of the certificate of completion with the public body once during their term of election or appointment as follows:

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

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

What does the public body need to do if it designates additional individuals to take the Public Access Counselor training?

At any time, a public body may designate new or additional employees, officers or members to receive training on compliance with OMA. If a public body designates new or additional individuals, those individuals must complete the training within 30 calendar days of their designation.

PUBLIC MEETING

How many members of the public body have to be present at a "meeting" before OMA requirements apply?

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

Before a public body takes a vote on an issue at a meeting, what must it do?

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

If an item is not listed on the posted agenda for a regular meeting, is the public body prohibited from taking action on the item at that meeting?

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

Is a public body required to provide members of the public with a copy of its "board packet" at an open meeting?

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

PUBLIC NOTICE OF A MEETING

What is public notice?

Giving public notice means providing the date, time and location of a meeting.

When and how does a notice of a regular meeting have to be provided by a public body?

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

If the public body changes the regular meeting schedule (as opposed to a particular meeting), it must give 10 calendar days notice of the change by publicizing the change in the newspaper and by posting information concerning the schedule change at the principal office of the public body.

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

MEETING AGENDA

What is an agenda?

An agenda is a list of the items to be acted upon or discussed during a meeting.

Can the agenda be changed?

A public body cannot change the agenda less than 48 hours before the meeting.

Can the public body take action on items not on the agenda of regular meetings?

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

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

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

TIME AND LOCATION OF A MEETING

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

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

RECORDING OF A MEETING

May a member of the public record an open meeting?

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

Is the public body required to take minutes of its open meetings?

Yes. The minutes must include:

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

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

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

EXCEPTIONS TO OPEN MEETINGS – CLOSED SESSIONS

When can a meeting be “closed”? Can a public body ever meet in private?

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

- the appointment, employment, compensation, discipline, performance, or dismissal of a specific employee or legal counsel for the public body;
- collective negotiating matters or deliberations concerning salary schedules for one or more classes of employees;
- discipline or removal of an occupant of a public office or appointment of an individual to fill a vacant public office;
- evidence or testimony received in a hearing, provided that the body is a quasi-adjudicative body and prepares and makes available for public inspection a written decision setting forth its determinative reasoning;
- the purchase or lease of real property by the public body;
- the setting of a price for sale or lease of property owned by the public body;
- the sale or purchase of securities, investments, or investment contracts;
- security procedures;
- student disciplinary cases;
- the placement of individual students in special education programs and other matters relating to individual students;
- pending or probable litigation against, affecting or on behalf of the public body;
- the establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act;
- conciliation of complaints of discrimination in the sale or rental of housing;
- ongoing, prior or future criminal investigations, when discussed by public bodies with criminal investigatory responsibilities;
- professional ethics or performance when discussed by an advisory body to a licensing or regulatory agency;
- discussions regarding self-evaluation, practices and procedures or professional ethics with representatives of statewide associations;
- the recruitment, credentialing, discipline or formal peer review of physicians or other health care professionals for a hospital or other health care center;
- deliberations for decisions of the Prisoner Review Board;
- review or discussion of applications received under the Experimental Organ Transplantation Procedures Act;
- classification and discussion of confidential matters of the State Government Suggestion Award Board;
- discussion of the minutes of a meeting that was lawfully closed under OMA;

- deliberations of the State Emergency Medical Services Disciplinary Review Board;
- the operation by a municipality of a municipal utility or power agency or natural gas agency regarding contracts relating to the purchase, sale or delivery of electricity or natural gas, or the results or conclusions of lead forecast studies;
- meetings of a residential health care facility resident sexual assault and death review team;
- discussions involving internal or external auditors and governmental audit committees, finance committees, and their equivalents, when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews conducted in accordance with generally accepted auditing standards of the United States of America; and
- correspondence and records that may not be disclosed under Section 11-9 of the Public Aid Code, 305 ILCS 5/1-1 *et seq.*, or that pertain to appeals under Section 11-8 of the Public Aid Code.

A public body can close a meeting to the public only if its members are discussing a topic that is listed in section 2(c) of the Open Meetings Act.

How can a public body “close” a public meeting?

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

Who can attend a “closed” session?

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

Can a public body take binding action in a closed session?

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

How must a public body record a closed meeting?

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

ATTENDING A MEETING BY PHONE OR VIDEO CONFERENCE

Can a member of a public body attend a meeting by telephone or video conference and not in person?

A member of a public body may attend a meeting by telephone or video conference only in accordance with and to the extent allowed by the rules of the public body. 5 ILCS 120/7(c). If a quorum of the members of the public body is physically present, then a majority of the public body may allow a member to attend by video or telephone conference if the member is prevented from physically attending because of (1) personal illness or disability, (2) employment purposes or the business of the public body, or (3) a family or other emergency. If a member wants to attend the meeting by video or telephone conference, he or she must notify the recording secretary or clerk of the public body before the meeting, unless advance notice is impractical.

IF A MEMBER OF THE PUBLIC BELIEVES THAT A PUBLIC BODY HAS VIOLATED THE OPEN MEETINGS ACT, HE OR SHE CAN TAKE ACTION. HERE IS WHAT YOU NEED TO KNOW.

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

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

What is a Request for Review?

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

Is there a deadline for submitting a Request for Review?

Yes. A person seeking review of an issue by the PAC must send the Request for Review to the PAC within 60 calendar days after the date of the alleged OMA violation.

What happens if a member of the public submits a Request for Review to the PAC and what are the responsibilities of the public body?

When the PAC receives a written Request for Review from the member of the public, the PAC has seven working days to determine whether further action is warranted. 5 ILCS 120.3.5(b).

If the Public Access Counselor reviews the Request for Review and determines that further action is warranted, she must forward a copy of the Request for Review to the public body within 7 working days of receiving the request. At that time, the PAC can specify records or other documents that the public body must furnish to facilitate the PAC's review. The public body must provide the requested records within 7 working days of receiving the request from the PAC.

Within 7 working days of receiving the request from the PAC, the public body may, but is not required to, provide an answer to the allegations in the Request for Review. The answer may take the form of a letter, brief or memorandum.

The Public Access Counselor must forward a copy of the public body's answer (with any confidential information redacted) to the member of the public who requested the review of the alleged OMA violation. The requester then may, but is not required to, respond in writing to the public body's answer. If the requester decides to respond, he or she must do so within 7 working days of receiving the public body's answer. The requester must send a copy of his or her response to the public body.

Once she has all of the necessary information to analyze the OMA issue and determine whether the public body violated the law, the PAC may:

- Decide that no further review is necessary and that the allegations are unfounded.
- Mediate and work to resolve the dispute. The PAC can decide to work informally to try to mediate the dispute between the member of the public and the public body.
- Issue an opinion resolving the matter. If the PAC decides to issue a binding opinion, she must issue the opinion within 60 days after receiving all the documents necessary to make a determination of the issues raised in the Request for Review. Under OMA, the PAC may extend this time by up to 21 business days by sending written notice to the requester and the public body and including an explanation of the reasons for the need for an extension of time.

What kind of information can the PAC request as she reviews the Request for Review?

The PAC can request any information necessary to decide whether an OMA violation has occurred. Under OMA, the PAC has the same authority as a court to request and review any audio or video tapes of a closed meeting.

What are the penalties that a public body may incur if it violates the Open Meetings Act?

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

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

