

## ANALYSIS OF ILLINOIS FREEDOM OF INFORMATION ACT AND ILLINOIS OPEN MEETINGS ACT

Illinois' two open government laws have provisions and protections that mandate open government. In 1984, the Illinois General Assembly was one of the last states nationwide to enact a Freedom of Information Act statute (FOIA). Illinois' FOIA law has a strong public policy statement advocating that "all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees." 5 ILCS 140/1. Illinois' Open Meetings Act statute (OMA), originally enacted in 1957, states that, "[i]t is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business. . . [I]t is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1. The OMA is explicit in promoting public participation in the democratic process by requiring public bodies to provide adequate notice of meeting times and keep records of public meetings.

While the Illinois FOIA and OMA have several strengths, there are substantial weaknesses within each statute that needs reform. Weakness identified in both statutes is the lack of effective enforcement and the extensive exemptions list. While other Midwest FOIA statutes have varied penalty provisions that include substantial fines, Illinois has none. Thus, strong provisions built into the statute, such as firm deadlines for public bodies to respond to requests for information, are nullified by non-existent enforcement provisions. In contrast, Illinois' OMA statute has commendable criminal penalties for violations, but State's Attorneys rarely bring OMA claims against a public body and a review of case law indicates that courts rarely impose penalties. The lack of effective enforcement within each statute negates strong provisions and gives the appearance that public bodies can violate open government statutes with little expectation of accountability. With regard to FOIA exemption provisions, respectively, Minnesota has four, Ohio has ten, Wisconsin has eleven, Michigan has twenty and Illinois has a resounding forty-five. Likewise, under the Illinois OMA, the permissible reasons to convene a meeting in closed session are extensive. With respect to closed session exceptions, Minnesota and Ohio have seven, Michigan has ten, Wisconsin has eleven and Illinois has twenty-four. The lack of effective enforcement provisions coupled with extensive exemptions in both of Illinois' open government statutes inappropriately focuses a public body's attention on reasons why information should be withheld or meetings closed and perpetuates a culture of non-transparency.

Reform of specific provisions is needed to improve transparency and access to government in Illinois. More importantly, the laws need to be enforced so that public bodies understand that compliance with open government laws is mandatory. The following provides an analysis of the strengths and weaknesses of the FOIA and OMA in Illinois, as well as a summary of the main components of the laws. Copies of model versions of both statutes, as well as citizen guides, are available by contacting the Citizen Advocacy Center (Center).

## **Strengths of Illinois' Freedom of Information Act**

The Illinois FOIA has strengths which encourage disclosure at the outset of a requesting party's search for public records and protect the requesting party's interests in litigation. The firm deadlines for public bodies to respond to requests and increasingly liberal provisions for attorneys' fees and court costs give the impression that the Illinois' government is serious about its Sunshine Laws.

The Illinois FOIA provides stringent deadlines under which a public body must respond. Within seven working days of a request being made to a public body, the public body must either produce the documents, provide a reason for its refusal to produce the requested documents, or request an extension. 5 ILCS 140/3(c). When an individual has been denied access to records and files an appeal, the public body is required to respond within seven working days. 5 ILCS 140/10(a). Michigan is the only other state surveyed that also mandates responsiveness to a request within a specific timeframe. A firm deadline leaves little ambiguity for when compliance is necessary, and theoretically guarantees that a requesting party will receive public documents, or at least the reasons why the documents are unavailable, within a specific amount of time.

The Illinois FOIA allows for an administrative appeals process when a requestor has been denied access to records. When a public record has been denied, the denial must include a disclosure of the right to an administrative appeal, the reasons for the denial with a citation to the specific exemption, and the names and titles or positions of each person responsible for the denial. 5 ILCS 140/9. Only one other state surveyed, Michigan, allows for an appeals process prior to pursuing judicial intervention. Because litigation is a costly and burdensome process for requestors to undertake, an appeals process in theory is an opportunity for the requestor and public body to amicably resolve a dispute and avoid unnecessary costs.

Another strength of the Illinois FOIA is that it allows for greater access to attorneys' fees for a party that prevails in obtaining public records disclosed pursuant to a lawsuit. Under the original FOIA, a court could award attorneys' fees to the person requesting records if the court found that the records were of significant interest to the general public, were withheld without any reasonable basis in law, and if the requesting party substantially prevailed on the merits of the case. *Duncan Publishing, Inc. v. City of Chicago*, 304 Ill. App. 3d 778, 237 Ill. Dec. 568, 709 N.E.2d 1281 (Ill. App. Ct. 1 Dist. 1999). While attorneys' fees are not mandated, the Illinois General Assembly recognized the significant barrier constructed by the difficulty in accessing attorneys' fees. The law was amended in 2003 so that a party is eligible to receive attorneys' fees whenever he or she has substantially prevailed on the merits of the case. 5 ILCS 140/11(i).

## **Weaknesses of Illinois' Freedom of Information Act**

While the FOIA has some ostensible benefits for the requesting parties, the law in application often results in nondisclosure and creates significant hurdles for those seeking access to public records.

**Lack of penalties for FOIA violations allow public bodies to disregard requests for public information with little concern for reprisal.**

Surveys by the Citizen Advocacy Center and the Illinois Press Association have documented that compliance with FOIA requests is scattershot among public bodies. Because of the lack of penalty provisions, public bodies may simply ignore FOIA requests and have little incentive to comply until a lawsuit is filed. Moreover, even when a lawsuit is filed to compel production, the public body can avoid accountability by merely tendering the requested document, thus rendering the lawsuit moot. The ability of a public body to ignore the law, only to produce public documents in an effort to avoid a judgment, circumvents the intent of the FOIA. What should be an expedited process for the acquisition of public records per the requirements of the statute, turns into a cumbersome and costly process for the requestor with no punitive impact on the public body. Additionally, while Illinois has a Public Access Counselor (PAC) within the Attorney General's office who is available to respond to citizen and media questions regarding FOIA and OMA, it is not a statutorily created office and does not retain enforcement capacity.

**Reform:** Implement mandatory training of public employees. Additionally, implement mandatory attorneys' fees for plaintiffs who substantially prevail in litigation, a punitive fee structure imposed on public bodies that willfully ignore FOIA requests, and the statutory creation of a PAC with enforcement capacity.

**Commercial parties seeking public records must meet higher standards to award attorneys' fees.**

Commercial entities seeking public records under the Illinois FOIA who are forced to file lawsuits for the disclosure of records are required to meet heightened standards to win attorneys' fees. *Duncan*, 304 Ill.App.3d at 786, 709 N.E.2d at 1288. Even if a commercial litigant substantially prevails in a case, it may still be denied attorneys' fees unless two additional elements are met: the records sought must be of *significant* interest to the general public; and the public body must have withheld the records without any *reasonable basis* in law. While the FOIA specifically states that it is not intended to further commercial enterprises, 5 ILCS 140/1, the commercial motivations of a party are irrelevant to whether or not government records are disclosable public documents. The higher threshold that must be met for a commercial litigant, as compared to an individual, to obtain attorneys' fees is unreasonable. Furthermore, this provision allows a public body to easily circumvent requests by the media, an entity that is categorized as a commercial enterprise but readily uses the FOIA in the course of reporting on government activity.

**Reform:** Mandatory attorneys' fees should be awarded to any party that substantially prevails on the merit of a FOIA case.

**Technology has outpaced provisions of the FOIA.**

Technology has outpaced provisions of Illinois' FOIA, especially regarding language in the statute that allows a public body to deny a request for public records based on what constitutes "creating" public records for disclosure purposes. Courts interpreting FOIA have held that

public bodies are not required to create records to respond to information requests that the body does not ordinarily maintain in record form. Additionally, a public body responding to a FOIA request is not required to prepare the records in a new format merely to accommodate a request for certain information. *American Federation of State v. Cook County*, 182 Ill.App.3d 941, 538 N.E.2d 776 (Ill.App. 1 Dist. 1989). In practice, it is not unusual for public bodies to withhold records maintained electronically and/or on an Internet website if the records require any additional manipulation to be responsive to a particular request. While technology has made it easier for a public body to track and document government activity, it can be used as a barrier to public access. Even though a public body may create a new record responsive to a request by a mere “click of the mouse,” a public body is under no legal obligation to do so. For example, cellular phone records can be accessed by going to the phone company’s Internet website for the account at issue. If cell phone records are usually maintained by a public body through a web account which only displays a summary page when the online account is opened, the public body could refuse to produce itemized phone call records subject to FOIA. Regardless of the ease in merely clicking a link on the phone company’s website, public bodies can use technology to circumvent disclosure.

**Reform:** If a public body maintains records electronically, or has the capacity to access records electronically, disclosure pursuant to a FOIA request is mandatory unless the public body can prove that production of the information requested is unduly burdensome.

**Excessive exemptions within the FOIA statute and broadly construed exemptions contradict the mandate of open government.**

A significant weakness in the Illinois FOIA that results in systemic barriers to the production of public records is the exemptions portion of the statute. Illinois’ FOIA has an astounding 45 exemptions, far exceeding the number of other states surveyed. In addition to duplicative exemptions that make the statute convoluted and restate non-disclosable information within other statutes, *per se* privacy exemptions listed under 5 ILCS 140/7(b)(i-vi) are particularly problematic. The broad exemption of 7(b) is intended to protect “clearly unwarranted invasion of personal privacy” and is supported by six examples which include personnel files and student files. However, Illinois’ privacy provisions are by far the most general of the other states surveyed. Public bodies routinely expand the interpretation of what a *per se* exemption includes.

Furthermore, the courts’ interpretation of what constitutes a *per se* exemption has created tensions under the general language of 7(b) because the exemptions may be applied even though it would be impossible to identify the names of any private citizens included in the records. *Chi. Tribune Co. v. Bd. of Educ.*, 332 Ill. App.3d 60, 773 N.E.2d 674 (Ill.App. 1 Dist., 2002). For example, student files and personnel files which do not contain readily identifiable information are being automatically exempt from disclosure wherein a proper analysis would necessitate a case-by-case assessment. Additionally, broad interpretations of what constitutes a “draft” document 5 ILCS 140/7(b)(f) is also problematic. Public bodies routinely withhold such documents from public disclosure, claiming that until a public body takes a vote on such a document, it is in draft form. However, when a public body holds a draft document in perpetuity, or chooses to abandon the draft and still withhold the document, the mandate of the FOIA to narrowly construe exemption provisions is circumvented.

**Reform:** The convoluted and superfluous FOIA exemptions contradict a policy of openness. Model the Illinois exemptions after the Federal FOIA, which has only a handful of exemptions.

### **Ambiguous costs provisions within the FOIA results in the denial of public records.**

The amount charged by public bodies in order to access public documents is a weakness within the FOIA. The FOIA states that public bodies who copy files in response to a FOIA request are permitted to charge fees only to reimburse the actual cost of physically reproducing the records. 5 ILCS 140/6(a). Although a public body may charge fees “reasonably calculated to reimburse its actual cost,” it may not charge search costs. The Attorney General has reiterated this concept by opining that a public body’s fees “cannot include any of the cost of searching for the requested records, and cannot exceed the cost of reproduction.” *Illinois Attorney General’s, “A Complete Guide to the Illinois Freedom of Information Act” pg. 38.* Despite explicit language within the statute, public bodies inconsistently apply copy charges for access to public documents without justification, and use it as a barrier for public access to government documents. For example, a 2008 Citizen Advocacy Center survey of public bodies within DuPage County, Illinois documented that public bodies charged anywhere from \$.10 per page to \$1.00 per page for access to public records.

**Reform:** Require public bodies to, when feasible and desirable by the requestor, access documents via electronic mail free of charge. Electronic mail technology allows public bodies to disburse information quickly, efficiently, and at virtually no cost. Moreover, for public bodies that regularly maintain a website, mandate the creation of “electronic reading rooms”. Electronic reading rooms are the automatic posting of previously requested public documents. Finally, to limit excessive costs of documents and lessen public skepticism that cost is being used as a mechanism to block public access to information, public bodies must either cap costs of information to \$.15 per copy or disclose actual costs of the public body.

The following section provides a summary of the main components of the Illinois Freedom of Information Act. This summary provides an overview of the nuts and bolts of the FOIA, including what records are covered, how to appeal a denial of records requests and what relief is available through the courts. Also included are assessments based on a review of the relevant case law of the main issues in FOIA litigation and whether attorneys’ fees are actually awarded to successful plaintiffs.

### **Summary of the Law**

#### **Who is Covered Under the Law?**

The Act sets forth specific requirements for the disclosure of public records by all “public bodies” in the state. According to subsection 2(a) of the Act, the term “public body” includes any legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing.

## **Public Records Open to Disclosure**

Public records are presumed to be open and accessible, although there are numerous exceptions to the rule. Records covered include administrative manuals, procedural rules, instructions to staff, final opinions and orders made in the adjudication of cases, substantive rules, statements and interpretations of policy which have been adopted by a public body, final planning policies, inspection reports, expenditure reports, employee information, applications for contract and reports prepared by independent contractors for a public body.

## **Public Records Exempt from Disclosure**

The Illinois FOIA has a plethora of exemptions to disclosure:

- (a) Information specifically prohibited from disclosure by federal or State law or rules and regulations adopted under federal or State law.
- (b) Information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy. Information exempted under this subsection (b) shall include but is not limited to:
  - (i) files and personal information maintained with respect to clients, patients, residents, students or other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly from federal agencies or public bodies;
  - (ii) personnel files and personal information maintained with respect to employees, appointees or elected officials of any public body or applicants for those positions;
  - (iii) files and personal information maintained with respect to any applicant, registrant or licensee by any public body cooperating with or engaged in professional or occupational registration, licensure or discipline;
  - (iv) information required of any taxpayer in connection with the assessment or collection of any tax unless disclosure is otherwise required by State statute;
  - (v) information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies; provided, however, that identification of witnesses to traffic accidents, traffic accident reports, and rescue reports may be provided by agencies of local government, except in a case for which a criminal investigation is ongoing, without constituting a clearly unwarranted per se invasion of personal privacy under this subsection; and
  - (vi) the names, addresses, or other personal information of participants and registrants in park district, forest preserve district, and conservation district programs.
- (c) Records compiled by any public body for administrative enforcement proceedings and any law enforcement or correctional agency for law enforcement purposes or for internal matters of a public body, but only to the extent that disclosure would:
  - (i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency;
  - (ii) interfere with pending administrative enforcement proceedings conducted by any public body;

- (iii) deprive a person of a fair trial or an impartial hearing;
  - (iv) unavoidably disclose the identity of a confidential source or confidential information furnished only by the confidential source;
  - (v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct;
  - (vi) constitute an invasion of personal privacy under subsection (b) of this Section;
  - (vii) endanger the life or physical safety of law enforcement personnel or any other person; or
  - (viii) obstruct an ongoing criminal investigation.
- (d) Criminal history record information maintained by state or local criminal justice agencies, except the following which shall be open for public inspection and copying:
- (i) chronologically maintained arrest information, such as traditional arrest logs or blotters;
  - (ii) the name of a person in the custody of a law enforcement agency and the charges for which that person is being held;
  - (iii) court records that are public;
  - (iv) records that are otherwise available under state or local law; or
  - (v) records in which the requesting party is the individual identified, except as provided under part (vii) of paragraph (c) of subsection (1) of this Section. "Criminal history record information" means data identifiable to an individual and consisting of descriptions or notations of arrests, detentions, indictments, information, pre-trial proceedings, trials, or other formal events in the criminal justice system or descriptions or notations of criminal charges (including criminal violations of local municipal ordinances) and the nature of any disposition arising there from, including sentencing, court or correctional supervision, rehabilitation and release. The term does not apply to statistical records and reports in which individuals are not identified and from which their identities are not ascertainable, or to information that is for criminal investigative or intelligence purposes.
- (e) Records that relate to or affect the security of correctional institutions and detention facilities.
- (f) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body. The exemption provided in this paragraph (f) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents.
- (g) Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or information are proprietary, privileged or confidential, or where disclosure of the trade secrets or information may cause competitive harm, including:
- (i) All information determined to be confidential under Section 4002 of the Technology Advancement and Development Act.
  - (ii) All trade secrets and commercial or financial information obtained by a public body, including a public pension fund, from a private equity fund or a privately held company within the investment portfolio of a private equity fund as a result of either investing or evaluating a potential investment of public funds in a private equity fund. The exemption contained in this item does not apply to the aggregate financial performance information

of a private equity fund, nor to the identity of the fund's managers or general partners. The exemption contained in this item does not apply to the identity of a privately held company within the investment portfolio of a private equity fund, unless the disclosure of the identity of a privately held company may cause competitive harm. Nothing contained in this paragraph (g) shall be construed to prevent a person or business from consenting to disclosure.

(h) Proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made.

(i) Valuable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss. The exemption for "computer geographic systems" provided in this paragraph (i) does not extend to requests made by news media as defined in Section 2 of this Act when the requested information is not otherwise exempt and the only purpose of the request is to access and disseminate information regarding the health, safety, welfare, or legal rights of the general public.

(j) Test questions, scoring keys and other examination data used to administer an academic examination or determined the qualifications of an applicant for a license or employment.

(k) Architects' plans, engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and the same for projects constructed or developed with public funds, but only to the extent that disclosure would compromise security, including but not limited to water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings.

(l) Library circulation and order records identifying library users with specific materials.

(m) Minutes of meetings of public bodies closed to the public as provided in the Open Meetings Act until the public body makes the minutes available to the public under Section 2.06 of the Open Meetings Act.

(n) Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

(o) Information received by a primary or secondary school, college or university under its procedures for the evaluation of faculty members by their academic peers.

(p) Administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section.

(q) Documents or materials relating to collective negotiating matters between public bodies and their employees or representatives, except that any final contract or agreement shall be subject to inspection and copying.

- (r) Drafts, notes, recommendations and memoranda pertaining to the financing and marketing transactions of the public body. The records of ownership, registration, transfer, and exchange of municipal debt obligations, and of persons to whom payment with respect to these obligations is made.
- (s) The records, documents and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated. With regard to a parcel involved in a pending or actually and reasonably contemplated eminent domain proceeding under the Eminent Domain Act, records, documents and information relating to that parcel shall be exempt except as may be allowed under discovery rules adopted by the Illinois Supreme Court. The records, documents and information relating to a real estate sale shall be exempt until a sale is consummated.
- (t) Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered health and accident cooperative or pool.
- (u) Information concerning a university's adjudication of student or employee grievance or disciplinary cases, to the extent that disclosure would reveal the identity of the student or employee and information concerning any public body's adjudication of student or employee grievances or disciplinary cases, except for the final outcome of the cases.
- (v) Course materials or research materials used by faculty members.
- (w) Information related solely to the internal personnel rules and practices of a public body.
- (x) Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a public body responsible for the regulation or supervision of financial institutions or insurance companies, unless disclosure is otherwise required by State law.
- (y) Information the disclosure of which is restricted under Section 5-108 of the Public Utilities Act.
- (z) Manuals or instruction to staff that relate to establishment or collection of liability for any State tax or that relate to investigations by a public body to determine violation of any criminal law.
- (aa) Applications, related documents, and medical records received by the Experimental Organ Transplantation Procedures Board and any and all documents or other records prepared by the Experimental Organ Transplantation Procedures Board or its staff relating to applications it has received.
- (bb) Insurance or self insurance (including any intergovernmental risk management association or self insurance pool) claims, loss or risk management information, records, data, advice or communications.
- (cc) Information and records held by the Department of Public Health and its authorized representatives relating to known or suspected cases of sexually transmissible disease or any information the disclosure of which is restricted under the Illinois Sexually Transmissible Disease Control Act.
- (dd) Information the disclosure of which is exempted under Section 30 of the Radon Industry Licensing Act.
- (ee) Firm performance evaluations under Section 55 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act.
- (ff) Security portions of system safety program plans, investigation reports, surveys, schedules, lists, data, or information compiled, collected, or prepared by or for the Regional Transportation

Authority under Section 2.11 of the Regional Transportation Authority Act or the St. Clair County Transit District under the Bi-State Transit Safety Act.

(gg) Information the disclosure of which is restricted and exempted under Section 50 of the Illinois Prepaid Tuition Act.

(hh) Information the disclosure of which is exempted under the State Officials and Employees Ethics Act.

(ii) Beginning July 1, 1999, information that would disclose or might lead to the disclosure of secret or confidential information, codes, algorithms, programs, or private keys intended to be used to create electronic or digital signatures under the Electronic Commerce Security Act.

(jj) Information contained in a local emergency energy plan submitted to a municipality in accordance with a local emergency energy plan ordinance that is adopted under Section 11-21.5-5 of the Illinois Municipal Code.

(kk) Information and data concerning the distribution of surcharge moneys collected and remitted by wireless carriers under the Wireless Emergency Telephone Safety Act.

(ll) Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

(mm) Maps and other records regarding the location or security of generation, transmission, distribution, storage, gathering, treatment, or switching facilities owned by a utility or by the Illinois Power Agency.

(nn) Law enforcement officer identification information or driver identification information compiled by a law enforcement agency or the Department of Transportation under Section 11-212 of the Illinois Vehicle Code.

(oo) Records and information provided to a residential health care facility resident sexual assault and death review team or the Executive Council under the Abuse Prevention Review Team Act.

(pp) Information provided to the predatory lending database created pursuant to Article 3 of the Residential Real Property Disclosure Act, except to the extent authorized under that Article.

(qq) Defense budgets and petitions for certification of compensation and expenses for court appointed trial counsel as provided under Sections 10 and 15 of the Capital Crimes Litigation Act. This subsection (qq) shall apply until the conclusion of the trial of the case, even if the prosecution chooses not to pursue the death penalty prior to trial or sentencing.

(rr) Information contained in or related to proposals, bids, or negotiations related to electric power procurement under Section 1-75 of the Illinois Power Agency Act and Section 16-111.5 of the Public Utilities Act that is determined to be confidential and proprietary by the Illinois Power Agency or by the Illinois Commerce Commission.

(ss) Information that is prohibited from being disclosed under Section 4 of the Illinois Health and Hazardous Substances Registry Act.

### **Special Provisions Regarding Electronic Mail**

According to the Illinois Attorney General, electronic mail records of a member of a public body should be considered a public record for purposes of the Act; however, certain exemptions may exist that permit a withholding of these records.

### **Main Areas of Litigation and Typical Outcomes Regarding Public Records Exempt From Disclosure**

A number of contentious FOIA cases hinge on the “personal privacy” exemption 7(b). Section 7(b) lists a number of examples of information that may qualify as exempt, including medical records, student files and tax assessments. The list is not exhaustive, and the courts have determined the enumerated items to be *per se* exempt. Any other claims of 7(b) exemptions must proceed case by case. The general outcome in this area of litigation is that the FOIA request is deemed rightfully denied.

### **What Information Must a Requestor Provide?**

According to the Illinois Attorney General, a public body may not require that the requestor provide his or her identity or intended use.

### **Deadline for Production of Public Records**

Absent extraordinary circumstances, the public body must respond within seven working days of receipt of the request. Under extraordinary circumstances, the FOIA provides that the seven day period for response may be extended for up to seven additional working days. When such additional time is required, the public body must notify the person making the request by letter specifying the reason for the delay and the date when either the records will be released or the denial of the request will be made. This letter must be sent within the original seven day period.

### **Denial of a Record**

When a request for public records is denied by a public body, that body must, within seven working days, or within any extended compliance period provided for in the FOIA, notify the person who made the request, by letter, of the decision to deny the request. Failure to respond within the specified time period is considered a denial of the request under the FOIA.

### **What Must be Included in Denial Letter?**

The letter must contain reasons for the denial, and the names and titles of all persons responsible for the denial. If an exemption has been asserted, the letter must specify which exemption authorizes the denial. The letter must also explain that the requesting party can appeal the denial to the head of the public body.

### **Appeal to Public Body**

Any person denied access to inspect or copy any public record for any reason may appeal the denial by sending a written notice of appeal to the head of the public body. Upon receiving that written notice, the head of the public body, or such person's designee, is required to review the requested public record promptly, and to determine whether, under the provisions of the Act, such records are open to inspection and copying. The person requesting the records must be notified of that determination within seven working days. If the head of a public body denies access to public records, he or she must explain in his letter of denial that the person requesting the records has a right to judicial review of that determination.

### **Appeal to State Court**

When the head of a public body denies access to public records, the requesting person is "deemed to have exhausted his administrative remedies." When the denial is from the head of a public body of the State, suit may be filed in the circuit court for the county in which the public body has its principal office or where the requesting party resides. When the denial is from the head of a municipality or other type of public body, suit must be brought in the circuit court for the county in which the public body is located.

### **Penalties for Violation**

The requesting person may file suit in the circuit court for injunctive or declaratory relief.

### **Availability of Attorneys' Fees for FOIA Litigation**

Under a January 1, 2004, amendment to 5 ILCS 140/11, a private party may recover attorneys' fees when he or she has substantially prevailed absent special circumstances. Special circumstances justifying a trial court's denial of attorneys' fees may include (1) the plaintiff is a non-lawyer proceeding *pro se*; (2) an attorney proceeds *pro se* under the Act; (3) the defendant entered into a nuisance settlement solely to end a frivolous and groundless suit and avoid the expense of litigation; (4) the plaintiff was not instrumental in achieving the remedy sought; or (5) the plaintiff, through a settlement or consent order, agreed to waive his or her right to pursue fees. *Callinan v. Prisoner Review Bd.*, 371 Ill. App. 3d 272, 862 N.E.2d 1165, 2007 Ill. App. LEXIS 91, 308 Ill. Dec. 962 (Ill. App. Ct. 3d Dist. 2007). If the requesting party sought the records in order to further commercial interests, the test is the same as that stated in *Duncan*.

### **Whether Attorneys' Fees Are Usually Granted**

Under the original Act, attorneys' fees were rarely granted. It remains to be seen whether the 2004 amendment, which *Callinan* interprets, will increase the frequency with which attorneys' fees are granted.

### **General Areas Litigated Most Commonly and Typical Outcomes**

A number of contentious FOIA cases hinge on the "personal privacy" exemption 7(b), as discussed above.

### **Ranking in 2007 National Study of 50 States' Freedom of Information Laws**

In 2007, the nonpartisan, nonprofit organizations Better Government Association and National Freedom of Information Coalition conducted a 50-state study of FOIA responsiveness. Three of the criteria—Response Time, Attorneys’ Fees & Costs and Sanctions—were worth four points each. Two of the criteria—Appeals and Expedited Process—were assigned a value of two points each. Response Time, Attorneys’ Fees & Costs and Sanctions were assigned a higher value because of their greater importance. These criteria determine how fast a requestor gets an initial answer, thus starting the process for an appeal if denied, and provide the necessary deterrent element to give public records laws meaning and vitality. Appeals and Expedited Process, although important, were determined to be less critical in promoting open government access and thus assigned only a two-point value. The following sets forth Illinois’ rankings in this study, which may be found at [http://www.bettergov.org/policy\\_foia\\_2008.html](http://www.bettergov.org/policy_foia_2008.html).

- For response time (analyzing response times, the process of appealing FOIA denials and expediency, and the means to give a case priority on a court’s docket in front of other matters because of time concerns), 4 of 4.
- For appeals (analyzing choice, cost and time), 1.5 of 2.
- For expedited review (if a petitioner’s appeal, in a court of law, would be expedited to the front of the docket so that it is heard immediately), 1 of 2.
- For fees and costs ((1) whether the court is required to award attorneys’ fees and court costs to the prevailing requestor; and (2) what sanctions, if any, the agency may be subject to for failing to comply with the law), 3 of 4.
- For sanctions (whether there was a provision in the statute that levied penalties against an agency found by a court to be in violation of the statute), 0 of 4.
- Percentage (compared to other 49 states), 59 of 100.

Grade (scale of A to F), an F.

### **Strengths of Illinois’ Open Meetings Act**

The Illinois’ OMA has a broad presumption of coverage. All meetings of public bodies are presumed to be open and subject to the provisions of the OMA, unless the meeting topic falls within one of the exemptions outlined in the law. When a valid exemption is cited, the public body is allowed to meet in executive (*i.e.*, closed) session. Illinois courts have strictly construed exceptions and have invalidated final actions taken during improperly properly closed meetings. The OMA mandates that closed session action is limited to the debating of public issues only. In addition, the public benefits from a lenient approach to the disclosure of information discussed in executive session. The OMA does not grant public bodies the right to sanction members for disclosing information discussed at a closed meeting. Therefore, members of public bodies who share information from closed sessions with interested individuals or groups do not suffer legal reprisal. Lastly, Illinois OMA is the only one of the states surveyed that specifically addresses electronic communications and meetings. The OMA states that email and Internet chat room communications are considered meetings. While there is ambiguity regarding successive email communications among a public body’s majority of a quorum, Illinois is ahead of the curve in attempting to address the integration of technology into the business of governing.

Illinois' OMA has the strongest requirements of the states surveyed to ensure notice of meetings and action items. Minnesota fails to have any notice requirements for a meeting or an agenda. Michigan requires only eighteen hours notice for a meeting and does not require a detailed agenda. Ohio requires twenty-four hours notice for a meeting and does not require a posted agenda unless a fee is paid to a public body and a request is made to be notified when specific issues are discussed. Wisconsin requires twenty-four hours notice, but no detailed agenda is required. Illinois' OMA requires that a meeting agenda must be posted at least 48 hours prior to a meeting with an agenda that sufficiently informs the public of action to be taken by the public body. Additionally, the public body must also post notice of the meeting and an agenda if it normally maintains a website. 5 ILCS 120/2.02. Illinois courts have upheld the OMA's strict notice provision. For example, an adopted ordinance was invalidated because it was listed as "new business" on the meeting agenda rather than with sufficient detail to notify the public that the item was a local law proposed for adoption. *Rice v. The Board of Trustees of Adams County*, 326 Ill.App. 3d 1120, 762 N.E. 2d 1205 (Ill.App. 4 Dist., 2002)

The Illinois Attorney General's Public Access Counselor (PAC) is a valuable asset. The PAC is a non-statutorily created office that takes an active role in ensuring that public bodies conduct their business openly and that members of the public have access to the governmental information to which they are entitled. Although the PAC does not have the power to sanction government bodies that violate the OMA, it will proactively mediate complaints from the public and media regarding OMA concerns. For instance, in responding to a resident's complaint regarding potential OMA violations, the PAC will investigate, intercede, and promote adherence to the OMA through such measures as ordering OMA training to help advance good government practices. The PAC's commitment to OMA accountability and transparency positively impacts the public's open government rights in Illinois.

### **Weaknesses of Illinois' Open Meetings Act**

While there are several weaknesses in Illinois' OMA statute, the most significant stems from lack of effective enforcement.

### **The Illinois penalty provisions are rarely utilized to enforce compliance with the OMA.**

The Illinois OMA is one of two states surveyed that provide for criminal penalties for violating the law. The OMA allows for punitive measures that include a Class C misdemeanor punishable by a fine of up to \$1,500 and imprisonment for up to 30 days. 5 ILCS 120/4. However, State's Attorneys throughout Illinois rarely pursue criminal actions against government officials or governmental bodies that violate that statute. Furthermore, while the courts have the power, they never assess criminal penalties, even for egregious OMA violations. The failure to implement penalties leads public bodies to openly violate the OMA without fear of reprisal. Furthermore, the courts' failure to impose criminal penalties for intentional violators and repeat offenders discourages OMA compliance and serves as a disincentive for state's attorneys who want to pursue criminal charges. With State's Attorneys failing to file OMA claims and the PAC not having enforcement capacity, the burden inappropriately rests solely on the average citizen to hold public bodies accountable through filing civil litigation. Lastly, even if a lawsuit is filed

seeking the invalidation of an improper final action, a public body may simply re-enact the illegal action properly, thereby mooting the legal claim. Allowing for subsequent remedial action permits a public body to overtly violate the law without fear of accountability.

**Reform:** Implement mandatory fines against public bodies that violate the OMA pursuant to a civil claim. Revise the OMA to disallow the mooting of a legal claim by subsequent remedial action by a public body. Statutorily create the PAC with enforcement capacity to file and intervene in lawsuits through statutory provisions. Mandate annual OMA training for public officials and require public officials to sign a certification form.

**Short statute of limitation deadlines are a disincentive for members of the public to file lawsuits to hold public bodies accountable.**

Illinois has a very short statutory deadline for which the public can file an OMA civil claim. As compared, Minnesota has no time limits to file a claim and Wisconsin and Ohio have a two year statute of limitations. Michigan has a short deadline of 30 or 60 days depending on the claim. Illinois' statute of limitations is 60 days. 5 ILCS 120/3. Members of the public who identify an OMA violation have three alternative avenues to address grievances prior to filing litigation: organizing and speaking out publicly against the governmental body to pressure public officials to address the indiscretion through a re-vote; mediating the dispute through the PAC; or filing a complaint with the appropriate State's Attorney. However, none of these options suspend the 60 day time bar, thus immense pressure is placed on an individual to quickly decide whether or not to pursue costly litigation.

**Reform:** Extend the statute of limitations to two years.

**Meeting minutes are often a vague documentation of the public meeting.**

Illinois OMA mandates that a public body record votes taken and summarize discussions on all matter proposed, deliberated or decided at a public meeting. 5 ILCS 120/2.06 While the OMA details what must be included in meeting minutes, the practical application often results in vague documentation of meeting activity and a failure to effectively apprise the public of what took place at a meeting. The Attorney General has opined that minutes must include sufficient data so that either the body or a court examining its minutes will be able to ascertain what, in fact, was discussed, the substance of that discussion, and what, if any, action was taken. However, the OMA itself does not include such specific requirements, nor have Illinois courts required substantive detail within minutes. As a result, members of the public who were not present at a meeting, but seek to become informed, are often unable to ascertain the full extent of meeting activity.

**Reform:** Amend the statute to require that meeting minutes include substantive information regarding discussions or that audio or video tape records of all meetings covered by the OMA be made and available to the public.

**Legally permissible reasons to close public meeting discussions are routinely abused.**

As with the Illinois FOIA, the OMA has far more legally permissible reasons to close a meeting as compared to the other states surveyed. Minnesota and Ohio have seven permissible reasons to close a meeting, Michigan has ten, Wisconsin has eleven, and Illinois has twenty-four. In contradiction to the statute, the extensive list is often broadly construed, allowing public bodies to operate in a non-transparent manner. Furthermore, the Illinois OMA does not require that a subsequent vote of an illegal discussion in closed session be voided, providing the public body with substantial leeway to violate the statute. A public body merely has to reconvene in open session and vote on the matter that was illegally deliberated.

Further, the exemption that allows for the discussion of pending litigation in closed session is widely exploited by public bodies. While the Attorney General has indicated that litigation must be probable, imminent, or pending for the exception to apply, public bodies sweep a vast amount of deliberation under the umbrella of pending litigation. This is especially seen in meetings of school district officials, given that they regularly discuss personnel issues or pending litigation in closed session. Since a large number of education matters involve staff issues, and any action or inaction regarding staff can result in a lawsuit, some school districts interpret the closed session exemptions in an overly broad manner and close meetings unnecessarily. In general, as compliance with closed sessions is difficult to police, and because filing litigation is a costly and an undesirable alternative, the public is forced to rely only on those who participate within the closed session to ensure compliance.

**Reform:** Amend the OMA to reduce permissible reasons for a public body to convene in closed sessions and prohibit a public body from taking remedial action in open sessions for impermissible closed meeting action. Additionally, public bodies are required to make a verbatim record of closed session meetings, however those records under current law are not publicly available, therefore require public bodies to make the verbatim recordings of closed sessions public after one year.

The following section provides a summary of the main components of the Illinois OMA. This summary provides an overview of the nuts and bolts of the statute, including what types of meetings are covered by the law, the procedures for closed sessions, how to appeal a violation and what relief is available through the courts. Also included are assessments based on a review of the relevant case law of the main issues in OMA litigation and whether attorneys' fees are actually awarded to successful plaintiffs.

## **Summary of the Law**

### **Who is Covered Under the Law?**

The law applies to any public body, which includes 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, and any subsidiary bodies of any of the foregoing. Coverage applies whether the public body is paid or unpaid. Home rule units must comply with the law, and may not adopt weaker standards. However, the law does not apply to private, not-for-profit corporations, even if they administer programs funded primarily by governmental agencies and are required to comply with

government regulations, if the boards of directors and employees of such corporations are free from direct governmental control.

### **Are Committees, Advisory Groups, Sub-Committees Covered?**

Yes. Committees are covered by the law. Sub-committees and advisory committees that are supported in any part by tax revenue or which expend tax revenue also are covered by the law. However, the General Assembly's committees, subcommittees and advisory committees are exempt.

### **Types of Gatherings Covered**

The law applies when the following requirements are met. There must be (1) a gathering (2) of a majority of a quorum of the public body (3) to discuss public business. Gatherings include in-person, telephonic and electronic meetings (*e.g.*, electronic mail and Internet chat rooms). Intent to discuss public business is necessary for the OMA to apply. A recently passed amendment provides an exemption from the meeting coverage requirement for public bodies with five members. Under the OMA amendment, public discussions by three, rather than two, members trigger coverage of the law for meeting purposes.

### **What Meetings Must Be Open?**

Any meeting that includes a majority of a quorum of the members of a public body must be open if it is held for the purpose of discussing public business.

### **Exceptions: Closed Meetings**

There are twenty-four authorized subjects permitted for closed meetings. The closed meetings exceptions authorize but do not require the holding of a closed meeting to discuss a covered subject.

- (1) The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity.
- (2) Collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees.
- (3) The selection of a person to fill a public office, as defined in the OMA, including a vacancy in a public office, when the public body is given power to appoint under law or ordinance, or the discipline, performance, or removal of the occupant of a public office, when the public body is given power to remove the occupant under law or ordinance.
- (4) Evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined in the OMA, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

- (5) The purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired.
- (6) The setting of a price for sale or lease of property owned by the public body.
- (7) The sale or purchase of securities, investments, or investment contracts.
- (8) Security procedures and the use of personnel and equipment to respond to an actual, threatened, or reasonably potential danger to the safety of employees, students, staff, the public, or public property.
- (9) Student disciplinary cases.
- (10) The placement of individual students in special education programs and other matters relating to individual students.
- (11) Litigation, when an action against, affecting, or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting.
- (12) The establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act, if otherwise the disposition of a claim or potential claim might be prejudiced, or the review or discussion of claims, loss or risk-management information, records, data, advice, or communications from or with respect to any insurer of the public body or any intergovernmental risk-management association or self-insurance pool of which the public body is a member.
- (13) Conciliation of complaints of discrimination in the sale or rental of housing, when closed meetings are authorized by the law or ordinance prescribing fair housing practices and creating a commission or administrative agency for their enforcement.
- (14) Informant sources, the hiring or assignment of undercover personnel or equipment, or ongoing, prior or future criminal investigations, when discussed by a public body with criminal investigatory responsibilities.
- (15) Professional ethics or performance when considered by an advisory body appointed to advise a licensing or regulatory agency on matters germane to the advisory body's field of competence.
- (16) Self-evaluation, practices and procedures, or professional ethics, when meeting with a representative of a statewide association of which the public body is a member.
- (17) The recruitment, credentialing, discipline or formal peer review of physicians or other health care professionals for a hospital or other institution providing medical care that is operated by the public body.
- (18) Deliberations for decisions of the Prisoner Review Board.
- (19) Review or discussion of applications received under the Experimental Organ Transplantation Procedures Act.
- (20) The classification and discussion of matters classified as confidential or continued confidential by the State Employees Suggestion Award Board.
- (21) Discussion of minutes of meetings lawfully closed under the OMA, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06.
- (22) Deliberations for decisions of the State Emergency Medical Services Disciplinary Review Board.
- (23) The operation by a municipality of a municipal utility or the operation of a municipal power agency or municipal natural gas agency when the discussion involves (i) contracts relating to the

purchase, sale, or delivery of electricity or natural gas or (ii) the results or conclusions of load forecast studies.

(24) Meetings of a residential health care facility resident sexual assault and death review team or the Residential Health Care Facility Resident Sexual Assault and Death Review Teams or the Executive Council under the Abuse Prevention Review Team Act.

### **Public Notice of Time and Place for Meetings: Requirements for Agendas**

The OMA requires public bodies to give public notice at the beginning of each calendar or fiscal year of the dates, times and places of their regular meetings to be held that year. Public bodies must post an agenda for each regular meeting at least 48 hours in advance of the meeting at the principal office of the public body and at the location where the meeting is to be held. Public notice of any special, rescheduled, or reconvened meeting must be given at least 48 hours in advance, except that public notice is not necessary for a meeting to be reconvened within 24 hours or if the time and place of the reconvened meeting was announced at the original meeting and there is no change in the agenda. Notice of a meeting held in the event of a bona fide emergency need not be given 48 hours prior to such meeting, but notice must be given as soon as practicable.

In addition, the schedule of regular meetings must be available at the office of the public body listing the times and places of regular meetings. If a change is made in regular meeting dates, notice of the change must be given at least 10 days in advance by posting a notice at the public body's office or at the place of meeting and sending a notice to each news medium that filed an annual request to receive such notice. Further, notice of the change must be published in a newspaper of general circulation in the area. However, if the population served by the public body is less than 500 and there is no newspaper published there, the 10 days notice may be given by posting a notice in three prominent places within the unit served.

### **Procedures for Closed Meetings**

A majority of a quorum must vote during an open meeting to close a meeting or to hold a closed meeting at a specific future date. The vote of each member on the question of holding a closed meeting must be publicly disclosed at the time of the vote and recorded and entered in the minutes of the meeting at which the vote is taken. The public statement and minutes must recite the language of the exemption.

A series of meetings may be closed by a single vote as long as each meeting in the series involves the same particular matter and is scheduled to be held within three months of the vote.

### **Recordkeeping for Meetings: Minutes Requirements**

Minutes must include the following: (1) the date, time and place of the meeting; (2) the members of the body recorded as present or absent; and (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken. With respect to the summary requirement, the Attorney General has opined that the minutes must include sufficient

data so that either the body or a court examining its minutes will be able to ascertain what, in fact, was discussed, the substance of that discussion, and what, if any, action was taken.

### **Taping or Filming Meetings**

Individuals may tape or film open session meetings so long as it does not interfere with the meeting. Rules regarding taping or filming should be written and published after appropriate public notice and deliberation rather than spontaneously created. Individuals giving testimony at public hearings may request that they not be recorded under certain conditions. If a witness before a commission, administrative agency or other tribunal refuses to testify because his or her testimony will be taped or filmed, the authority holding the meeting must prohibit the recording during the testimony of the witness.

### **Are Electronic Mail Communications a Meeting?**

Yes. Electronic mail and Internet chat room communications are considered communications for meeting purposes under the law.

### **Summary of Pivotal State Supreme Court OMA Decisions**

The OMA is designed to prohibit secret deliberations and action on matters which, due to their potential impact on the public, should properly be discussed in a public forum. *People ex rel. Difanis v. Barr*, 83 Ill. 2d 191, 202 (1980).

Nothing in the OMA provides a cause of action against a public body for discussing information from a closed meeting. *Swanson v. Board of Police Comm'rs*, 197 Ill. App. 3d 592 (1990).

The exemptions to the OMA are limited in number, very specific and must be strictly construed. *I.N.B.A. v. City of Springfield*, 22 Ill. App. 3d 226, 228 (1974).

### **Enforcement**

Enforcement is weak. While the State's Attorneys have the ability to prosecute OMA violations, they almost never do. The Illinois Office of the Attorney General has established a Public Access Counselor's (PAC) office to take an active role in assuring that public bodies understand the requirements of open government laws such as the OMA and conduct their business openly, and that the public has access to the governmental information to which they are entitled. While the PAC Office has no punitive authority, it responds to resident's complaints and occasionally refers OMA matters to the State's Attorney for investigation.

### **Penalties for Violation**

Civil and criminal penalties are available for OMA violations. A civil lawsuit may be filed by any private individual or the State's Attorney of the county in which a violation occurred. The lawsuit must be filed within 60 days after the meeting alleged to have been held in violation of the law, or within 60 days of the discovery of a violation by the appropriate State's Attorney.

Mandamus and injunction are available. Criminal penalties are limited to Class C misdemeanor charges, which are punishable by a fine of up to \$1,500 and imprisonment for up to 30 days. Criminal charges may only be initiated by the appropriate State's Attorney.

### **Are Criminal Penalties Assessed Regularly?**

Criminal penalties are rarely imposed in OMA cases.

### **Availability of Attorneys' Fees for OMA Litigation**

Attorneys' fees are available for a prevailing party in OMA litigation. *Pro se* plaintiffs (individuals who serve as their own lawyers) may not be awarded attorneys' fees.

### **Whether Attorneys' Fees Are Usually Granted**

Attorneys' fees are usually not granted to prevailing parties.

### **General Areas Litigated Most Commonly and Typical Outcomes**

The area that appears to trigger the most litigation is when a public body improperly enters an executive session under the OMA. Courts generally construe the closed session exceptions narrowly. Courts also have considered several cases interpreting the notice requirement and have mostly invalidated final actions where notice was defective.

## **Intake Examples**

### **FOIA**

In connection with an open government survey, the Citizen Advocacy Center sent FOIA requests to several dozen public bodies in the Chicago area asking for basic election-related referendum records. Addison Township initially responded to the Center's FOIA request with a letter stating that the Center was required to fill out the Addison Township FOIA request form. Although the form inappropriately requires a requestor to state the purpose for the FOIA request, the Center complied for the sake of obtaining information for its survey. Thereafter, Addison Township sought a valid extension of time. They failed to meet their statutory deadline then requested several additional extensions that are not statutorily permitted. Approximately three months after the Center's original FOIA request, Addison Township supplied the requested records.

### **OMA**

While the Citizen Advocacy Center monitored a meeting of the DuPage County Board, the Chairman of the Board provided his "Chairman's Report." The agenda published prior to the meeting only had the title of "Chairman's Report" with no subsections listed. During the Chairman's report, he called on the Board to vote on a resolution altering DuPage County's

policy position opposing O'Hare Airport expansion, a controversial issue at the time. The Board immediately voted to pass the resolution. A lawsuit was filed alleging a violation of OMA notice requirements, specifically that the DuPage County Board failed to appropriately notify the public of business to be conducted. After three years litigation, the DuPage County Board rescinded the resolution pursuant to a settlement agreement.