

Illinois Freedom of Information Act
Frequently Asked Questions
By the Public

The Illinois Freedom of Information Act (FOIA) is designed to ensure that Illinois residents can obtain information about their government. In 2009, Attorney General Lisa Madigan worked with legislators and a diverse group of individuals and organizations to strengthen FOIA and hold government more accountable. On January 1, 2010, key changes to the Freedom of Information Act took effect to provide Illinois residents with a more open and accountable government. These Frequently Asked Questions describe the FOIA provisions that are currently in effect.

WHO'S WHO UNDER FOIA

Public Access Counselor (PAC) – is an attorney in the Attorney General’s office whose responsibility is to ensure compliance with FOIA. The Public Access Counselor is part of the Public Access Bureau in the Attorney General’s office, which includes several Assistant Attorneys General and professional support staff members working to respond to FOIA and Open Meetings Act issues raised by the public and government officials. Working under the direction and supervision of the Attorney General, the PAC has the authority to review requests for documents under FOIA and determine whether those documents should have been disclosed under FOIA. The PAC also has the authority to determine whether a public body has violated the Open Meetings Act. As part of this public access work, the Attorney General may issue binding opinions in FOIA disputes, may sue to enforce binding opinions, and may issue advisory opinions to guide public bodies. The Public Access Counselor also creates the electronic training that all FOIA officers are required to complete annually.

Public Body – is defined in FOIA as “all 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 including but not limited to committees and subcommittees thereof and a School Finance Authority created under Article 1E of the School Code.” FOIA provides that a “[p]ublic body’ does not include a child death review team or the Illinois Child Death Review Teams Executive Council established under the Child Death Review Team Act, or a regional youth advisory board or the Statewide Youth Advisory Board established under the Department of Children and Family Services Statewide Youth Advisory Board Act.” The Illinois courts have determined that the definition of “public body” under FOIA does not include the offices of the judicial branch of the state, including the Illinois circuit, appellate, and supreme courts, judges, and the circuit clerk’s offices.

FOIA Officer – is a person appointed by the “public body.” The FOIA officer’s responsibility is to receive FOIA requests from the public and to send responses in compliance with FOIA. FOIA requires that each public body appoint one or more FOIA officers who must complete an electronic training developed by the Attorney General’s PAC. Training must be completed annually. The Attorney General’s office has made the electronic training available to all FOIA officers.

Public Records – are defined in FOIA as “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 pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.” A few examples of public records available under FOIA are: orders; rules; reports or studies; contracts; and roster and salaries of public employees. Information can be available in electronic as well as paper format.

GENERAL INFORMATION

What is FOIA?

The Freedom of Information Act (FOIA) is a state statute that provides the public the right to access government documents and records. The premise behind FOIA is that the public has a right to know what the government is doing. The law provides that a person can request a copy of a public body’s records on a specific subject, and the public body must provide those records, unless there is an exemption in the statute that protects those records from disclosure.

Who is subject to FOIA?

Public bodies are subject to FOIA. The judicial branch is not subject to FOIA, but court records and proceedings generally are open to the public under other Illinois laws.

Who can submit a FOIA request?

Anyone. Any person, group, association, corporation, firm, partnership or organization has the right to file a FOIA request to any state or local public body.

HOW TO SUBMIT A FOIA REQUEST

I need information from a public body but I am not quite sure where to start or what to request. What can I do?

If you would like to obtain information from a public body, you should begin by writing down a list of the information you are seeking. Then prepare a letter or email to that public body’s office. If you are not sure to whom to address your correspondence, contact the public body’s main office and request the contact information for the FOIA officer.

It is helpful if your correspondence includes your contact information so that the public body can contact you if it has any questions. Be sure to describe the information you are

seeking with sufficient detail so that the public body can find the requested records. Providing as much information as possible in your request on the subject matter may expedite the public body's search process.

Public bodies cannot require that the public submit FOIA requests on a specific form or in a specific format. Public bodies, however, can require that FOIA requests be submitted in writing. Public bodies must accept requests by mail, personal delivery, fax, email, or other means available to the public body. Public bodies may accept oral FOIA requests but are not required to do so.

Additionally, each public body must develop and make available upon request a list of documents that the public body will immediately provide to a requester. Each public body also must maintain a reasonably current list of all types or categories of records under its control, and the list should be reasonably detailed in order to aid persons in obtaining access to public records. This list must be available for inspection and copying.

What should I include in the FOIA request?

On your written request, include the date and your contact information so that the public body can contact you with any questions. Provide as much information as possible on the subject matter, as this will help expedite the search process.

Can a public body require that a FOIA request must be submitted on a certain form or in a certain format?

No. While public bodies may offer a form or website portal for FOIA requests, they cannot reject your request if you do not use a specific method. Public bodies may accept oral FOIA requests but are not required to do so. Public bodies can require that FOIA requests be submitted in writing, but they must accept requests by mail, personal delivery, fax, email, or other means available.

To whom do I submit a FOIA request?

FOIA requests should be submitted to the public body's designated FOIA officer. Every public body must prominently display at its office and make available certain information on its website, including the name(s) of its FOIA officer(s). In addition, the public body must display and make available:

- Information on how to submit a FOIA; and
- A brief description of the office, including its purpose, budget, and number of employees.

Is electronic information considered to be a public record?

Yes. FOIA defines public records to include electronic documents, records, and communications. When a person requests an electronic copy of a record that is maintained in an electronic format, the public body must provide it in the electronic format specified in the request, if that is feasible. If it is not feasible, the public body must present the information in the format in which it is maintained or in a paper format at the option of the requester. The public body typically is limited to charging a fee for the actual cost of purchasing the recording medium, such as a CD or flash drive, but may also impose a fee based on the number of megabytes of responsive records if a request

qualifies as a "voluminous request" under the definition of that term in FOIA. A public body cannot charge a fee for its search for or review of the information, except in rare circumstances only applicable to commercial requests.

What if I don't use the same name for a document that the public body uses? Can the public body deny my request for that reason?

No, the public body cannot deny the request just because you called the document by a different name. You do not need to describe the document specifically and accurately by the same name the public body uses. As long as the public body understands what you are requesting, it must release that information unless an exemption in FOIA is applicable, even if you do not call it by the same name the public body uses.

How many days does the public body have to respond to my FOIA request?

A public body must respond to a FOIA request within 5 business days *after* the public body receives the request. Day 1 of the 5-day timeline is the first business day *after* the request is received by the public body, not the date that the request was received. The public body may extend that time period for an additional 5 business days from the date of the original due date if:

- The requested information is stored at a different location;
- The request requires the collection of a substantial number of documents;
- The request requires an extensive search;
- The requested records have not been located and require additional effort to find;
- The requested records need to be reviewed by staff who can determine whether they are exempt from FOIA;
- The requested records cannot be produced without unduly burdening the public body or interfering with its operations; or
- The request requires the public body to consult with another public body who has substantial interest in the subject matter of the request.

If additional time is needed, the public body must notify the requester in writing within 5 *business days* after the receipt of the request of the statutory reasons for the extension and when the requested information will be furnished.

In the relatively rare circumstances in which a request meets the definitions in FOIA of a "voluminous request" or a request submitted by a "recurrent requester," public bodies must provide an initial response within 5 business days after the receipt of the request to notify the requester of that designation and provide certain other information, but extended periods for substantively responding to the request are applicable.

When does the 5 business day time period start?

Day 1 is the first business day *after* the public body *receives* the request.

What is a "business day" or "working day"?

A "business day" or "working day" is a regular day of the week (Monday through Friday) when public offices and most businesses are open. Saturdays, Sundays and state holidays are not business days and cannot be counted in the 5 business day time period.

What is the incentive for a public body to respond to my request within 5 business days (or 10 business days if extended)?

Aside from the potential that a court ultimately could impose a civil penalty of between \$2,500 and \$5,000 per violation, public bodies have an additional incentive to respond within the time limits set forth in the statute: In the event a public body fails to respond within 5 business days, it cannot charge a fee for the copies provided at a later time or treat the request as unduly burdensome; this does not apply to voluminous requests or requests by recurrent requesters.

Can I enter into an agreement with the public body to extend the deadline to respond?

Yes, but the agreement must be in writing. The agreement will also relieve the public body of having to comply with other legal deadlines in FOIA.

Can the public body ask me why I want the information?

No, except to determine if the request is for commercial reasons or if the requester seeks a fee waiver. *See below for more details on commercial requests and fee waivers.*

FEES

Can the public body charge for copies?

Yes, but the fees are limited. For black and white, letter or legal sized copies (8 ½ x 11 or 8 ½ x 14), the first 50 pages are free, and any additional pages can cost no more than 15 cents a page. For color copies or abnormally sized copies, the public body can charge the actual cost of copying.

Can a public body charge for electronic copies?

Yes, but only the actual cost of the recording medium. For example, if information is furnished on a flash drive, the public body may only charge the requester the actual cost incurred to purchase the flash drive. If a public body treats a FOIA request as voluminous, then it may charge certain fees based on megabytes of data provided, as detailed in the law.

Is it possible for a public body to waive the copying fees?

Yes. Public bodies may, but are not required to, waive or reduce copying fees if the requester states the specific purpose of the request and indicates that disclosure is in the public interest. A waiver or reduction may be available if:

- The purpose of the request is to access and disseminate information on the health, safety and welfare or the legal rights of the general public;
- No personal or commercial benefit will be received from document disclosure.

INFORMATION IN AN ELECTRONIC FORMAT

Can I request the documents in electronic form?

Yes, and the public body must provide you those electronic documents in your requested format if (1) it maintains the records in an electronic format, and (2) it is feasible for the public body to provide the records in the requested format. If that format is not available to the public body, it must provide the documents in the electronic format in which they are kept or in paper, at the option of the requester. A public body is not required to convert records maintained in paper format into an electronic format.

If the public body has a database and the information I am seeking requires that the public body do a search of that database, does the public body have to conduct that search?

Yes and the public body cannot charge you for that search except in certain circumstances that are applicable only to commercial requests.

Are e-mails subject to FOIA?

Yes. All electronic communications (as long as they do not fall within an exemption) are subject to FOIA.

FOIA OFFICERS

What is a “FOIA officer”?

A FOIA officer is a person appointed by the public body to ensure that the public body complies with FOIA. The FOIA officer’s responsibility is to receive FOIA requests from the public and to send responses in compliance with FOIA. FOIA requires that each public body appoint at least one FOIA officer and that the FOIA officer(s) complete an electronic training developed by the Attorney General’s PAC. The training program must be completed annually.

Is every public body required to have a designated FOIA officer?

Yes. Every public body must prominently display at its office, and on its website if it maintains a website, certain information including a brief description of the methods available to the public to submit a FOIA request, a directory designating the FOIA officer(s), the address where FOIA requests should be directed, and any fees applicable to FOIA requests.

If the public body does not display the FOIA officer’s information, what should I do?

You can address the FOIA request to “FOIA Officer” using a general mailing or email address for the public body. A public body is responsible for forwarding all FOIA requests to its FOIA officer. However, the public body is required to post information explaining how to submit a FOIA request, at the office of the public body as well as on any websites maintained by the public body. You may wish to call the public body to report that you were unable to locate the required information.

WHAT TO DO IF THE PUBLIC BODY DOES NOT RESPOND

What can I do if the public body doesn't respond to my FOIA request?

If the public body does not respond to your request, or properly extend the time for responding, within 5 business days after receiving it, then its inaction is considered a denial of your request. If that occurs, you can either file a Request for Review with the Attorney General's PAC or file a lawsuit in court.

WHAT TO DO IF YOUR FOIA REQUEST IS DENIED

What must the public body include in a denial?

The denial must be in writing, and reference a specific legal reason under FOIA to justify withholding the record or information in the record. If the denial is challenged in court, the public body has the burden of proving by clear and convincing evidence that the information is exempt from disclosure. The denial must also inform the requester of the right to seek review of the issue by the Attorney General's PAC, with the PAC's contact information, as well as the right to seek judicial review by filing a lawsuit.

What can I do if the public body denies my request for information?

First, it is important to know that FOIA includes provisions that exempt some records and information from public disclosure, such as unique personal or private information, some law enforcement records, pre-decisional opinions and recommendations, business trade secrets, and attorney-client communications. Additionally, a public body may deny a request that is unduly burdensome. If a public body has denied, in part or in full, your request for information, you can either file a Request for Review with the Attorney General's PAC or file a lawsuit in court. *See below for more details on filing a Request for Review with the PAC.*

EXEMPTIONS – RECORDS AND INFORMATION THAT A PUBLIC BODY MAY WITHHOLD FROM DISCLOSURE

What is considered a “public record”?

“Public records” are defined in FOIA as “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 pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.” Given this broad definition, FOIA is intended to cover any document, regardless of form, that pertains to government business.

What kind of information can a public body decline to provide to me in response to a FOIA request?

The FOIA law has a presumption that all information is public, unless the public body proves otherwise. There are several exceptions to public disclosure that include but are not limited to:

- Private information, which is defined as “unique identifiers, including a person’s social security number, driver’s license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal e-mail addresses.” Under FOIA, “private information also includes home addresses and personal license plate numbers, except as otherwise provided by law or when compiled without possibility of attribution to any person.”
- Personal information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the person who is the subject of the information. Under FOIA, the “unwarranted invasion of personal privacy” means the “disclosure of information that is 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.” Disclosing information that relates to the public duties of public employees is not considered an invasion of personal privacy.
- Law enforcement records that, if disclosed, would interfere with a pending or reasonably contemplated proceeding, obstruct an open investigation, or reveal the identity of a person who filed a complaint with or provided information to a law enforcement agency.
- Information that, if disclosed, might endanger anyone’s life or physical safety.
- Preliminary drafts or notes in which opinions are expressed or policies are formulated, unless the record is publicly cited and identified by the head of the public body.
- Business trade secrets or commercial or financial information that is proprietary, privileged or confidential and that if disclosed, would cause competitive harm to the person or business.
- Proposals and bids for any contract, until a final selection is made.
- Requests that are “unduly burdensome.” (*See next question.*)

What does “unduly burdensome” mean?

An exemption exists for requests that are unduly burdensome. A request may be considered unduly burdensome if there is no way to narrow the request, and the burden on the public body to respond to the request outweighs the public interest in the information. However, before relying on this exemption, the public body must first give the requester an opportunity to reduce the request to a manageable size and confer with the requester when appropriate. If it is still unduly burdensome, the public body must explain in writing the reasons why the request is unduly burdensome and the extent to which compliance will burden the operations of the public body. Such a response is considered a denial.

Can a public body remove or black out information from documents it provides?

Yes. If a record contains information that is exempt from disclosure under FOIA, a public body can remove or black out that exempt information from the public records. This is called “redaction.” The public body must, however, provide the remaining information.

COMMERCIAL REQUESTS

What is a request for information made for a commercial purpose?

A commercial request is when the requester seeks to use part or all of the public records for sale, resale, or solicitation or advertisement for sales or services. Requests by the news media, not-for-profit organizations, and scientific or academic institutions are not considered commercial information requests.

Are commercial information requests treated differently?

Yes. A public body has 21 business days to respond to a request for information that is made for a commercial purpose. The public body can either: (1) provide the requested records; (2) advise when the records will be provided and the costs; (3) deny the request (if it falls under an exception); or (4) advise the requester that the request is unduly burdensome.

Can the public entity charge fees for copies of the information?

Yes, but the fees are limited. For traditional black and white, letter or legal sized copies (8 ½ x 11 or 8 ½ x 14), the first 50 pages are free, and any additional pages can cost no more than 15 cents a page. For color copies or abnormally sized copies, the public body can charge the actual cost of copying. Additionally, a public body may charge up to \$10 for each hour spent by personnel in searching for and retrieving a requested record or examining the record for necessary redactions, except that the first 8 hours shall be free. This fee is applicable only to commercial requesters.

OTHER FOIA QUESTIONS

Does a request for a copy of an ordinance require a FOIA request?

No. Ordinances are public documents that should be immediately available to the public without a FOIA request.

Can a public body allow you to inspect but not copy public documents?

No. It must allow you to inspect and obtain copies of public documents. In the rare circumstance where the public body is prohibited from copying documents for which it does not hold the copyright, the public body must allow you to inspect records.

HOW TO FILE A REQUEST FOR REVIEW WITH THE PUBLIC ACCESS COUNSELOR (PAC)

What is a Request for Review?

A Request for Review is correspondence that a requester may submit to the PAC if their request to inspect or copy a public record has been denied in whole or in part, or if the public body has failed to respond. This letter or email is a formal way of asking the PAC to take a look at the request and the public body's response (or lack thereof) and determine if a FOIA violation has occurred. The request must be in writing, must be signed by the requester, and must include: (1) a copy of the FOIA request; and (2) any responses, including denial letters, from the public body.

Is there a deadline for submitting a Request for Review?

Yes. The requester must submit a Request for Review to the PAC within 60 calendar days after the date of the final denial from the public body (or the date upon which the response was provided or was due). Note that this time limit is counted in calendar days (i.e., including Saturdays, Sundays, and holidays), not business days. By this deadline, the requester must submit all records necessary for a complete Request for Review.

How do I contact the Public Access Counselor in the Attorney General's Office?

The Public Access Counselor is a part of the Public Access Bureau in the Attorney General's Office and may be contacted as follows:

Leah Bartelt
Public Access Counselor
Public Access Bureau
500 S. 2nd Street
Springfield, Illinois 62706
E-mail: public.access@ilag.gov
FOIA Hotline: 1-877-299-FOIA (1-877-299-3642)

The Request for Review does not need to follow any particular format. If you would like to use a sample request form, however, please visit our [website](#).

What does the PAC do with my Request for Review?

The PAC will review your request and do one of the following:

1. Decide that no further action is necessary. If the PAC decides that the alleged violation is unfounded and no further action is necessary, the PAC will inform you and the public body of that decision in writing.
2. Send a copy of the Request to the public body and request for information from the public body. If the PAC decides that further review of the request is necessary, the PAC will forward a copy of the request for review to the public body. The PAC may ask for any records the PAC needs to complete the review and any additional information relevant to the issues raised. The public body has 7 working days to provide the requested information.
3. Attempt to informally resolve the matter. The PAC may also try to resolve your FOIA dispute with the public body through mediation or other informal efforts.

What are the different possible outcomes of a Request for Review by the PAC?

There are multiple ways the PAC may respond to a Request for Review:

- Decide that no further action is necessary. If the PAC decides that the alleged violations of FOIA are unfounded, the PAC will advise the requester and the public body of that decision. The PAC will not conduct any further review.
- Resolve the FOIA dispute by mediation or by a means other than the issuance of a binding opinion. The PAC may choose to mediate the dispute or resolve the matter by means other than the issuance of a binding opinion, including the

issuance of a non-binding determination letter. The PAC will choose to issue a non-binding determination letter after reviewing any information needed to analyze the FOIA dispute and any additional information provided by the requester or public body. The PAC's decision to decline to issue a binding opinion is not reviewable.

- Issue a binding opinion. The PAC will review any information needed to analyze the FOIA dispute and any additional information provided by the requester or the public body. If the PAC decides to issue a binding opinion, the PAC must issue that opinion within 60 calendar days after receiving the Request for Review. The PAC may extend the 60-day time period by 30 business days by sending a written notice to the requester and the public body, and must include the reasons for the extension.

If the opinion orders the public body to disclose the records, the public body may appeal the opinion to the circuit court. If the public body does not appeal the opinion and fails to disclose the records as ordered by the opinion, the Attorney General's office may sue the public body to enforce the opinion. If the opinion concludes that the records fall within a FOIA exemption and need not be disclosed, the requester may appeal the opinion to the circuit court.

Do I have to file a Request for Review with the PAC before I file a FOIA lawsuit in court?

No. You can file a FOIA lawsuit in court after you receive a denial from the public body, or after the PAC concludes a review of the matter. If the PAC decides to issue a binding opinion and you disagree with the opinions of the PAC, you can appeal the PAC's decision to the circuit court. You should be aware that if you ask the PAC to review a matter and then decide, before the PAC completes the review, to file a lawsuit without waiting for the PAC's decision, the PAC is required to immediately stop working on your Request for Review to allow your lawsuit to move forward.

What's the difference between my two appeal options: filing a Request for Review with the PAC or filing a suit in court?

Although most Requests for Review are resolved without the issuance of a binding opinion, if the PAC does issue a binding opinion deciding your case, then that opinion carries significant weight. If the losing party decides to appeal it to court, the court must give deference to the PAC's opinion and can only overturn it if it is clearly erroneous. If you decide not to seek assistance from the PAC and instead go straight to court, the public body has the burden to show that its denial was correct through clear and convincing evidence.