

# MUNICIPAL SUNSHINE LAW REVISIONS FOR 2010

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## INTRODUCTION

This document has been prepared by IML staff to assist you with understanding the changes made to the state's Sunshine Laws in 2009, which became effective on January 1, 2010.

The amendments to the Open Meetings Act (OMA) substantive language were fewer, with the exception of the Public Access Counselor role, which is expansive. The changes to the Freedom of Information Act (FOIA), however, are expansive as is the role of the Public Access Counselor (PAC). The new supervisory role and enforcement provisions granted to the Attorney General's office through the appointment of a Public Access Counselor is truly something that each public body and local official must review and comprehend. IML is hopeful this document will assist everyone and as always, staff is available to help you. Your municipal attorney will be a valued advisor to help you in responding to these new changes.

We should note that the IML was heavily engaged in the process by which the Attorney General advanced these changes through the legislative process and many concerns that exist were pointed out by the IML as substantial problems and concerns. Those suggestions to make the Act more user friendly for citizens and officials were mostly ignored and this highly legalized version was approved. We are all confronted now with doing our best. The Attorney General's website will be an important area for updates and further information ([www.illinoisattorneygeneral.gov/](http://www.illinoisattorneygeneral.gov/)). In addition, IML will continue to provide updated information at our website, [www.iml.org](http://www.iml.org).

## OPEN MEETINGS ACT

Public Act 96-542 made some changes to the Open Meetings Act (OMA). For the most part, the underlying procedures for the conduct of meetings remains unchanged. The new changes concern training for municipal personnel and the review of alleged violations.

### A. TRAINING REQUIREMENTS

**1. DESIGNATION OF PERSONNEL:** Each municipality must designate employees, officers or members to receive training on compliance with OMA. The municipality must submit a list of those designated trainees to the Public Access Counselor and update that list as needed.<sup>1</sup>

**2. TRAINING CURRICULUM:** Each person designated by the municipality must complete a training curriculum developed by the Attorney General's Office by July 1, 2010 and annually thereafter.<sup>2</sup> The Attorney General's Office will provide the training curriculum in an electronic format,<sup>3</sup> and it must provide the training free of charge.<sup>4</sup>

### B. REVIEW BY PUBLIC ACCESS COUNSELOR

The changes to OMA by P.A. 96-542 add a procedure by which the Public Access Counselor may review alleged violations of the Act. This new procedure is an additional option to the Act's current judicial review procedures through a civil action brought by an individual or the State's Attorney.

**1. COMPLAINT PROCEDURES:** If a person believes an OMA violation has occurred, then he or she may request a review by the Public Access Counselor. The request must be in writing, signed by the requester, and contain a summary of the facts supporting the allegation. This must be done within 60 days after the alleged violation.<sup>5</sup>

**2. INVESTIGATION BY PUBLIC ACCESS COUNSELOR:** Upon receiving a review request, the PAC will review the allegation. If it is determined that the allegation is unfounded, then the PAC notifies the requester and municipality and takes no further action.

If, however, the PAC proceeds with review, then, within 7 working days, the PAC notifies the municipality and specifies the records or documents that the municipality must furnish in order to facilitate the review of the alleged violation. Those records are confidential and exempt under FOIA.

The municipality has 7 working days to provide the records, and it must cooperate with the PAC investigation, and the Attorney General may issue subpoenas for documents. Of particular note is the fact that this procedure gives the PAC the authority to examine the verbatim recording of a closed meeting.

The municipality may, at its discretion, supply an additional answer to the allegation. This answer must be made within the same 7-day period if it chooses to supply a brief or memorandum on the request. That additional answer, if furnished, will be forwarded to the requester in a redacted format. The requester may then respond to that information within 7 working days. After receiving the required records and any additional answers or responses, the PAC reviews the information.<sup>6</sup>

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**3. OPINIONS BY THE PUBLIC ACCESS COUNSELOR:** After conducting its review, the PAC must make and issue findings of fact and conclusions of law, which are binding upon both the requester and public body. The PAC must issue this binding opinion within 60 days after initiating review. The PAC may extend this 60-day period by 21 business days.<sup>7</sup>

Rather than go through the binding-opinion process, the Attorney General may decide to resolve the issue through mediation or other means. This decision is not reviewable by either party. The statute does not set forth any procedures or requirements for this alternative process.<sup>8</sup>

**4. ENFORCEMENT:** The municipality must comply with the binding opinions of the Public Access Counselor, and the Attorney General may file a civil action to compel compliance with that order.<sup>9</sup>

**5. ADMINISTRATIVE REVIEW:** Either party may file for administrative review of the Public Access Counselor's binding opinion under the Administrative Review Law.<sup>10</sup> Any action for administrative review may only be commenced in Cook or Sangamon County.

**6. ABANDONMENT OF PUBLIC ACCESS COUNSELOR'S REVIEW:** At any time during the PAC review process, the requester has the option to file a civil action in the circuit court. If this happens, then the requester must notify the PAC, which will then suspend review and tell the municipality.

**7. ADVISORY OPINIONS:** The municipality may ask the Public Access Counselor to issue an advisory opinion concerning OMA compliance. To ask for an advisory opinion, the head of the public body or its attorney must send a written request to the Public Access Counselor. The request must set forth sufficient facts for the Public Access Counselor to make a determination, and the Public Access Counselor may request additional information.

Unfortunately, while the municipality has a right to request an opinion, the Public Access Counselor is not legally required to respond.<sup>11</sup>

If the municipality relies on this advisory opinion in good faith, then it is relieved from any penalty under the Act.<sup>12</sup>

## THE FREEDOM OF INFORMATION ACT

Most of the changes from Public Act 96-542 occurred in FOIA. That legislation made sweeping changes to the Act and fundamentally rewrote many of the procedures that municipalities must follow. Local officials should be aware of the changing obligations that your municipality faces under FOIA.

### A. GENERAL ADMINISTRATIVE FOIA TASKS

There are certain things that a municipality must do in order to get ready to receive records requests under the new law. These tasks include appointing FOIA officers, completing required training and posting required information.

**1. APPOINT FOIA OFFICERS:** Each public body is required to designate one or more officials or employees to act as a "FOIA officer." The FOIA officer is basically the quarterback for the municipality's FOIA program. The duties of a FOIA officer are to receive requests that are submitted to the municipality, to ensure that the municipality responds in a timely manner, and to issue the necessary responses.<sup>13</sup>

Your municipality will want to ensure that it has a sufficient number of FOIA officers. FOIA's definition of a "public body" includes not only the municipality itself—it also includes all subsidiary bodies of the municipality, such as committees, boards and departments.<sup>14</sup> You will need to review the organizational chart of your municipality and determine how many FOIA officers you will need. Make sure to include back-up personnel for those instances where the FOIA officer is on vacation or otherwise not in the office.

**2. TRAINING REQUIREMENTS:** Each FOIA officer must successfully complete a training curriculum developed by the Attorney General's Office. An initial training curriculum must be completed by July 1, 2010.<sup>15</sup> If a new FOIA officer is appointed after that date, then he or she must complete the initial training within 30 days after assuming the position. After the initial training, a FOIA officer must complete annual training.<sup>16</sup>

The Attorney General's Office will provide the training curriculum in an electronic format,<sup>17</sup> and it must provide the training free of charge.<sup>18</sup>

**3. POSTING INFORMATION:** FOIA requires you to post certain information about your municipality and about your FOIA procedures. This information includes:

- A summary of purpose of the municipality;

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- A block diagram giving the municipality's functional subdivisions;
- The total amount of the municipality's operating budget;
- The number and location of all of the municipality's separate offices;
- The approximate number of all full-time and part-time employees;
- The identification and membership of any municipal board, commission, committee or council;
- A description of the methods by which the public may request information and public records;
- A directory of the municipal FOIA officers; and
- Any fees for records under FOIA.<sup>19</sup>

This information must be prominently displayed at each administrative or regional office of the municipality. You must also make this information available for inspection and copying, and, if so requested, you must mail this information to a requester. If your municipality maintains a website, then you must also post this information on that website.<sup>20</sup>

## B. REQUEST INTAKE PROCEDURES

The fundamental purpose of FOIA is the disclosure of public records. FOIA requires that each public body must make all public records available for inspection and copying unless those records are exempt under the statute. The new changes to FOIA have altered the procedures for handling records requests.

**1. FORM OF REQUEST:** Records requests must be made in writing and be directed to the public body.<sup>21</sup> Unfortunately, the statute does not require that the request be directed to a FOIA officer—it only requires that it be directed to the public body. Consequently, you will want to ensure that you have a process in place by which a records request will find its way to the relevant FOIA officer.

The written request may be submitted to the public body in person, by mail, by telefax, or by any other delivery method that is available to the public body. The municipality may have a suggested form to use for records requests, but it may not require that a standard form be used.<sup>22</sup>

While it is not a requirement, the statute allows the municipality to honor oral requests if it so desires.<sup>23</sup> There are several reasons why this practice is ill-advised. First, it is difficult to reconcile an oral request with the filing

requirements for requests and the FOIA officer's duties, which are discussed next. Also, the lack of a written record could be an issue if there are legal challenges later on.

**2. FOIA OFFICER DUTIES:** The FOIA statute sets out very specific requirements that a FOIA officer must follow when he or she receives a records request. The FOIA officer must do all of the following:

- note the date upon which the municipality received the written request;
- compute the day on which the period for response will expire and note that date on the written request;
- maintain an electronic or paper copy of a written request—along with all documents submitted with the request—until the records have been disclosed or the request has been denied; and
- create a file for the retention of the original request, a copy of the response, a record of written communications with the requester; and a copy of other communications.<sup>24</sup>

You will notice that these procedural requirements all concern written requests and the file created when the FOIA officer answers. As we previously noted, these procedural requirements will be difficult to reconcile with oral requests and any subsequent review of the municipality's handling of the requests.

**3. LIMITATION ON FOLLOW-UP:** The municipality may not ask why the requester wants the information. Other than determining whether a request is made for a commercial purpose or whether a fee waiver is appropriate, a public body may not require the requester to specify the purpose for a request.<sup>25</sup> This potentially poses a problem when it comes to trying to clarify an ambiguous request or to narrow down an overly burdensome request. But be aware that this limitation exists.

## C. EVALUATING RECORDS REQUESTS

Once a records request is received and properly logged, the next step is to examine the request and determine the next procedures with respect to that request.

**1. TIME LIMITS FOR RESPONSE:** The changes to FOIA have decreased the amount of time in which the municipality has to respond to a records request. That time limit has changed from 7 working days to 5 business days.<sup>26</sup>

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The municipality may extend the 5-day time period for an additional 5 business days from the original due date if the municipality can demonstrate that certain conditions exist, such as a large amount of records or the need for extensive review.<sup>27</sup> In order to use this time extension, the municipality must, within the original 5 business days, notify the requester of the reasons for the extension and of the new due date.<sup>28</sup> The failure to respond within the time limits constitutes a denial of the records request, and the requester can file for a review of that denial by the Public Access Counselor or the circuit court.<sup>29</sup>

A special time limit appears to exist for arrest reports and criminal-history information. Notwithstanding the time limits otherwise provided, the municipality must furnish the following chronologically maintained arrest and criminal history information as soon as practical—but in no event later than 72 hours after the arrest:

- information that identifies the individual, including the name, age, address and photograph, when and if available;
- information detailing any charges relating to the arrest;
- the time and location of the arrest;
- the name of the investigating or arresting law enforcement agency;
- if the individual is incarcerated, the amount of any bail or bond; and
- if the individual is incarcerated, the time and date that the individual was received into, discharged from, or transferred from the arresting agency's custody.<sup>30</sup>

If a categorical request is particularly onerous, then the municipality may declare it to be unduly burdensome if: (i) there is no way to narrow the request; and (ii) the burden on the municipality outweighs the public interest in the information. Before denying a request as being unduly burdensome, the municipality must give the requester an opportunity to negotiate with the municipality to reduce the request to manageable terms. Repeated requests from the same person for the same records that are unchanged or identical to records that were previously provided or that were properly denied are deemed to be unduly burdensome.<sup>31</sup>

The municipality and the requester may agree to extend the time limits for response. This agreement must be in writing. If the parties reach an agreement to extend the time, then any failure by the municipality to comply with any previous deadlines is not treated as a denial under FOIA.<sup>32</sup>

If the municipality fails to respond to a records request within the 5-day period (or 10-day period with an extension), then it may not charge for reproduction costs at a later date, and it may not treat the request as being unduly burdensome.<sup>33</sup>

**2. IS THE DOCUMENT A PUBLIC RECORD?** Under FOIA, a municipality must disclose public records. Therefore, the obvious first step in any analysis is to determine whether the requested records are, in fact, “public records.” Under FOIA, there are three parts to a public record—a public record: (i) is a documentary material; (ii) that pertains to the transaction of public business; (iii) that is prepared by or for, or has been or is being used by, received by, in the possession of, or under the control of the municipality.<sup>34</sup> If a record does not meet all three of those requirements, then it is not a public record.

The term “documentary materials” is extensive and includes all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials.<sup>35</sup>

One of the recent changes to the definition is the requirement that, to be a public record, a record must pertain to the transaction of public business. One interpretation of this is that a government employee's private e-mail is not a public record just because it is sent over a government computer. This interpretation has been advanced by representatives of the Attorney General's Office. But a word of caution is in order. While this is a reasonable, common-sense interpretation, there is no legal citation for it in the statute or in the case law. Consequently, a court may end up deciding this issue.

The last element of a “public record” is that the record is prepared by or for, or has been or is being used by, received by, in the possession of, or under the control of the municipality. A careful reading of this suggests that a record may be a public record even if it is not in the possession of the municipality. There is a provision under FOIA concerning records in the possession of third-party contractors. A record that is not in the possession of a public body but is in the possession of a third party that has contracted with the public body to perform a governmental function is considered to be a “public record” that, unless otherwise exempt, is subject to disclosure.<sup>36</sup>

The FOIA statute lists a number of records that it specifically identifies as being a “public record.” These include:

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- **Records of public funds:** Records relating to the obligation, receipt and use of public funds are public records.<sup>37</sup>
- **Prevailing Wage payroll records:** Certified payroll records that are submitted to the municipality under the Prevailing Wage Act are public records, but employees' private information may be redacted.<sup>38</sup>
- **Arrest information:** As previously mentioned, arrest and criminal history information is a public record and must be disclosed no later than 72 hours after an arrest is made. Certain information may be redacted if it would interfere with a law-enforcement proceeding or endanger safety.<sup>39</sup>
- **Criminal history information:** Court records, criminal history records available under state or local law, and records in which the requester is the individual identified in the record are public records. This does not, however, include juvenile arrest records.<sup>40</sup>
- **Settlement agreements:** All settlement agreements entered into or on behalf of any public body are public records.<sup>41</sup>

**3. EXEMPTIONS:** The Section concerning exemptions was dramatically restructured, reworded and "reformed." Those exemptions that are specifically enumerated in other statutory provisions were moved to a new Section 7.5. Many of the remaining exemptions were moved around, combined or deleted.<sup>42</sup> A careful analysis should be performed if the municipality is going to deny a records request based upon an exemption because the burden of proof is on the municipality to demonstrate, by clear and convincing evidence, that the requested information is exempt.

One of the biggest changes to the exemptions is the requirement that certain exemptions require a notice of the municipality's intent to deny the request and an automatic review by the Public Access Counselor. If a municipality intends to deny a request based on the exemption for the unwarranted invasion of personal privacy or for the draft-document exemptions, it must first send an intent to deny to the requester and it must also send a copy to the PAC. The notice must contain (i) a copy of the request, (ii) a copy of the municipality's proposed response, (iii) a detailed summary of the municipality's assertion of the exemption. The PAC will review the notice of the intent to deny the request and has 5 working days to determine whether the denial is an appropriate response by the municipality or whether further inquiry is necessary. If further inquiry is necessary, then the PAC proceeds under the procedures for the review of a denial of a records request.<sup>43</sup>

**4. COMMERCIAL PURPOSES:** Special procedures apply for commercial requests. When faced with a records request, the municipality may ask the requester to disclose whether the request is being made for a commercial purpose. It is illegal for the requester to obtain a record for a commercial purpose without making this disclosure if asked to do so.

If the request is for a commercial purpose, then the municipality has 21 business days to provide an initial response. That initial response may consist of:

- providing the records;
- provide the requester with an estimate as to when the records will be available and what the estimated costs will be;
- denying the record under an exemption; or
- notifying the requester that the request is unduly burdensome.

The municipality must comply with a commercial request within a reasonable time period considering the size and complexity of the request.<sup>44</sup>

A commercial request is a request in which the requester seeks to use all or part of the record for the sale, resale, or solicitation or advertisement for services. Requests made by news media, not-for-profit organizations, scientific organizations, or academic organizations are not commercial requests if they are made for the purposes of journalism, research or similar purposes.<sup>45</sup>

**5. ADVISORY OPINIONS:** The municipality may ask the Public Access Counselor to issue an advisory opinion concerning FOIA compliance. To ask for an advisory opinion, the head of the public body or its attorney must send a written request to the Public Access Counselor. The request must set forth sufficient facts for the Public Access Counselor to make a determination, and the Public Access Counselor may request additional information.

Unfortunately, while the municipality has a right to request an opinion, the Public Access Counselor is not legally required to respond.<sup>46</sup>

Another potential pitfall concerning advisory opinions is the issue of time limits for response. It is highly doubtful that the Public Access Counselor would issue an advisory opinion within the 5-day time limit for responding to FOIA requests.<sup>47</sup> At one point, a representative of the Attorney General's Office stated in a forum that it was "implied" in the statute that the time limits for FOIA responses were tolled pending an advisory opinion. But at this point, there is no authority in statute or binding opinion on that position.

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## D. PROVIDING RECORDS

The statute sets out certain requirements for providing records.

**1. FORMAT OF RECORDS:** A records request may specify that the records be provided in an electronic format. The municipality must provide records in the requested format, if that format is feasible for the municipality. If the requested format is not feasible, then, at the requester's option, the municipality must provide the records in the electronic format in which they are kept or in paper form.<sup>48</sup>

**2. FEES:** The FOIA statute now sets out a specific schedule for copying fees. For black and white, letter or legal sized copies, the first 50 pages are free, and the charges for additional pages may not exceed 15 cents per page. For color or abnormal sized copies, the municipality may charge the actual cost of copying. Charges for electronic copies are limited to the actual cost of the recording medium (tape, CD, disk, etc.).<sup>49</sup> The municipality may not charge more than \$1 for certifying a record.<sup>50</sup>

## E. DENYING RECORDS REQUESTS

FOIA sets forth specific procedures for denying a records request.

**1. PRESUMPTION AGAINST DENIAL:** A municipality that denies a records request has the burden of proof that the exemption used meets a clear and convincing evidentiary standard.<sup>51</sup> The changes under Public Act 96-542 create a presumption that all records are open, and a municipality that denies a request must bear the burden of proof that the record should not be disclosed.<sup>52</sup>

**2. REDACTION:** If a record contains both exempt and non-exempt information, then the municipality must redact the exempt information and provide the non-exempt information.<sup>53</sup> It is important to remember that a redaction is a denial under FOIA, and the procedures for denial must be followed when you make a redaction.

**3. PROCEDURES FOR DENIAL:** The FOIA statute sets out specific procedures for when the municipality denies a records request. When denying a request, the municipality must notify the requester in writing. The denial notice must contain:

- the reasons for the denial, including a detailed factual basis for any exemption claimed;
- a citation to supporting legal authority for any exemption claimed;

- a notice that the requester has a right to a review of the denial by the Public Access Counselor, including contact information of the Public Access Counselor; and
- a notice that the requester has a right to judicial review under the Act.<sup>54</sup>

## F. POST-DENIAL REVIEW

If the municipality denies a records request, then the requester may seek review of that denial either through the Public Access Counselor or through the court. Under prior versions of FOIA, any denial had to be appealed to the head of the public body before a suit could be filed. That requirement has been eliminated under P.A. 96-542. Now, a review proceeds directly to the PAC or to the courts without a review by the municipality if the requester chooses to proceed.

## G. REVIEW BY PUBLIC ACCESS COUNSELOR

The changes to FOIA by P.A. 96-542 add a procedure by which the Public Access Counselor may review alleged violations of the Act. This new procedure is an additional option to the Act's current judicial review procedures.

**1. COMPLAINT PROCEDURES:** If a person believes a violation of FOIA has occurred, then he or she may request a review by the Public Access Counselor. The request must be in writing, signed by the requester, and contain a copy of the request and any response by the municipality. This must be done within 60 days after the date of the denial.<sup>55</sup>

**2. INVESTIGATION BY PUBLIC ACCESS COUNSELOR:** Upon receiving a review request, the PAC will review the allegation. If it is determined that the allegation is unfounded, then the PAC notifies the requester and municipality and takes no further action.

If, however, the PAC proceeds with review, then, within 7 working days, the PAC notifies the municipality and specifies the records or documents that the municipality must furnish in order to facilitate the review of the denial.<sup>56</sup>

The municipality has 7 working days to provide the records, and it must cooperate with the PAC investigation. The Attorney General may issue subpoenas for the records.

The municipality may, at its discretion, supply an additional answer to the allegation. This answer must be made within the same 7-day period if it chooses to supply a brief or memorandum on the request. The requester may then respond to that information within 7 working days. After

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receiving the required records and any additional answers or responses, the PAC reviews the information.<sup>57</sup>

To the extent the public body claims an exemption from disclosure for the submitted records, the PAC may not disclose those records.<sup>58</sup>

**3. OPINIONS BY THE PUBLIC ACCESS COUNSELOR:** After conducting its review, the PAC must make and issue findings of fact and conclusions of law, which are binding upon both the requester and public body. The PAC must issue this binding opinion within 60 days after initiating review. The PAC may extend this 60-day period by 21 business days.<sup>59</sup>

Rather than go through the binding-opinion process, the Attorney General may decide to resolve the issue through mediation or other means. This decision is not reviewable by either party. The statute does not set forth any procedures or requirements for this alternative process.<sup>60</sup>

A municipality that discloses records in accordance with an Attorney General opinion is immune from all liabilities by reason thereof and is not liable for penalties under this Act.<sup>61</sup>

**4. ENFORCEMENT:** The municipality must comply with the binding opinions of the Public Access Counselor, and the Attorney General may file a civil action to compel compliance with that order.<sup>62</sup>

**5. ADMINISTRATIVE REVIEW:** Either party may file for administrative review of the Public Access Counselor's binding opinion under the Administrative Review Law. Any action for administrative review may only be commenced in Cook or Sangamon County.<sup>63</sup>

**6. ABANDONMENT OF PUBLIC ACCESS COUNSELOR'S REVIEW:** At any time during the PAC review process, the requester has the option to file a civil action in the circuit court. If this happens, then the requester must notify the PAC, which will then suspend review and tell the municipality.<sup>64</sup>

## H. PENALTIES

Public Act 96-542 imposes a number of penalties for municipalities who fail to provide records under FOIA.

**1. ATTORNEY FEES:** If a person brings an action in court over the denial of a records request and prevails in court, then the court is required to award that person attorneys' fees and costs. Under prior versions of FOIA, the court had discretion as to whether to award the fees. The fee award is proportionate to the degree by which the requester prevailed in court.<sup>65</sup>

**2. FINES:** If a court determines that the municipality willfully and intentionally failed to comply with FOIA or acted in bad faith, then the court must impose a civil penalty on the municipality of not less than \$2,500 and not more than \$5,000 for each occurrence.<sup>66</sup>

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## THE ATTORNEY GENERAL'S STATUTE

Public Act 96-542 made a number of changes to the Attorney General Act concerning the powers and duties of that office related to its activities under OMA and FOIA.

**1. OPINIONS:** The Attorney General has the authority to give binding opinions and advisory opinions concerning OMA and FOIA.<sup>67</sup> The Attorney General is required to post binding opinions and rules for FOIA and OMA on their official website.<sup>68</sup>

**2. PUBLIC ACCESS COUNSELOR:** Authority is bestowed on the Attorney General to appoint a Public Access Counselor who has the power to:

- provide free training for public officials and educate the public on the responsibilities of public bodies under FOIA and OMA;
- prepare interpretative materials;
- resolve disputes about FOIA and OMA through mediation, information resolution or binding opinions;
- give advisory opinions with respect to FOIA or OMA;
- respond to informal inquiries of the public or public bodies;
- conduct research;
- make recommendations to improve public records and public access;
- to develop and make available electronic training for FOIA and OMA;
- to develop and distribute model policies to public bodies for compliance with FOIA;
- to promulgate rules.<sup>69</sup>

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**3. SUBPOENA POWER AND INJUNCTIVE RELIEF:** The PAC, through the Attorney General, has the power to issue subpoenas and enforce those through the circuit court.<sup>70</sup>

The Attorney General also has the authority to file an action in Cook or Sangamon County for injunctive or other relief to compel compliance with binding opinions and to prevent a violation of OMA or FOIA.<sup>71</sup>

## RESOURCES:

IML website: [www.iml.org](http://www.iml.org)

Attorney General website: [www.ag.state.il.us](http://www.ag.state.il.us)

<sup>1</sup> 5 ILCS 120/1.05.

<sup>2</sup> *Id.*, which states that the training must be received within 6 months after the effective date of P.A. 96-542. The effective date of that Act is January 1, 2010.

<sup>3</sup> *Id.*

<sup>4</sup> 15 ILCS 205/7.

<sup>5</sup> 5 ILCS 120/3.5.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* Note that the original 60-day period is not limited to business days.

<sup>8</sup> *Id.* Note that the decision to mediate rests with the Attorney General—not with the Public Access Counselor.

<sup>9</sup> 15 ILCS 205/7.

<sup>10</sup> 5 ILCS 120/7.5. The Administrative Review Law is located at 735 ILCS 5/Art. III).

<sup>11</sup> 5 ILCS 120/3.5.

<sup>12</sup> *Id.*

<sup>13</sup> 5 ILCS 140/3.5

<sup>14</sup> *See* 5 ILCS 140/2.

<sup>15</sup> 5 ILCS 140/3.5, which states that the training must be received within 6 months after the effective date of P.A. 96-542. The effective date of that Act is January 1, 2010.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 15 ILCS 205/7.

<sup>19</sup> 5 ILCS 140/4.

<sup>20</sup> *Id.*

<sup>21</sup> 5 ILCS 140/3.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> 5 ILCS 140/3.5.

<sup>25</sup> *Id.*

<sup>26</sup> 5 ILCS 140/3. There is nothing under Illinois statute that distinguishes “working days” from “business days.” Under Illinois statutes, time limits are computed by excluding the first day and including the last day—unless the last day is Saturday, Sunday or a statutory holiday, in which case the last day is also excluded. If the day following the Saturday, Sunday or a holiday is also a Saturday, Sunday or holiday, then that following day is also excluded. 5 ILCS 70/1.11.

<sup>27</sup> 5 ILCS 140/3.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> 5 ILCS 140/2.15.

<sup>31</sup> 5 ILCS 140/3.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> 5 ILCS 140/2.

<sup>35</sup> *Id.*

<sup>36</sup> 5 ILCS 140/7. For some unexplained reason, this provision was hidden in the Section of the statute concerning exemptions despite the fact that it does not concern exemptions.

<sup>37</sup> 5 ILCS 140/2.5.

<sup>38</sup> 5 ILCS 140/2.10.

<sup>38</sup> 5 ILCS 140/2.15.

<sup>40</sup> *Id.*

<sup>41</sup> 5 ILCS 140/2.20.

<sup>42</sup> *See generally*, 5 ILCS 140/7; 5 ILCS 140/7.5.

<sup>43</sup> 5 ILCS 140/9.5.

<sup>44</sup> 5 ILCS 140/3.1.

<sup>45</sup> 5 ILCS 140/2.

<sup>46</sup> 5 ILCS 140/9.5.

<sup>47</sup> From January 1, 2009 through November 25, 2009, the Attorney General’s Office has published only two Official Opinions.

<sup>48</sup> 5 ILCS 140/6.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> 5 ILCS 140/9.

<sup>52</sup> 5 ILCS 140/2.

<sup>53</sup> 5 ILCS 140/7.

<sup>54</sup> 5 ILCS 140/9.

<sup>55</sup> 5 ILCS 140/9.5.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> 15 ILCS 205/7.

<sup>63</sup> 5 ILCS 140/11.5.

<sup>64</sup> 5 ILCS 140/9.5.

<sup>65</sup> 5 ILCS 140/11.

<sup>66</sup> *Id.*

<sup>67</sup> 15 ILCS 205/4.

<sup>68</sup> 15 ILCS 205/7.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*



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