



Freedom of Information and Open Meeting Acts

Update and Tools to Simplify the Approach

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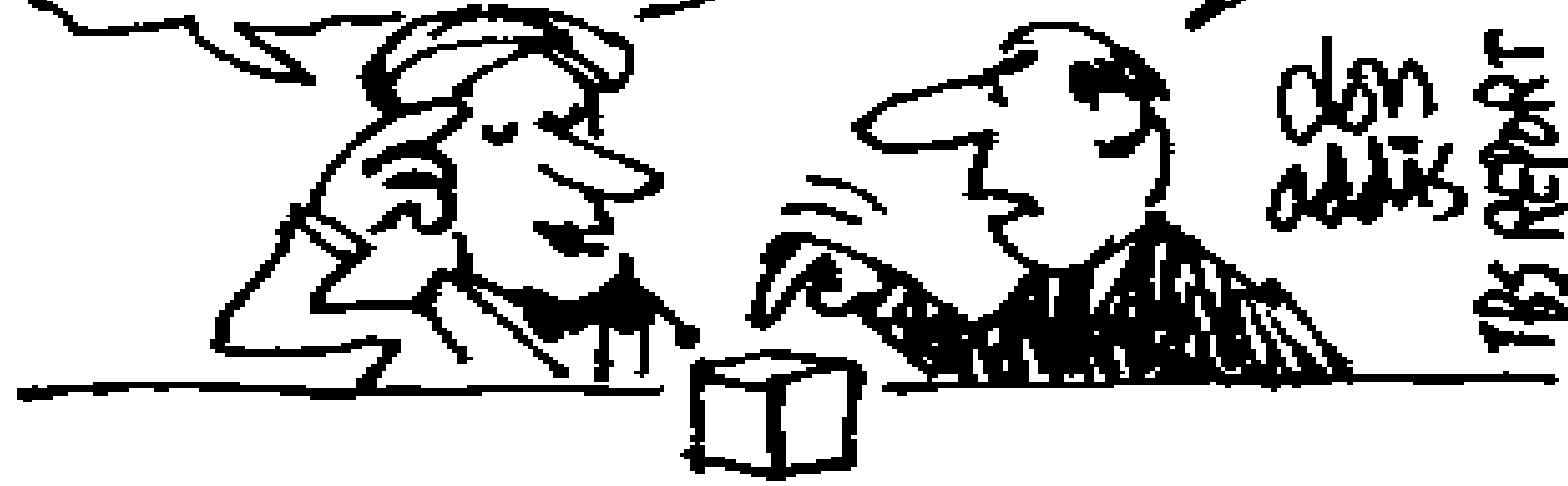
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IT'S GOOD THE GOVERNMENT IS THINKING OUTSIDE THE BOX

NEVER MIND THAT. TELL US WHAT'S IN THE BOX!

don
advise
TBS REPORT





FOIA 5 ILCS 140/1 et. seq.

- A general right of access to information held by public entities
- Sets out the procedures for public entities and citizens to make or respond to FOIA requests
- Provides for administrative (the PAC) and judicial review of public entity decisions



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FOIA 5 ILCS 140/1 et. seq.

Who does it govern?

- Public Bodies - all legislative, executive, administrative, or advisory bodies of the State
- state universities and colleges
- counties, townships, cities, villages, incorporated towns, school districts
- Individual governmental officers



FOIA 5 ILCS 140/1 et. seq.

Who can access information?

- any individual, corporation, partnership, firm, organization or association, acting individually or as a group
- Advocacy Groups



FOIA 5 ILCS 140/1 et. seq.

What can they access?

- All “public records”
- Public record – pertains to the transaction of public business and 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



FOIA 5 ILCS 140/1 et. seq.

What don't you have to do?

- YOU DO NOT HAVE TO CREATE RECORDS
- YOU DO NOT HAVE TO ANSWER QUESTIONS
- YOU DO NOT HAVE TO EXPLAIN THE DOCUMENTS
- YOU DO NOT HAVE TO COMPILE DATE YOU DON'T MAINTAIN
- HAVE POLICIES AND PROCEDURES THAT LIMIT ORAL COMMUNICATIONS.



FOIA Exemptions (commonly used)

- Prohibited from disclosure by federal or state laws
- Private Information
- Personal Information
- Interfere with administrative or law enforcement proceedings
- Preliminary drafts, note, recommendations...
- Proposals and bids
- Records relating to collective negotiating matters between public bodies and their employees or representatives



Minimizing FOIA Requests

- Publish Records Online (140/8.5)
 - Do this contemporaneously with their creation
 - Identify documents of interest to the public
 - Alongside directions for FOIA request, link to records frequently requested
 - Post records released in response to FOIA request.
 - Publish Online Indexes of Disclosed Records



Minimizing FOIA Requests

- Categorize records
- Required to list categories of disclosable records (140/5).
- Decide which public records are regularly created, not exempt and if those are records regularly requested
 - Building inspection reports
 - Budgets



Handling FOIA Requests

- Allow for requests to be made online
- Allow for fulfillment to be accomplished via e-mail.
- Allow for a tracking number for requestors so they can track response
- Notify requestors if original request is going to be routed to different agency.



Fulfilling FOIA Requests

- Make a template for responses: grants, partial denials, full denials and appeal rights.
- Identify exemption used, identify document(s) withheld, clearly explain why exemptions applies, rights to appeal.
- Burden is on public entity to prove by clear and convincing evidence that exemption applies.



Fulfilling FOIA Response

- 5 business Days to Respond
- Notification of Extension, but no more than 5 days. 140/3(e)
 - Docs not on site
 - Substantial records requested
 - Request is categorical
 - Records have not been located in routine search

Different timelines for recurrent and commercial requests.



FOIA Responses

Costs/charges

- Can charge for the **actual cost** of purchasing the medium electronic records are stored on (i.e. CDs)
- No fee for first 50 pages of black/white copies, less than 15 cents per page afterwards
- Can charge **actual cost** of color or alternative size records
- Waiver or Reduction of Fees



FOIA- Cases

- The Public Access Counselor
 - Requests for view by persons denied records
 - Consultations with public bodies
- Judicial Review
 - Attorneys fees to requestor
 - Under what standard are fees awarded
 - Refusing to comply with binding opinion (140/11.6).- Civil Penalties



Example Litigation

- Chicago Alliance for Neighborhood Safety v. City of Chicago, 348 Illapp.3d 188
 - Plaintiff wanted to collect information to see if response to FOIA requests were dictated by race and location of requestor. Wanted identify of individuals attending beat meetings. Also, all records of denials from 1998 on. Challenged indexing of same. Challenged City's vague description of records available.



Example Litigation

- Chicago Alliance for Neighborhood Safety v. City of Chicago, 348 Illapp.3d 188 cont.....
 - Court found no waiver, despite prior disclosure of citizens. Upheld award of attorney fees. Found manner of indexing in compliance with FOIA. Held that Illinois is not identical to Federal FOIA, but Federal cases are to be considered.



Example Litigation

- Rockford Police Benvolent v. Morrissey
 - College students conduct survey at request of PD and gives same to City. City will not disclose with FOIA. It's not an audit and it's not a personnel matter, it's a survey. Commercial purpose argument in seeking to get award of fees overturned did not work.



Open Meetings Act 5ILCS 120/1

- Applies to nearly every public body that is supported by or expends tax revenue.
- All meetings are to be in the open
- Exceptions when discussing issues of compensation, bargaining, land purchase, selecting a replacement member, quasi-adjudicative proceedings, litigation discussions, self-evaluation, safeguarding complaints having to do with fair housing, student discipline.
- Final actions must be made in open with description of confidentiality.



OMA

- Agendas posted 48 hours in advance
- Until regular meeting is concluded
- Issue properly noticed shall not be affected by other errors on agenda
- Reconvened meetings, must be done within 24 hours, no new 48 hour requirement



OMA- Speakers

- Public must be given opportunity to address others at open meeting.
- What to do to keep it clean, brief and not be the primary focus of the meeting.
 - Have to let others vent.



FOIA and OMA Overlap

- Disclosure of lawsuit outcomes
- The effectiveness of confidentiality agreements