



# Public Access Counselor Annual Report

*An overview of 2006*



*March 2007*





A Message from  
ILLINOIS ATTORNEY GENERAL  
**LISA MADIGAN**



The right to open access to government information is one of our most important rights as Illinoisans. Open government fosters public trust, promotes equal access to government, and helps prevent abuse of power. Open government can be achieved only through the free exchange of information between the government and the public.

In Illinois, we have two critical tools to help the public obtain the facts about their government: the Freedom of Information Act (FOIA), 5 ILCS 140, and the Open Meetings Act (OMA), 5 ILCS 120. These laws embody the fundamental principles that the public has a right to be informed about the workings of their government and that public bodies exist to aid in the conduct of the people's business.

I created the Division of Public Access and Opinions in my office to place a new emphasis on ensuring compliance with these important laws. Michael Luke, a senior attorney with extensive experience in government, is the Chief of this division. Terry Mutchler, an attorney with experience as an investigative reporter for The Associated Press, serves as the state's first Public Access Counselor. In May 2006, as part of an expansion of this division, Scott B. Sievers joined my office as an Assistant Public Access Counselor and an Assistant Attorney General. Prior to joining my office, Scott worked in private practice where he represented plaintiffs in Freedom of Information Act and Open Meetings Act litigation.

The Public Access Counselor works with government bodies throughout Illinois to enhance their knowledge and understanding of these laws and, as a result, to make sure that government business is conducted openly. Through the Public Access Counselor, our office serves as a valuable resource for government officials, members of the public, and the media when questions or disputes arise. As part of our mission to improve compliance with the sunshine laws, we also conduct extensive training sessions around the state in which we provide a detailed discussion of the laws and answer questions on compliance.

As you will see in this report, in 2006, the Public Access Counselor handled 988 cases and conducted 53 training sessions, bringing the total for our first two years to 1,999 cases and 132 training sessions.

The requests for assistance that we receive come most often from members of the public. This fact continues to confirm my belief that members of the public are actively interested in learning about and being involved in the work of their government. And it confirms the importance of our efforts to provide help to the public through the Public Access Counselor.

As Attorney General, I will continue to provide these valuable resources to assist members of the public, government officials, and the media in making sure that government in Illinois is open and accessible to all.

A handwritten signature in black ink that reads "Lisa Madigan". The signature is fluid and cursive.

Lisa Madigan  
Illinois Attorney General

## Table of Contents

1. Complaint Statistics
2. Training Seminars
3. How to File a FOIA Request
4. FOIA Facts
5. FOIA Assistance from the Office of the Attorney General
6. FOIA Case Examples
7. OMA Assistance from the Office of the Attorney General
8. OMA Case Examples
9. Frequently Asked Questions
10. The Public Access and Opinions Division





# Statistics

In its second year, the Public Access Counselor, as part of the Public Access and Opinions Division, responded to 988 cases specifically dealing with the Illinois Freedom of Information Act (FOIA), 5 ILCS 140, and the Illinois Open Meetings Act (OMA), 5 ILCS 120. This Division also conducted 53 training sessions throughout Illinois for individuals, government officials, members of the media, and students.

The following is a statistical breakdown of requests received by our Office in 2006. Most of the 988 requests and concerns addressed to the Public Access Counselor came from individual members of the public. The requests came from every area of the state, and no one particular geographic area had an unusual cluster of requests related to either of these Acts.

## TOTAL FREEDOM OF INFORMATION ACT CASES: 781

- 660 from Members of the Public
- 81 from the Media
- 40 from Government Officials

## Further Freedom of Information Act (FOIA) Breakdown

- o **280 were written FOIA requests for internal documents of the Office of Attorney General**
  - 269 from Members of the Public
  - 11 from the Media
- o **404 were written requests for FOIA assistance in which the Office of the Attorney General was asked to help obtain documents from public bodies**
  - 347 from Members of the Public
  - 57 from the Media
- o **97 were FOIA telephone inquiries**
  - 44 from Members of the Public
  - 40 from Government Officials
  - 13 from the Media



## **TOTAL OPEN MEETINGS ACT CASES: 207**

- 131 from Members of the Public
- 48 from Government Officials
- 28 from the Media

### **Further Open Meetings Act (OMA) Breakdown**

- o **124 were written inquiries**
  - 106 from Members of the Public
  - 18 from the Media
- o **83 were OMA telephone inquiries**
  - 48 from Government Officials
  - 25 from Members of the Public
  - 10 from the Media





# Training Seminars

The Office of the Attorney General conducted 53 trainings around the state to provide members of the public, government officials, and the media with a practical understanding of the Freedom of Information and Open Meetings Acts. Each training provided an overview of the history of the Acts, what a government official must do to comply with the law, and how members of the public can use these Acts to participate in open government. At the end of each training, Attorney General staff answered questions and addressed concerns related to specific open government situations.

The 2006 training sessions included the following:

01/09/06	Illinois Laboratory Advisory Board	Sangamon
01/18/06	FOIA/OMA Workshops	Sangamon
01/19/06	Illinois Plumbers Association	Sangamon
01/20/06	Municipal League	Macon
01/25/06	Illinois Finance Authority	Cook
01/26/06	Illinois Times	Cook
01/26/06	Chicago Tribune	Cook
01/27/06	Northwest Herald	McHenry
01/31/06	Kane County Chronicle	Kane
02/01/06	DeKalb Daily Chronicle	DeKalb
02/08/06	Collinsville Herald Journal	Madison
02/08/06	Illinois Press Association	Saint Clair
02/08/06	Illinois Press Association	Madison
02/09/06	Illinois Commerce Commission Advisory Commission	Cook
02/16/06	Illinois Press Association	Sangamon
02/24/06	Illinois Press Association	Jefferson
02/28/06	Illinois Press Association	Will
02/28/06	Illinois Press Association	Cook
03/01/06	The Champaign News Gazette	Champaign
03/14/06	Chicago Bar Association	Cook
03/21/06	Rolling Prairie Library System	Macon
03/30/06	Springfield Police Department	Sangamon
04/04/06	Southwestern Illinois College	Saint Clair
04/21-22/06	National Freedom of Information Conference	Hamilton/Marion
05/04/06	Marshall County Board	Marshall
05/09/06	Chicago Bar Association	Cook



*Training Seminars Continued*

05/12/06	Township Clerks Zone 1 Continuing Education Seminar	Kankakee
05/18/06	Jackson County Bar Association	Jackson
06/06/06	Rolling Prairie Library Systems	Macon
06/08/06	Chicago Bar Association Quarterly Meeting	Cook
06/13/06	Columbia University	Cook
06/20/06	City of Carbondale	Jackson
06/21/06	Illinois Township Officials	DuPage
06/28/06	Illinois Township Clerk Officials	Stephenson
08/08/06	Illinois Continuing Legal Education Seminar	Cook
08/11/06	CISCO Construction Industry Service Corporation	Cook
08/25/06	National Convention of Society of Professional Journalists	Cook
08/29/06	Illinois State Library	Sangamon
09/20/06	Southern Illinois University Public Policy Institute	Jackson
09/22/06	Chicago Park District Training	Cook
09/25/06	City of Monticello	Piatt
09/26/06	Village of Morton Grove	Cook
10/04/06	Columbia University Communications Law Class	Cook
10/04/06	Illinois Municipal League	Cook
10/24/06	Illinois State Library	Sangamon
10/26/06	State Corrections Employee Video Conference	Sangamon
11/14/06	Township Officials Training Session	Peoria
11/16/06	Central Illinois Municipal Officers Association	Piatt
11/29/06	Illinois Guardianship and Advocacy Commission	Sangamon
11/10/06	Regional Police Departments	McLean
11/30/06	Community Information and Education Services, University of Illinois	Sangamon
12/8/06	Community Information and Education Services, University of Illinois	Champaign
12/08/06	Community Information and Education Services	Sangamon





# How to File a FOIA Request

Here are instructions for how to file a FOIA request:

1. To ensure you preserve all of your rights under the Freedom of Information Act, you should file a written request for documents, known as a Freedom of Information Act request.
2. Be as specific as possible when identifying documents you are seeking to obtain. Remember, a public body doesn't have to answer questions under FOIA. The law is geared to inspection and copying of documents, not answering questions.
3. Tell the public body whether you want copies or whether you want to examine the records in person. You have the right to do either.
4. Know that you are permitted to ask for a waiver of the copying fees. To do so, you may state in your written FOIA request: "I request a waiver of all fees for this request." However, you must include a specific explanation as to why it is in the public interest—and not just your personal interest—for the public body to waive the fees and provide you with the requested document free of charge.
5. Include your name, telephone number, address, and e-mail address for contact information.
6. Keep a copy of your FOIA request letter.



# FOIA Facts



Here are some critical facts to know when filing a FOIA request:

1. A public body must respond promptly, and absent extraordinary circumstances, within seven working days (excluding weekends and holidays) to a written FOIA request.
2. A public body may invoke an additional seven working days to respond to a request in limited circumstances.
3. A public body must respond to your request in writing.
4. If a public body denies your request or a portion of your request, it must cite the specific section of the law that allows them to withhold the information you are seeking.
5. A public body must inform you of your right to appeal a denial of information by giving you the name of the head of the public body and his or her address to use in filing an appeal.
6. A public body has seven working days to respond in writing to an appeal of a denial. The public body must inform you that you have a right to seek injunctive or declaratory relief in the Circuit Court if the denial of your information is upheld.



# FOIA Assistance from the Office of Attorney General

The Office of the Attorney General can try to help you if a public body has denied or ignored your request for documents under the Freedom of Information Act, 5 ILCS 140. Unlike the Open Meetings Act, the Freedom of Information Act does not contain fines or penalties for violations.

1. To receive assistance, you can send to our office a copy of the FOIA request that you submitted to a public body, with a short explanation of the problems you are experiencing.
2. Your request to us must be made in writing, but it does not need to be lengthy.
3. Tell us:
  - a. The name of the public body involved.
  - b. The date you filed the FOIA request (and provide a copy of your FOIA request).
  - c. Any response that you have received (and provide a copy).
  - d. Whether you have contacted the local State's Attorney for assistance and the status of that request, if any.
  - e. What assistance you seek from our office.
  - f. Your name, address, telephone number, and e-mail, if applicable.
4. Send this information to Public Access Counselor Terry Mutchler, 500 S. Second Street, Springfield, IL 62704.



# FOIA Case Examples



The following are some examples of how the Attorney General's Office has intervened in disputes arising under the Freedom of Information Act (FOIA).

## Freedom of Information Act Cases

***Bensenville, Cook & DuPage counties***—A Forest Park resident requested the employment dates and status of a Village of Bensenville police officer. The Village denied the FOIA request, the resident appealed, and the Village affirmed the denial on appeal. In response to a letter from the Office of the Attorney General, the Deputy Village Clerk stated "although the Village respectfully disagrees with the analysis and ultimate decision of [the Assistant Public Access Counselor], I have since been directed to provide [the requester with] records responsive to your Request in deference to and out of respect for the offices and authority of the Illinois Attorney General."

***DeKalb, DeKalb County***—The DeKalb County Rehab & Nursing Center provided a FOIA requester with copies of e-mail correspondence with a vendor, but then billed the requester 37 hours of a technician's time at \$24.39 per hour for a total of \$902.43 to search for the requested records. After being informed by the Office of the Attorney General that a public body could not charge a fee under FOIA for the cost of conducting the search for responsive records, the nursing home administrator wrote that the county "has no intention of pursuing collection of this fee."

***Alton, Madison County***—After several weeks had passed since the Alton Police Department received a resident's three FOIA requests for copies of incident reports and photos without the resident receiving a written response, the Office of the Attorney General wrote to the department, describing the public body's obligations to respond to requests under the Act. Shortly thereafter, the resident's requests were satisfied.

***Shabonna, DeKalb County***—When Indian Creek Community Unit School District 425 denied a union's FOIA request for copies of payroll records that the contractors on a school construction project were required by law to provide to the school district to prove compliance with the Prevailing Wage Act, the Office of the Attorney General informed the district of the law. The school district supplemented its response with the requested records, prompting the union's business manager to write Attorney General Madigan that "your office did a wonderful job to get these documents to us. . . . Tell your people to keep up the fight for the little guy."

***Yorkville, Kendall County***—The United City of Yorkville issued cell phones to city employees, but refused to disclose cell phone billing records and usage reports to an alderman and to local news organizations. After the Office of the Attorney General fielded complaints on the matter and conferred with the city attorney, the city agreed to disclose the requested information. The Office further provided the City with a detailed letter setting forth the law on access to such records.





***Mt. Vernon, Jefferson County***—Senator John O. Jones filed a request for information with the Illinois Department of Corrections, seeking a copy of a report for which the state had paid a vendor \$500,000. IDOC denied his request. Senator Jones asked the Office of the Attorney General for assistance. The Office of the Attorney General contacted IDOC and advised the agency that the report was a public record and should be released. IDOC subsequently released the report.

***Danville, Vermilion County***—An alderman contacted our office after she filed a FOIA request to obtain the names and salaries of employees working for the city of Danville. The City denied her request stating that this information was not available under the Freedom of Information Act. She asked the Office of the Attorney General for assistance. The Attorney General's office sent a letter to the City explaining that the records sought are public records, and the City released the information to the alderman.

***Winnetka, Cook County***—A reporter filed a FOIA request with the Village of Winnetka seeking a copy of a police report involving an incident in which a squad car hit a pedestrian. The Village initially denied the request stating that traffic reports are confidential. The Office of the Attorney General wrote a letter to the Village explaining that police reports are public record subject to applicable exemptions outlined in the law. The Village released the report.

***Berwyn, Cook County***—A resident filed a FOIA request seeking specific public records from the City. The City agreed to provide the responsive documents but would only provide them in hard copy even though they were available on computer disk. The Office of the Attorney General wrote a letter to the City outlining that Illinois courts have held that it is the obligation of the public body to provide a requesting party with records in the form that they are ordinarily kept if so requested. The City then released the records on a computer disk.

***Broadview, Cook County***—A member of the public filed a FOIA request with Proviso Township seeking documents. The Township did not respond to his request. About a month later, he filed an appeal, which the Township ignored. The resident asked for our assistance and the Office of the Attorney General wrote a letter to the Township, securing a response to the FOIA request and the release of the public records.



# OMA Assistance from the Office of Attorney General



The Open Meetings Act provides for both civil and criminal enforcement. Subsection 3 of the Act, 5 ILCS 120/3, is the civil enforcement provision. Subsection 3(a) authorizes any person, including the State's Attorney of the county in which noncompliance may have occurred, to bring a civil action for the enforcement of the Act within 60 days after a meeting alleged to have been held in violation of the Act, or, if facts concerning the meeting are not discovered within that period, within 60 days after the discovery of a violation by the appropriate State's Attorney. This provision clearly authorizes members of the general public to institute court enforcement proceedings under the Act.

You can also seek our help with Open Meetings Act issues. The Office of the Attorney General can work to help you if you have concerns about a public body's compliance with the Illinois Open Meetings Act, 5 ILCS 120.

1. To receive assistance, you can send to our office a written request which provides a short explanation of the problems you are experiencing.
2. Your request to the Attorney General's office must be made in writing, but it does not need to be lengthy.
3. Tell us:
  - a. The name of the public body involved.
  - b. The date of the alleged violation of the Open Meetings Act.
  - c. Whether you have contacted the public body regarding this issue.
  - d. Whether you have contacted the local State's Attorney for assistance and the status of that request, if any.
  - e. What assistance you seek from our office.
  - f. Your name, address, telephone number, and e-mail, if applicable.
4. Send this information to Public Access Counselor Terry Mutchler, 500 S. Second Street, Springfield, IL 62704.





# OMA Case Examples

The following are some examples of how the Attorney General's Office has intervened in disputes arising under the Open Meetings Act (OMA).

## Open Meetings Act (OMA) Cases

**Stanton, Macoupin County**—A School Board entered closed session to discuss the discipline of a student. While properly in closed session, the Board's attorney turned off the tape recording while providing guidance to the Board. A member of the Board filed a complaint with our office asking if the Act permitted non-taping. The Attorney General's Office advised the Board that this action was a violation of the Act. Under the law, "all public bodies shall keep a verbatim record of all their closed meetings in the form of an audio or video recording."

**Evanston, Cook County**—A representative of the National Association for the Advancement of Colored People (NAACP) filed a complaint with the Office of the Attorney General related to the e-mail circulation among School Board members of a document that he alleged was drafted, circulated, and secretly discussed among Board members prior to public disclosure of this proposal. Our office reviewed the matter and determined that members of the Board did not engage in an e-mail discussion, and thus did not violate the Act. However, we expressed a concern that the Board may not have been fully aware of the requirements of the Act. Based on this concern, the Board invited the Office of the Attorney General to conduct training for members of the Board.

**Niantic, Macon County**—The Office of Attorney General Lisa Madigan received a complaint that Village Board members routinely gather at a local tavern after regularly scheduled meetings and, in some instances, discuss business. Board members circulated a flyer telling citizens that "some Board members may go to Christine's or Uncle Monkey's after the regularly scheduled meeting." The flyer indicated that "due to the possibility that Village business may be discussed during this purely social gathering, the public is invited to attend." The Office of the Attorney General intervened regarding this violation of the Act and the Village agreed to comply. The advance notice requirement was not met in this instance because the public body did not provide a specific location for a meeting, did not specify a location that was "open and convenient" to the public as defined in the Act, and also did not provide 48-hour advance notice for a meeting.

**Orland Park, Cook County**—Residents complained that the Orland Park School District entered closed-door session to discuss the search for a new superintendent. Two School Board members refused to participate in the closed-door session as they believed it was a violation of the Act. The Office of the Attorney General sent a letter to the School Board indicating that the meeting was improper under the Act and the School District agreed to release the minutes of the closed-door session related to this matter.





***Caledonia, Boone County***—Residents complained to our office after the Village President conducted one-on-one meetings with a private developer at her home on a controversial development plan. The Village asserted that meetings involving only two members of the Board did not constitute meetings with a majority of the quorum and therefore did not violate the Act. The Office of the Attorney General intervened and informed the Village that holding a meeting in the President's home and inviting trustees to participate one at a time to ask questions outside of the public view is clearly an attempt to exclude the public from the working of its government and violated the spirit of the Act.

***Chicago, Cook County***—A group of parents complained that the City-Wide Parent Advisory Council conducted a vote by secret ballot. The Office of the Attorney General and the counsel for the Chicago Public Schools wrote a joint letter to this organization informing them that corrective action needed to be taken as there can be no secret ballots at public meetings. The City-Wide Parent Advisory Council agreed to rescind the secret-ballot vote and conduct the voting in open session as required by law.

***Carpentersville, Kane County***—Village of Carpentersville trustees were invited to attend a forum on illegal immigration. After the Village attorney and the Office of the Attorney General conferred, the Village agreed that if a majority of a quorum of the Village Board attended such a forum, it would have to be conducted in full compliance with the Act.

***River Grove, Cook County***—After the Triton College Board of Trustees was alerted by the Office of the Attorney General to a possible procedural violation of the OMA, the college self-reported to our Office that it had unknowingly violated the Act in the past by holding "pre-meetings" prior to regular meetings and corrective action was taken.

***Worth, Cook County***—A member of the public filed a complaint with our office after the Worth Park District entered closed session and on returning to open session failed to invite the public back into the room as it continued with business. The Office of the Attorney General wrote a letter to the Worth Board, which acknowledged that problem and agreed to corrective action.



# Frequently Asked Questions

**Q. Can a public body charge me photocopying fees under FOIA?**

**A. Yes.** A public body may charge fees reasonably calculated to reimburse its actual cost for the reproduction and certification of public records and for the use by any person of the equipment of the public body to copy records. Such fees cannot include the costs of any search for and review of the records, and shall not exceed the actual cost of reproduction and certification, unless otherwise provided by State statute. Such fees shall be imposed according to a standard scale of fees, established and made public by the body imposing them. Purposeful imposition of a fee not consistent with subsections (6)(a) and (b) of this Act shall be considered a denial of access to public records for the purposes of judicial review.

**Q. Can a public body charge me to research my request for information?**

**A. No.** The Act specifically states that the cost shall exclude the cost of searching for and reviewing the records.

**Q. Does a public body have to honor a "standing request" for information asking that the public body forward certain reports, such as accident reports, each month, under the Act?**

**A. No.** A person cannot request that at regular intervals, such as each month, the public body provide copies of particular reports, such as accident reports. The public body is required to respond, however, to each individual request as required by the Act.

**Q. Are autopsy reports of the county coroner considered public records?**

**A. Yes.** However, certain exemptions may exist that permit a withholding of these records per section 7 of the Act.





**Q.** Are office telephone records of members of a public body public records?

**A.** Yes. Office telephone records of a member of a public body would be considered a public record for purposes of the Act. Certain exemptions may exist that permit a withholding of these records per section 7 of the Act.

**Q.** Are e-mails of members of a public body public records?

**A.** Yes. E-mail records of a member of a public body are generally considered public records for purposes of the Act. Certain exemptions may exist that permit a withholding of these records per section 7 of the Act.

**Q.** Are condominium associations subject to the Freedom of Information Act?

**A.** No. The Act only covers public bodies, not private organizations such as a condominium or home-owners association.



# The Public Access and Opinions Division

**Michael Luke** is a Senior Assistant Attorney General. He is a graduate of the University of Illinois (A.B. History, 1974; J.D., 1978). He served for two years as an Assistant State's Attorney in Piatt County, Illinois, before joining the Attorney General's staff in 1980. He currently serves as the Chief of the Public Access and Opinions Division, as well as Chief of the Land Acquisition Bureau, in the Office of the Attorney General. Mr. Luke is a frequent lecturer on issues relating to State and local government law, governmental ethics, and eminent domain.

**Terry Mutchler** is the Public Access Counselor for the Office of the Attorney General. Prior to joining the Attorney General's staff, she was a member of the media law group and appellate practice group in the law firm of Foley & Lardner in Chicago. She is a former law clerk for Illinois Supreme Court Justice Benjamin Miller, and also clerked for the Executive Office of the President during the Clinton Administration, focusing on privacy issues. Before becoming a lawyer, Terry was an investigative journalist for The Associated Press covering politics in Pennsylvania, New Jersey, Illinois, and Alaska. She later served as a spokeswoman and senior advisor for the late Illinois Minority Whip, Senator Penny Severns.

**Scott B. Sievers** is an Assistant Attorney General serving as Assistant Public Access Counselor. Prior to joining the Office of Attorney General Lisa Madigan in May 2006, Mr. Sievers was an associate at the Springfield law firm of Donald M. Craven, P.C., where he represented a variety of clients, including plaintiffs in Freedom of Information Act and Open Meetings Act litigation. He is co-author of the Open Government Guide (5th ed. 2006), published by the Reporters Committee for Freedom of the Press. Mr. Sievers has taught mass communications law at Eastern Illinois University in Charleston and Western Illinois University in Macomb. He earned his master's degree from the University of Illinois at Springfield and his law degree from the University of Illinois College of Law in Champaign, where he was a member of the University of Illinois Law Review.







**LISA MADIGAN**  
ILLINOIS ATTORNEY GENERAL