

# Open Meetings Act/Freedom of Information Act Training



**ZONE 5 – METROPOLITAN LIBRARY SYSTEM  
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- Changes made to the Open Meetings Act (OMA)
- Significant changes made to the Freedom of Information Act (FOIA)
- The changes became effective on January 1, 2010

# PURPOSE



- To increase transparency, accountability and openness of public bodies.
- OMA:
  - Presumption that all meetings are to be open.
  - Limited exceptions to be strictly construed.
- FOIA:
  - Presumption that all records are open to inspection and copying.
  - Limited exceptions to be strictly construed.
  - Public Body that asserts that a record is exempt from disclosure has the burden of proving the exemption by clear and convincing evidence.

# “OFFICE OF PUBLIC ACCESS COUNSELOR”



- Created as a part of the Attorney General’s office.
- PAC’s authority:
  - Review and determine whether documents should have been disclosed under FOIA.
  - Review and determine whether a public body violated OMA.
  - May also issue advisory opinions to guide public bodies.

# Open Meetings Act



- Meetings to be open
- Public notice to be given / agenda posted
- Written minutes to be kept
- Proper motions for closed meetings
- Verbatim record of closed meetings
- Posting on the website

# OVERVIEW: OMA



- Purpose of OMA: to assure that Government action is taken openly
- Basic Requirements:
  1. Public Notice of meetings
  2. Open to public: convenient times and places
  3. Written minutes of all meetings
  4. Verbatim record of closed meetings
  5. Website posting of notice, agenda and minutes may be required

# Policy of Open Meetings Act



- The actions of public bodies are to be taken:
  1. At a public meeting; and
  2. Openly
- Intent of the Act is the protection of citizens' right to know.
- Exceptions to open meeting requirements are strictly construed.

# Definitions



- What is a public body?
- What is a meeting?

# Public Body



- Library Board of Trustees
- All committees of the Library Board of Trustees – can include citizen committees.
- However, a committee that is not established by the board and does not report to the board, such as a Friends of the Library group, is not subject to the Act.

# Committees: Potential Problem



- All committees and subcommittees of the Board are subject to the requirements of the Act:
  1. Notice of meetings
  2. Open to public
  2. Written minutes
- A citizens committee appointed to advise the Board is covered by the Act

# Meeting



- Any gathering of
- a majority of a quorum
- of a public body
- held for the purpose of discussing public business.

# Majority of Quorum



- Library Board of Trustees (7 members) → quorum is 4. Majority of quorum is 3.
- Committee of 3 → quorum is 2. Majority of quorum is 2.

# Four Types of Meetings



- Regular Meetings
- Special Meetings
- Reconvened Meetings
- Emergency Meetings

# Time and Place of Meetings



- Must be at specified times and places
- Convenient to the public
- No meeting on a legal holiday unless regular meeting day falls on that holiday

# Public Notice of Meetings



- Public notice of all meetings must be given in the manner required by the law
- Public notice of schedule of regular meetings to be given at beginning of each calendar or fiscal year listing times and places of those meetings
- Agenda of regular meeting, to be posted 48 hours in advance of meeting
- Notice to be posted on web site

# Public Notice of Meetings



- Public notice of special meeting to be posted 48 hours in advance with an agenda. Also on web site.
- Reconvened meeting
- Emergency meetings

# All Meetings to be Open Unless Exemption



- Closed meeting only if specific exemption applies. Exemptions to be strictly construed.
- Must be closed in manner required by law
  - ❑ By motion citing the specific exemption
  - ❑ Roll call vote on motion

# Exemptions



- There are currently 24 specific exemptions set forth in Section 2 of the Open Meetings Act, 105 ILCS 120/2.
- Not all apply to libraries.

# Often Used Exemptions



- Appointment, employment, compensation, performance, or dismissal of specific employees
- Collective Negotiations
- Purchase or lease of real property
- Litigation discussions

# Roll Call Vote



- A roll call vote on a motion to go to closed session is required
- Motion must state the specific exemption
- In closed session can only discuss the subject of the motion

# Sample Motion



- I move that the Board go into a closed session to discuss the employment of a specific employee.

# No Final Action in Closed Session



- No final action may be taken in a closed session
- Final action taken in open session must be preceded by a public recital of the nature of the matter

# Minutes Must be Kept



- Written minutes of all meetings must be kept. Must include:
  1. Date, time and place of meeting
  2. Members of public body recorded as present or absent
  3. A summary of the discussion on all matters proposed, deliberated or decided, and a record of any votes taken
  4. To be posted on web site – 60 days.

# Verbatim Record of Closed Meetings



- In addition to minutes, a verbatim record must be kept of all closed meetings by video or audio recording
- Verbatim record may be destroyed after 18 months if: Board approves the destruction and the minutes of the meeting have been approved
- Must review closed minutes at least semi-annually and make public those that no longer need be confidential.

# Dispute Procedure: Alleged Violation of OMA



- Request for review filed with PAC – must be within 60 days of alleged violation.
- PAC may determine unfounded, no further action, or initiate review by requesting records and documents from the public body. To be delivered within 7 working days.
- Public body may file answer and or affidavits within time limit.
- PAC may resolve by mediation or other means or issue findings of fact and final binding decision.
- Procedure set forth in Section 3.5 of Act.

# **Top 10 mistakes/violations**

# No. 10



- Approving a consent agenda without reading it aloud at the Board meeting

# No. 9



- Voting on a matter not listed specifically on an agenda of a regular meeting

# No. 8



- Improperly drafting notice of special meeting – keeping to the limited topics of discussion set forth on the notice.

# No. 7



- In closed session, not keeping to the specific topic identified as the reason for the closed session.

# No. 6



- Not specifying the exact statutory exception when going into closed session.

# No. 5



- Scheduling a public hearing before a regular meeting without the required notice of a special meeting.

# No. 4



- Amending or supplementing the Board's agenda less than 48 hours before the meeting.

# No. 3



- Discussing official business at social events.

# No. 2



- Committee meeting procedures: failure to give notice, take minutes or have quorum.

# No. 1



- Holding “informal” meetings before and after a Board meeting.

# Penalty for Violations of OMA



- Any person violating any of the provisions of the Open Meetings Act shall be guilty of a Class C misdemeanor
- In civil suit, attorneys fees may be awarded
- Court may issue an injunction or declare action taken null and void

# Designated Employees



- The new Act requires public bodies to designate employees, officers or members to complete an annual OMA electronic training course prepared by the PAC.

# Freedom of Information Act



**PURPOSE**  
**PROCEDURE**  
**EXEMPTIONS**  
**DENIALS**  
**PENALTIES FOR VIOLATIONS**

# FOIA



- FOIA requires inspection and copying of public records, except for those exempted by the Act.
- It does not require staff to answer questions that are part of a document request or an oral request.
- It does not require staff to create a new record to comply with a request.

# FOIA: PROCEDURE



- Request must be in writing.
  - Public Body cannot require use of its standard form.
  - Public Body cannot require the person making the request to specify the purpose for the request, except to determine whether the records requested are for a commercial purpose or whether to grant a fee waiver.
  - A public body may honor oral requests, but it is not required to.
- Request can be delivered by any means.
  - Personal delivery, mail, telefax, other means.

# FOIA: Procedure



- Upon receipt, the request is to be delivered to the Public Body's Freedom of Information Officer.
  - A Public Body must designate one or more officials or employees to act as Freedom of Information Officer(s).
  - The Freedom of Information Officer must receive requests submitted to the public body, ensure that the public body responds in a timely fashion, and issue responses.
- The Freedom of Information Officer then must:
  - Note the day of receipt.
  - Compute the response timeline, and make a written notation on the written request.
  - Maintain an electronic or written copy of the request, including all documents submitted with it, until the public body responds.
  - Keep the original request, a copy of the response, and a record of all communications associated with the request.

# FOIA: Procedure



- Public Body must comply with or deny request within five (5) business days. Extension of 5 more days in limited cases.
- Copying charges are limited:
  - The first 50 pages must be provided at no charge.
  - Remaining black and white copies = 15¢/page.
  - Color or non-letter/legal size = no more than actual cost.
  - Electronic records = actual cost of the recording medium.
  - Certifying a copy of a record = \$1.00.
  - May not charge for the costs of any search and review of the records or other personnel costs associated with reproducing the records.

# FOIA: Procedure



- Must provide in electronic format specified by the requester, if feasible.
- If it is not feasible to furnish in the specified electronic format, then the public body shall furnish it in the format in which it is maintained by the public body, or in paper format at the option of the requester.

# FOIA: Commercial Purpose



- “Commercial Purpose” - the use of any part of a public record in any form for sale, resale, or solicitation or advertisement for sales or services.
- Requests made by the news media and non-profit agencies, as well as any scientific or academic organizations, are still not considered made for commercial purposes when the principal purpose of the request is:
  - (1) To access and disseminate information concerning news and current or passing events;
  - (2) For articles of opinion or features of interest to the public; or
  - (3) For the purpose of academic, scientific, or public research or education.

# FOIA: Commercial Purpose



- Commercial requests can be processed on a different timeline than other requests
- Within 21 working days after receiving a commercial request, the public body must do one of 4 things:
  - Provide the public records.
  - Deny the request due to exemptions.
  - Treat the request as unduly burdensome.
  - Provide an estimate of the time required to provide the public records requested and an estimate of the fees to be charged, which the public body can require to be paid before copying.

# Records of Materials Checked Out of the Library



- Under the Library Records Confidentiality Act, 75 ILCS 70/1, registration and circulation records of a library are confidential information. They may not be made public except:
  - (1) by court order; or
  - (2) if requested by a sworn law enforcement officer who represents that it is an emergency and there is probable cause of imminent danger of physical harm.

# Records of Materials Checked Out of the Library



- The information must be limited to identifying a suspect, witness, or victim of a crime.
- Registration or circulation records that would indicate materials borrowed, resources reviewed, or services used at the library may not be made public without a court order.
- If requested to do so by the library, the requesting law enforcement officer must sign a form acknowledging the receipt of the information.
- A library providing the information may seek subsequent judicial review to assess compliance with this Section.

# Records of Materials Checked Out of the Library



- However, a library may make available reasonable statistical reports on the number of library cardholders and book circulation, as long as no individual is identified in those reports.
- To deny a FOIA request on this basis, cite to Section 7(1)(a) and 7.5(b).

# FOIA: Exemptions



- Preliminary draft/notes exemption 7(1)(f)
  - Essentially unchanged
- Private information exemption 7(1)(b)
  - Narrow category of “private information” exempt from disclosure, such as social security numbers, drivers license numbers, employee identification numbers, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers and personal email addresses. This list also includes home addresses and personal license plate numbers, except as otherwise provided by law.
- Personal privacy exemption 7(1)(c)
  - Exempt if disclosure would constitute “a clearly unwarranted invasion of personal privacy,” which means that disclosure of the information would be “highly personal or objectionable to a reasonable person and in which the subject’s right to privacy outweighs any legitimate public interest in obtaining the information.”

# FOIA: Exemptions



- Bid documents exempt until an award or final selection is made. 7(1)(h)
- Plans – architects, engineering, technical clients. 7(1)(k)
- Closed session meeting minutes 7(1)(l)

# FOIA: Other Issues



- Personnel files
  - *Stern v. Wheaton-Warrenville Community Unit School District 200*, 233 Ill. 2d 396 (2009)
- Settlement agreements

# FOIA : Denial Procedure - 1



- Written notice of denial stating the specific exemption claimed with detailed facts showing basis for the claimed exemption.
- Notice to state names and positions of persons responsible for denial.
- Notice to inform person of right to review by the PAC, provide the address and phone number of the Public Access Counselor, and advise of right to judicial review.

# FOIA : Denial Procedure - 2



- If denial of record is based upon “unwarranted invasion of privacy” or “preliminary draft/recommendation” exemption, Public Body must notify the PAC of its “intent to deny.”
- PAC will advise if further inquiry necessary within 5 working days.
- PAC may then commence review by requesting the documents from the Public Body. To be delivered in 7 days.
- PAC to issue binding opinion within 60 days.

# FOIA: Penalties for Violations



- A public body that is late in providing requested documents or an exemption notification waives its ability to later assert that the request is unduly burdensome or to charge for copying costs.
- Courts may impose civil penalties between \$2,500.00 and \$5,000.00 against public bodies that willfully and intentionally fail to comply with the Act or otherwise act in bad faith.
- The court “shall” award attorney’s fees to requesters who prevail in a FOIA claim brought forth in circuit court.

# Designated FOIA Officers



- A Public Body must designate one or more officials or employees to act as Freedom of Information Officer(s).
- Freedom of Information Officers must successfully complete an annual FOIA electronic training course prepared by the PAC.
- By June 30, 2010 all designated OMA employees, officers or members, and Officers must successfully complete training courses, and they must annually complete a refresher course thereafter.
- New Freedom of Information Officers, who are designated after January 1, 2010, must complete the training course within thirty (30) days after assuming the position.
- Update policies. FOIA manual.

# STEPS TO TAKE



**DESIGNATING EMPLOYEES  
TRAINING  
UPDATE POLICIES  
FOIA MANUAL  
ADDITIONAL INFORMATION**

# Where to Get More Information



- Web site of Illinois Attorney General:  
[www.ag.state.il.us/](http://www.ag.state.il.us/)
- The Acts, which can be found on the web site of the Illinois legislature: [www.ilga.gov/](http://www.ilga.gov/)

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