The Citizen Advocacy Center
Freedom of Information and Open Meetings Midwest Project Summary

"A popular government without proper information or the means of acquiring it is but a prologue to a farce or a tragedy – or perhaps both. Knowledge will forever govern ignorance; and the people who mean to be their own governors, must arm themselves with the power which knowledge gives." (*James Madison, Letter to W. T. Barry, 1822).*

Strong open government laws that mandate transparency in conducting the people's business are essential components of a healthy democracy. The ideals of a government that is of the people, by the people, and for the people require that the public have, to the fullest extent possible, the capacity to access the governmental decision-making process and documents that are created and maintained with public tax dollars. Broad access to government ensures the public's capacity to play a role in the democratic process and provides a mechanism by which the public can knowledgably discuss issues of public concern, make informed judgments as to the actions of public officials, and monitor government to ensure that it is acting in the public interest.

Both the federal government and all individual states have open government laws. These laws uphold the ideals of transparency in government and mandate liberal access to government documents and government meetings. By providing public access to government meetings and robust access to information regarding government affairs, open government statutes are cornerstone laws that ensure and protect the free flow of information from government to the people. However, state open government laws have statutorily weak features that must be reformed. Moreover, the implementation of state open government laws suffers from inconsistent governmental responses, despite strong public policy statements which are supposed to provide a framework to interpret statutory provisions. While public bodies have the legal burden to ensure compliance with open government laws, more often than not compliance rests on the shoulders of the public.

Our democracy is weakened when government can circumvent transparency based on ineffective oversight mechanisms, a lack of penalties or implementation of penalties, a lack of training that leads to inadvertent violations, excessive fees that make information inaccessible, ineffective policies that fail to address the integration of technology in the businesses of governing, or few resources available to provide assistance to people when government is resistant to permitting proper access or disclosure. These are just a few of the barriers that impede public participation. A healthy democracy requires that open government barriers be identified, dismantled, and replaced with effective statutory language and institutional protocols that ensure citizen participation and government operation in the light of day.

To address systemic barriers that chill public participation and access to government, the Citizen Advocacy Center (Center) conducted a systemic overview of open government laws in the states of Michigan, Ohio, Illinois, Wisconsin, and Minnesota with the goals of evaluating the provisions and implementation of the statutes. In executing this project, the Center reviewed the relevant statutes and more than 1,000 legal cases, attorney general opinions, and professional publications to produce a comprehensive study of each state's respective strengths and

weaknesses. The study serves as a valuable resource for policy makers, good government organizations, the media, and citizens who regularly use open government laws.

Specifically, the Center analyzed how the public in each state is entitled to participate in the democratic process and to what extent policy goals of mandating transparency and accessibility to government operations are achieved. With regard to the Freedom of Information Act statutes, the Center focused on issues such as: response time to requests; appeal time and procedures; fees and costs associated with requests; fines and penalties for lack of responsiveness by a government body; the frequency with which available fines and penalties have been implemented; the extent of information exempt from public records requests; the presence of government resources to act as an ombudsman; and provisions that mandate access and disclosure of public records created via the Internet. With regard to the Open Meetings Act statutes, the Center reviewed: public notice and agenda requirements; provisions to address the use of the Internet and other forms of electronic communications to conduct meetings; fines and penalties; the frequency with which available fines and penalties are implemented; and the extent to which a public body can close public meetings.

During the course of completing the Midwest Open Government Project, four major themes surfaced. The first is that all of the surveyed Midwestern states suffer from a lack of enforcement implementation. In every state surveyed except Illinois, public information laws have some kind of fine or penalty provision to deter non-compliance. However, a review of case law indicates that penalties are rarely enforced in the states that have penalty provisions. With respect to open government laws, every state statute includes a variety of enforcement and penalty provisions, some of which include criminal charges and removal from office. Despite strong provisions, few states implement their strong statutory provisions to hold public bodies accountable. The lack of implementation of enforcement provisions has a detrimental ripple effect -- public bodies are less likely to be responsive to requests for public information and more likely to inappropriately utilize exemption provisions in addition to being less likely to hold open government meetings.

The second theme is that no state surveyed has a statutorily created entity with enforcement powers dedicated to ensuring open government.[1] It is laudable that every state examined had either state resources or non-profit organizations available to the media, public officials, and the general public to navigate respective open government statutes, provide training, and advocate for more transparency, accountability, and accessibility of state government. However, considering the systemic lack of enforcement among the states for open government laws in general, a statutorily created office with enforcement powers would substantially increase the likelihood that governmental bodies will comply with open government laws.

The third theme is the lack of mandated training for public officials and public employees on appropriate utilization of open government statutes. Ohio was the only state surveyed that requires every elected official, or a designee, to receive three hours of training regarding use of

[1] Illinois: Attorney General's Public Access Counselor; Minnesota: Department of Administration's Information Policy Analysis Division; Ohio: Auditor of State's Open Government Unit; Wisconsin: Department of Justice's State Programs, Administration and Revenue Unit and the non-profit Wisconsin Freedom of Information Council; Michigan: the non-profit Michigan's Freedom of Information Committee.

that state's open records law during every term in office. Mandatory training for those who fall under the purview of open records and open meetings laws is essential to promoting open government. Required training increases the capacity of public officials and employees to comply with the law and offers a degree of accountability.

The fourth theme is that participatory opportunities for the public during public meetings are absent. The preamble of each state's open meetings statute identifies the broad goals as ensuring transparency in the government decision-making process and guaranteeing that the public has access to full and complete information regarding the affairs of government. Beyond having the capacity to access government information and observe how government operates, a healthy democracy requires an engaged public that has the opportunity to publicly comment on issues that public officials intend to take action on. Michigan is the only state surveyed that requires public bodies to provide an opportunity for the public to speak at public meeting, within appropriate restrictions. This is a tremendously important element that is conspicuously absent in other states.

Beyond the major themes identified above, the project brought to light interesting aspects of each state's open government laws. For example, Ohio's Open Meetings Law has outstanding provisions within the statute and remarkable fines and penalties for non-compliance. However, the statute does not apply to home rule units of government per the Ohio Constitution. In Illinois, the notice and minutes provisions of the Open Meetings Act are the most stringent of the five statutes, but the Freedom of Information Act is the only state surveyed that fails to have any kind of penalties or fines for violations. In addition, Illinois's statute has the longest list of exemptions by far, making the statute perplexing. With respect to Michigan, while its Open Meetings Act mandates public comment opportunity at public meetings and its Freedom of Information Act covers private entities that receive more than half of its funding from a government agency, the Governor's office, Lieutenant Governor's office and legislature are exempt from the statute. In addition, Michigan has the most stringent requirements regarding the imposition of fees for searching and compiling public records and the shortest statute of limitations under the Open Meetings Act when issues of expenditures are at stake. Wisconsin, while considered to have fairly strong open government laws, is devoid of an administrative appeals process for when requests are denied and lacks a firm statutory deadline by which public bodies must respond to requests for records. The lack of a firm deadline results in unjustified delays in accessing government information. Finally, Minnesota places a high priority on protecting the privacy of a requestor of public records, as well as an individual who may be the subject of a request. However, this leads to tremendously complex and confusing open records laws. The multi-tiered system of laws and regulations regarding the production of government documents renders the statutes virtually unusable to general public. Moreover, public bodies in Minnesota are not required by law to provide public notice of meetings, agendas detailing what action public bodies will take at such meetings, or that any minutes beyond the recording of votes be taken.

As the Center completed its broad overview of each state's statutory provisions, we completed comparative analyses highlighting positive and negative anomalies that influenced our eventual reform recommendations for each state. In addition to the individual state policy reports that provide an overview of each state's open government laws and the identification of specific

strengths and weaknesses, the Center drafted ten model statutes that are tailored to each state that good government advocates can use to begin the conversation about how to advance specific reforms. Additionally, the Center has produced citizen guides that translate dense legalese into an easily understandable format for the public. The combination of the policy reports, model legislation, and citizen guides results in a comprehensive open government tool box that can be effectively deployed to advance systemic democratic protocols. The Midwest Open Government Project is a substantial endeavor embarked on by the Center that has produced significant results to help strengthen democracy and build the capacity of the public to participate and affect government decision-making.

ANALYSIS OF ILLINOIS FREEDOM OF INFORMATION ACT AND ILLINOIS OPEN MEETINGS ACT

Illinois' two open government laws have provisions and protections that mandate open government. In 1984, the Illinois General Assembly was one of the last states nationwide to enact a Freedom of Information Act statute (FOIA). Illinois' FOIA law has a strong public policy statement advocating that "all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees." 5 ILCS 140/1. Illinois' Open Meetings Act statute (OMA), originally enacted in 1957, states that, "[i]t is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business. . . [I]t is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1. The OMA is explicit in promoting public participation in the democratic process by requiring public bodies to provide adequate notice of meeting times and keep records of public meetings.

While the Illinois FOIA and OMA have several strengths, there are substantial weaknesses within each statute that needs reform. Weakness identified in both statutes is the lack of effective enforcement and the extensive exemptions list. While other Midwest FOIA statutes have varied penalty provisions that include substantial fines, Illinois has none. Thus, strong provisions built into the statute, such as firm deadlines for public bodies to respond to requests for information, are nullified by non-existent enforcement provisions. In contrast, Illinois' OMA statute has commendable criminal penalties for violations, but State's Attorneys rarely bring OMA claims against a public body and a review of case law indicates that courts rarely impose penalties. The lack of effective enforcement within each statute negates strong provisions and gives the appearance that public bodies can violate open government statutes with little expectation of accountability. With regard to FOIA exemption provisions, respectively, Minnesota has four, Ohio has ten, Wisconsin has eleven, Michigan has twenty and Illinois has a resounding forty-five. Likewise, under the Illinois OMA, the permissible reasons to convene a meeting in closed session are extensive. With respect to closed session exceptions, Minnesota and Ohio have seven, Michigan has ten, Wisconsin has eleven and Illinois has twenty-four. The lack of effective enforcement provisions coupled with extensive exemptions in both of Illinois' open government statutes inappropriately focuses a public body's attention on reasons why information should be withheld or meetings closed and perpetuates a culture of non-transparency.

Reform of specific provisions is needed to improve transparency and access to government in Illinois. More importantly, the laws need to be enforced so that public bodies understand that compliance with open government laws is mandatory. The following provides an analysis of the strengths and weaknesses of the FOIA and OMA in Illinois, as well as a summary of the main components of the laws. Copies of model versions of both statutes, as well as citizen guides, are available by contacting the Citizen Advocacy Center (Center).

Strengths of Illinois' Freedom of Information Act

The Illinois FOIA has strengths which encourage disclosure at the outset of a requesting party's search for public records and protect the requesting party's interests in litigation. The firm deadlines for public bodies to respond to requests and increasingly liberal provisions for attorneys' fees and court costs give the impression that the Illinois' government is serious about its Sunshine Laws.

The Illinois FOIA provides stringent deadlines under which a public body must respond. Within seven working days of a request being made to a public body, the public body must either produce the documents, provide a reason for its refusal to produce the requested documents, or request an extension. 5 ILCS 140/3(c). When an individual has been denied access to records and files an appeal, the public body is required to respond within seven working days. 5 ILCS 140/10(a). Michigan is the only other state surveyed that also mandates responsiveness to a request within a specific timeframe. A firm deadline leaves little ambiguity for when compliance is necessary, and theoretically guarantees that a requesting party will receive public documents, or at least the reasons why the documents are unavailable, within a specific amount of time.

The Illinois FOIA allows for an administrative appeals process when a requestor has been denied access to records. When a public record has been denied, the denial must include a disclosure of the right to an administrative appeal, the reasons for the denial with a citation to the specific exemption, and the names and titles or positions of each person responsible for the denial. 5 ILCS 140/9. Only one other state surveyed, Michigan, allows for an appeals process prior to pursuing judicial intervention. Because litigation is a costly and burdensome process for requestors to undertake, an appeals process in theory is an opportunity for the requestor and public body to amicably resolve a dispute and avoid unnecessary costs.

Another strength of the Illinois FOIA is that it allows for greater access to attorneys' fees for a party that prevails in obtaining public records disclosed pursuant to a lawsuit. Under the original FOIA, a court could award attorneys' fees to the person requesting records if the court found that the records were of significant interest to the general public, were withheld without any reasonable basis in law, and if the requesting party substantially prevailed on the merits of the case. *Duncan Publishing, Inc. v. City of Chicago*, 304 Ill. App. 3d 778, 237 Ill. Dec. 568, 709 N.E.2d 1281 (Ill. App. Ct. 1 Dist. 1999). While attorneys' fees are not mandated, the Illinois General Assembly recognized the significant barrier constructed by the difficulty in accessing attorneys' fees. The law was amended in 2003 so that a party is eligible to receive attorneys' fees whenever he or she has substantially prevailed on the merits of the case. 5 ILCS 140/11(i).

Weaknesses of Illinois' Freedom of Information Act

While the FOIA has some ostensible benefits for the requesting parties, the law in application often results in nondisclosure and creates significant hurdles for those seeking access to public records.

Lack of penalties for FOIA violations allow public bodies to disregard requests for public information with little concern for reprisal.

Surveys by the Citizen Advocacy Center and the Illinois Press Association have documented that compliance with FOIA requests is scattershot among public bodies. Because of the lack of penalty provisions, public bodies may simply ignore FOIA requests and have little incentive to comply until a lawsuit is filed. Moreover, even when a lawsuit is filed to compel production, the public body can avoid accountability by merely tendering the requested document, thus rendering the lawsuit moot. The ability of a public body to ignore the law, only to produce public documents in an effort to avoid a judgment, circumvents the intent of the FOIA. What should be an expedited process for the acquisition of public records per the requirements of the statute, turns into a cumbersome and costly process for the requestor with no punitive impact on the public body. Additionally, while Illinois has a Public Access Counselor (PAC) within the Attorney General's office who is available to respond to citizen and media questions regarding FOIA and OMA, it is not a statutorily created office and does not retain enforcement capacity.

Reform: Implement mandatory training of public employees. Additionally, implement mandatory attorneys' fees for plaintiffs who substantially prevail in litigation, a punitive fee structure imposed on public bodies that willfully ignore FOIA requests, and the statutory creation of a PAC with enforcement capacity.

Commercial parties seeking public records must meet higher standards to award attorneys' fees.

Commercial entities seeking public records under the Illinois FOIA who are forced to file lawsuits for the disclosure of records are required to meet heightened standards to win attorneys' fees. *Duncan*, 304 Ill.App.3d at 786, 709 N.E.2d at 1288. Even if a commercial litigant substantially prevails in a case, it may still be denied attorneys' fees unless two additional elements are met: the records sought must be of *significant* interest to the general public; and the public body must have withheld the records without any *reasonable basis* in law. While the FOIA specifically states that it is not intended to further commercial enterprises, 5 ILCS 140/1, the commercial motivations of a party are irrelevant to whether or not government records are disclosable public documents. The higher threshold that must be met for a commercial litigant, as compared to an individual, to obtain attorneys' fees is unreasonable. Furthermore, this provision allows a public body to easily circumvent requests by the media, an entity that is categorized as a commercial enterprise but readily uses the FOIA in the course of reporting on government activity.

Reform: Mandatory attorneys' fees should be awarded to any party that substantially prevails on the merit of a FOIA case.

Technology has outpaced provisions of the FOIA.

Technology has outpaced provisions of Illinois' FOIA, especially regarding language in the statute that allows a public body to deny a request for public records based on what constitutes "creating" public records for disclosure purposes. Courts interpreting FOIA have held that

public bodies are not required to create records to respond to information requests that the body does not ordinarily maintain in record form. Additionally, a public body responding to a FOIA request is not required to prepare the records in a new format merely to accommodate a request for certain information. *American Federation of State v. Cook County*, 182 Ill.App.3d 941, 538 N.E.2d 776 (Ill.App. 1 Dist. 1989). In practice, it is not unusual for public bodies to withhold records maintained electronically and/or on an Internet website if the records require any additional manipulation to be responsive to a particular request. While technology has made it easier for a public body to track and document government activity, it can be used as a barrier to public access. Even though a public body may create a new record responsive to a request by a mere "click of the mouse," a public body is under no legal obligation to do so. For example, cellular phone records can be accessed by going to the phone company's Internet website for the account at issue. If cell phone records are usually maintained by a public body through a web account which only displays a summary page when the online account is opened, the public body could refuse to produce itemized phone call records subject to FOIA. Regardless of the ease in merely clicking a link on the phone company's website, public bodies can use technology to circumvent disclosure.

Reform: If a public body maintains records electronically, or has the capacity to access records electronically, disclosure pursuant to a FOIA request is mandatory unless the public body can prove that production of the information requested is unduly burdensome.

Excessive exemptions within the FOIA statute and broadly construed exemptions contradict the mandate of open government.

A significant weakness in the Illinois FOIA that results in systemic barriers to the production of public records is the exemptions portion of the statute. Illinois' FOIA has an astounding 45 exemptions, far exceeding the number of other states surveyed. In addition to duplicative exemptions that make the statute convoluted and restate non-disclosable information within other statutes, *per se* privacy exemptions listed under 5 ILCS 140/7(b)(i-vi) are particularly problematic. The broad exemption of 7(b) is intended to protect "clearly unwarranted invasion of personal privacy" and is supported by six examples which include personnel files and student files. However, Illinois' privacy provisions are by far the most general of the other states surveyed. Public bodies routinely expand the interpretation of what a *per se* exemption includes.

Furthermore, the courts' interpretation of what constitutes a *per se* exemption has created tensions under the general language of 7(b) because the exemptions may be applied even though it would be impossible to identify the names of any private citizens included in the records. *Chi. Tribune Co. v. Bd. of Educ.*, 332 Ill. App.3d 60, 773 N.E.2d 674 (Ill.App. 1 Dist., 2002). For example, student files and personnel files which do not contain readily identifiable information are being automatically exempt from disclosure wherein a proper analysis would necessitate a case-by-case assessment. Additionally, broad interpretations of what constitutes a "draft" document 5 ILCS 140/7(b)(f) is also problematic. Public bodies routinely withhold such documents from public disclosure, claiming that until a public body takes a vote on such a document, it is in draft form. However, when a public body holds a draft document in perpetuity, or chooses to abandon the draft and still withhold the document, the mandate of the FOIA to narrowly construe exemption provisions is circumvented.

Reform: The convoluted and superfluous FOIA exemptions contradict a policy of openness. Model the Illinois exemptions after the Federal FOIA, which has only a handful of exemptions.

Ambiguous costs provisions within the FOIA results in the denial of public records.

The amount charged by public bodies in order to access public documents is a weakness within the FOIA. The FOIA states that public bodies who copy files in response to a FOIA request are permitted to charge fees only to reimburse the actual cost of physically reproducing the records. 5 ILCS 140/6(a). Although a public body may charge fees "reasonably calculated to reimburse its actual cost," it may not charge search costs. The Attorney General has reiterated this concept by opining that a public body's fees "cannot include any of the cost of searching for the requested records, and cannot exceed the cost of reproduction." *Illinois Attorney General's, "A Complete Guide to the Illinois Freedom of Information Act" pg. 38.* Despite explicit language within the statute, public bodies inconsistently apply copy charges for access to public documents without justification, and use it as a barrier for public access to government documents. For example, a 2008 Citizen Advocacy Center survey of public bodies within DuPage County, Illinois documented that public bodies charged anywhere from $.10 per page to $1.00 per page for access to public records.

Reform: Require public bodies to, when feasible and desirable by the requestor, access documents via electronic mail free of charge. Electronic mail technology allows public bodies to disburse information quickly, efficiently, and at virtually no cost. Moreover, for public bodies that regularly maintain a website, mandate the creation of "electronic reading rooms". Electronic reading rooms are the automatic posting of previously requested public documents. Finally, to limit excessive costs of documents and lessen public skepticism that cost is being used as a mechanism to block public access to information, public bodies must either cap costs of information to $.15 per copy or disclose actual costs of the public body.

The following section provides a summary of the main components of the Illinois Freedom of Information Act. This summary provides an overview of the nuts and bolts of the FOIA, including what records are covered, how to appeal a denial of records requests and what relief is available through the courts. Also included are assessments based on a review of the relevant case law of the main issues in FOIA litigation and whether attorneys' fees are actually awarded to successful plaintiffs.

Summary of the Law

Who is Covered Under the Law?

The Act sets forth specific requirements for the disclosure of public records by all "public bodies" in the state. According to subsection 2(a) of the Act, the term "public body" includes any 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.

Public Records Open to Disclosure

Public records are presumed to be open and accessible, although there are numerous exceptions to the rule. Records covered include administrative manuals, procedural rules, instructions to staff, final opinions and orders made in the adjudication of cases, substantive rules, statements and interpretations of policy which have been adopted by a public body, final planning policies, inspection reports, expenditure reports, employee information, applications for contract and reports prepared by independent contractors for a public body.

Public Records Exempt from Disclosure

The Illinois FOIA has a plethora of exemptions to disclosure:

(a) Information specifically prohibited from disclosure by federal or State law or rules and regulations adopted under federal or State law.
(b) Information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy. Information exempted under this subsection (b) shall include but is not limited to:

> (i) files and personal information maintained with respect to clients, patients, residents, students or other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly from federal agencies or public bodies;
> (ii) personnel files and personal information maintained with respect to employees, appointees or elected officials of any public body or applicants for those positions;
> (iii) files and personal information maintained with respect to any applicant, registrant or licensee by any public body cooperating with or engaged in professional or occupational registration, licensure or discipline;
> (iv) information required of any taxpayer in connection with the assessment or collection of any tax unless disclosure is otherwise required by State statute;
> (v) information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies; provided, however, that identification of witnesses to traffic accidents, traffic accident reports, and rescue reports may be provided by agencies of local government, except in a case for which a criminal investigation is ongoing, without constituting a clearly unwarranted per se invasion of personal privacy under this subsection; and
> (vi) the names, addresses, or other personal information of participants and registrants in park district, forest preserve district, and conservation district programs.

(c) Records compiled by any public body for administrative enforcement proceedings and any law enforcement or correctional agency for law enforcement purposes or for internal matters of a public body, but only to the extent that disclosure would:

> (i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency;
> (ii) interfere with pending administrative enforcement proceedings conducted by any public body;

(iii) deprive a person of a fair trial or an impartial hearing;
(iv) unavoidably disclose the identity of a confidential source or confidential information furnished only by the confidential source;
(v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct;
(vi) constitute an invasion of personal privacy under subsection (b) of this Section;
(vii) endanger the life or physical safety of law enforcement personnel or any other person; or
(viii) obstruct an ongoing criminal investigation.

(d) Criminal history record information maintained by state or local criminal justice agencies, except the following which shall be open for public inspection and copying:
(i) chronologically maintained arrest information, such as traditional arrest logs or blotters;
(ii) the name of a person in the custody of a law enforcement agency and the charges for which that person is being held;
(iii) court records that are public;
(iv) records that are otherwise available under state or local law; or
(v) records in which the requesting party is the individual identified, except as provided under part (vii) of paragraph (c) of subsection (1) of this Section. "Criminal history record information" means data identifiable to an individual and consisting of descriptions or notations of arrests, detentions, indictments, information, pre-trial proceedings, trials, or other formal events in the criminal justice system or descriptions or notations of criminal charges (including criminal violations of local municipal ordinances) and the nature of any disposition arising there from, including sentencing, court or correctional supervision, rehabilitation and release. The term does not apply to statistical records and reports in which individuals are not identified and from which their identities are not ascertainable, or to information that is for criminal investigative or intelligence purposes.

(e) Records that relate to or affect the security of correctional institutions and detention facilities.

(f) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body. The exemption provided in this paragraph (f) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents.

(g) Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or information are proprietary, privileged or confidential, or where disclosure of the trade secrets or information may cause competitive harm, including:
(i) All information determined to be confidential under Section 4002 of the Technology Advancement and Development Act.
(ii) All trade secrets and commercial or financial information obtained by a public body, including a public pension fund, from a private equity fund or a privately held company within the investment portfolio of a private equity fund as a result of either investing or evaluating a potential investment of public funds in a private equity fund. The exemption contained in this item does not apply to the aggregate financial performance information

of a private equity fund, nor to the identity of the fund's managers or general partners. The exemption contained in this item does not apply to the identity of a privately held company within the investment portfolio of a private equity fund, unless the disclosure of the identity of a privately held company may cause competitive harm. Nothing contained in this paragraph (g) shall be construed to prevent a person or business from consenting to disclosure.

(h) Proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made.

(i) Valuable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss. The exemption for "computer geographic systems" provided in this paragraph (i) does not extend to requests made by news media as defined in Section 2 of this Act when the requested information is not otherwise exempt and the only purpose of the request is to access and disseminate information regarding the health, safety, welfare, or legal rights of the general public.

(j) Test questions, scoring keys and other examination data used to administer an academic examination or determined the qualifications of an applicant for a license or employment.

(k) Architects' plans, engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and the same for projects constructed or developed with public funds, but only to the extent that disclosure would compromise security, including but not limited to water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings.

(l) Library circulation and order records identifying library users with specific materials.

(m) Minutes of meetings of public bodies closed to the public as provided in the Open Meetings Act until the public body makes the minutes available to the public under Section 2.06 of the Open Meetings Act.

(n) Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

(o) Information received by a primary or secondary school, college or university under its procedures for the evaluation of faculty members by their academic peers.

(p) Administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section.

(q) Documents or materials relating to collective negotiating matters between public bodies and their employees or representatives, except that any final contract or agreement shall be subject to inspection and copying.

(r) Drafts, notes, recommendations and memoranda pertaining to the financing and marketing transactions of the public body. The records of ownership, registration, transfer, and exchange of municipal debt obligations, and of persons to whom payment with respect to these obligations is made.
(s) The records, documents and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated. With regard to a parcel involved in a pending or actually and reasonably contemplated eminent domain proceeding under the Eminent Domain Act, records, documents and information relating to that parcel shall be exempt except as may be allowed under discovery rules adopted by the Illinois Supreme Court. The records, documents and information relating to a real estate sale shall be exempt until a sale is consummated.
(t) Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered health and accident cooperative or pool.
(u) Information concerning a university's adjudication of student or employee grievance or disciplinary cases, to the extent that disclosure would reveal the identity of the student or employee and information concerning any public body's adjudication of student or employee grievances or disciplinary cases, except for the final outcome of the cases.
(v) Course materials or research materials used by faculty members.
(w) Information related solely to the internal personnel rules and practices of a public body.
(x) Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a public body responsible for the regulation or supervision of financial institutions or insurance companies, unless disclosure is otherwise required by State law.
(y) Information the disclosure of which is restricted under Section 5-108 of the Public Utilities Act.
(z) Manuals or instruction to staff that relate to establishment or collection of liability for any State tax or that relate to investigations by a public body to determine violation of any criminal law.
(aa) Applications, related documents, and medical records received by the Experimental Organ Transplantation Procedures Board and any and all documents or other records prepared by the Experimental Organ Transplantation Procedures Board or its staff relating to applications it has received.
(bb) Insurance or self insurance (including any intergovernmental risk management association or self insurance pool) claims, loss or risk management information, records, data, advice or communications.
(cc) Information and records held by the Department of Public Health and its authorized representatives relating to known or suspected cases of sexually transmissible disease or any information the disclosure of which is restricted under the Illinois Sexually Transmissible Disease Control Act.
(dd) Information the disclosure of which is exempted under Section 30 of the Radon Industry Licensing Act.
(ee) Firm performance evaluations under Section 55 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act.
(ff) Security portions of system safety program plans, investigation reports, surveys, schedules, lists, data, or information compiled, collected, or prepared by or for the Regional Transportation

Authority under Section 2.11 of the Regional Transportation Authority Act or the St. Clair County Transit District under the Bi-State Transit Safety Act.
(gg) Information the disclosure of which is restricted and exempted under Section 50 of the Illinois Prepaid Tuition Act.
(hh) Information the disclosure of which is exempted under the State Officials and Employees Ethics Act.
(ii) Beginning July 1, 1999, information that would disclose or might lead to the disclosure of secret or confidential information, codes, algorithms, programs, or private keys intended to be used to create electronic or digital signatures under the Electronic Commerce Security Act.
(jj) Information contained in a local emergency energy plan submitted to a municipality in accordance with a local emergency energy plan ordinance that is adopted under Section 11-21.5-5 of the Illinois Municipal Code.
(kk) Information and data concerning the distribution of surcharge moneys collected and remitted by wireless carriers under the Wireless Emergency Telephone Safety Act.
(ll) Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.
(mm) Maps and other records regarding the location or security of generation, transmission, distribution, storage, gathering, treatment, or switching facilities owned by a utility or by the Illinois Power Agency.
(nn) Law enforcement officer identification information or driver identification information compiled by a law enforcement agency or the Department of Transportation under Section 11-212 of the Illinois Vehicle Code.
(oo) Records and information provided to a residential health care facility resident sexual assault and death review team or the Executive Council under the Abuse Prevention Review Team Act.
(pp) Information provided to the predatory lending database created pursuant to Article 3 of the Residential Real Property Disclosure Act, except to the extent authorized under that Article.
(qq) Defense budgets and petitions for certification of compensation and expenses for court appointed trial counsel as provided under Sections 10 and 15 of the Capital Crimes Litigation Act. This subsection (qq) shall apply until the conclusion of the trial of the case, even if the prosecution chooses not to pursue the death penalty prior to trial or sentencing.
(rr) Information contained in or related to proposals, bids, or negotiations related to electric power procurement under Section 1-75 of the Illinois Power Agency Act and Section 16-111.5 of the Public Utilities Act that is determined to be confidential and proprietary by the Illinois Power Agency or by the Illinois Commerce Commission.
(ss) Information that is prohibited from being disclosed under Section 4 of the Illinois Health and Hazardous Substances Registry Act.

Special Provisions Regarding Electronic Mail

According to the Illinois Attorney General, electronic mail records of a member of a public body should be considered a public record for purposes of the Act; however, certain exemptions may exist that permit a withholding of these records.

Main Areas of Litigation and Typical Outcomes Regarding Public Records Exempt From Disclosure

A number of contentious FOIA cases hinge on the "personal privacy" exemption 7(b). Section 7(b) lists a number of examples of information that may qualify as exempt, including medical records, student files and tax assessments. The list is not exhaustive, and the courts have determined the enumerated items to be *per se* exempt. Any other claims of 7(b) exemptions must proceed case by case. The general outcome in this area of litigation is that the FOIA request is deemed rightfully denied.

What Information Must a Requestor Provide?

According to the Illinois Attorney General, a public body may not require that the requestor provide his or her identity or intended use.

Deadline for Production of Public Records

Absent extraordinary circumstances, the public body must respond within seven working days of receipt of the request. Under extraordinary circumstances, the FOIA provides that the seven day period for response may be extended for up to seven additional working days. When such additional time is required, the public body must notify the person making the request by letter specifying the reason for the delay and the date when either the records will be released or the denial of the request will be made. This letter must be sent within the original seven day period.

Denial of a Record

When a request for public records is denied by a public body, that body must, within seven working days, or within any extended compliance period provided for in the FOIA, notify the person who made the request, by letter, of the decision to deny the request. Failure to respond within the specified time period is considered a denial of the request under the FOIA.

What Must be Included in Denial Letter?

The letter must contain reasons for the denial, and the names and titles of all persons responsible for the denial. If an exemption has been asserted, the letter must specify which exemption authorizes the denial. The letter must also explain that the requesting party can appeal the denial to the head of the public body.

Appeal to Public Body

Any person denied access to inspect or copy any public record for any reason may appeal the denial by sending a written notice of appeal to the head of the public body. Upon receiving that written notice, the head of the public body, or such person's designee, is required to review the requested public record promptly, and to determine whether, under the provisions of the Act, such records are open to inspection and copying. The person requesting the records must be notified of that determination within seven working days. If the head of a public body denies access to public records, he or she must explain in his letter of denial that the person requesting the records has a right to judicial review of that determination.

Appeal to State Court

When the head of a public body denies access to public records, the requesting person is "deemed to have exhausted his administrative remedies." When the denial is from the head of a public body of the State, suit may be filed in the circuit court for the county in which the public body has its principal office or where the requesting party resides. When the denial is from the head of a municipality or other type of public body, suit must be brought in the circuit court for the county in which the public body is located.

Penalties for Violation

The requesting person may file suit in the circuit court for injunctive or declaratory relief.

Availability of Attorneys' Fees for FOIA Litigation

Under a January 1, 2004, amendment to 5 ILCS 140/11, a private party may recover attorneys' fees when he or she has substantially prevailed absent special circumstances. Special circumstances justifying a trial court's denial of attorneys' fees may include (1) the plaintiff is a non-lawyer proceeding *pro se*; (2) an attorney proceeds *pro se* under the Act; (3) the defendant entered into a nuisance settlement solely to end a frivolous and groundless suit and avoid the expense of litigation; (4) the plaintiff was not instrumental in achieving the remedy sought; or (5) the plaintiff, through a settlement or consent order, agreed to waive his or her right to pursue fees. *Callinan v. Prisoner Review Bd.*, 371 Ill. App. 3d 272, 862 N.E.2d 1165, 2007 Ill. App. LEXIS 91, 308 Ill. Dec. 962 (Ill. App. Ct. 3d Dist. 2007). If the requesting party sought the records in order to further commercial interests, the test is the same as that stated in *Duncan.*

Whether Attorneys' Fees Are Usually Granted

Under the original Act, attorneys' fees were rarely granted. It remains to be seen whether the 2004 amendment, which *Callinan* interprets, will increase the frequency with which attorneys' fees are granted.

General Areas Litigated Most Commonly and Typical Outcomes

A number of contentious FOIA cases hinge on the "personal privacy" exemption 7(b), as discussed above.

Ranking in 2007 National Study of 50 States' Freedom of Information Laws

In 2007, the nonpartisan, nonprofit organizations Better Government Association and National Freedom of Information Coalition conducted a 50-state study of FOIA responsiveness. Three of the criteria—Response Time, Attorneys' Fees & Costs and Sanctions—were worth four points each. Two of the criteria—Appeals and Expedited Process—were assigned a value of two points each. Response Time, Attorneys' Fees & Costs and Sanctions were assigned a higher value because of their greater importance. These criteria determine how fast a requestor gets an initial answer, thus starting the process for an appeal if denied, and provide the necessary deterrent element to give public records laws meaning and vitality. Appeals and Expedited Process, although important, were determined to be less critical in promoting open government access and thus assigned only a two-point value. The following sets forth Illinois' rankings in this study, which may be found at http://www.bettergov.org/policy_foia_2008.html.

- For response time (analyzing response times, the process of appealing FOIA denials and expediency, and the means to give a case priority on a court's docket in front of other matters because of time concerns), 4 of 4.
- For appeals (analyzing choice, cost and time), 1.5 of 2.
- For expedited review (if a petitioner's appeal, in a court of law, would be expedited to the front of the docket so that it is heard immediately), 1 of 2.
- For fees and costs ((1) whether the court is required to award attorneys' fees and court costs to the prevailing requestor; and (2) what sanctions, if any, the agency may be subject to for failing to comply with the law), 3 of 4.
- For sanctions (whether there was a provision in the statute that levied penalties against an agency found by a court to be in violation of the statute), 0 of 4.
- Percentage (compared to other 49 states), 59 of 100.

Grade (scale of A to F), an F.

Strengths of Illinois' Open Meetings Act

The Illinois' OMA has a broad presumption of coverage. All meetings of public bodies are presumed to be open and subject to the provisions of the OMA, unless the meeting topic falls within one of the exemptions outlined in the law. When a valid exemption is cited, the public body is allowed to meet in executive (*i.e.*, closed) session. Illinois courts have strictly construed exceptions and have invalidated final actions taken during improperly properly closed meetings. The OMA mandates that closed session action is limited to the debating of public issues only. In addition, the public benefits from a lenient approach to the disclosure of information discussed in executive session. The OMA does not grant public bodies the right to sanction members for disclosing information discussed at a closed meeting. Therefore, members of public bodies who share information from closed sessions with interested individuals or groups do not suffer legal reprisal. Lastly, Illinois OMA is the only one of the states surveyed that specifically addresses electronic communications and meetings. The OMA states that email and Internet chat room communications are considered meetings. While there is ambiguity regarding successive email communications among a public body's majority of a quorum, Illinois is ahead of the curve in attempting to address the integration of technology into the business of governing.

Illinois' OMA has the strongest requirements of the states surveyed to ensure notice of meetings and action items. Minnesota fails to have any notice requirements for a meeting or an agenda. Michigan requires only eighteen hours notice for a meeting and does not require a detailed agenda. Ohio requires twenty-four hours notice for a meeting and does not required a posted agenda unless a fee is paid to a public body and a request is made to be notified when specific issues are discussed. Wisconsin requires twenty-four hours notice, but no detailed agenda is required. Illinois' OMA requires that a meeting agenda must be posted at least 48 hours prior to a meeting with an agenda that sufficiently informs the public of action to be taken by the public body. Additionally, the public body must also post notice of the meeting and an agenda if it normally maintains a website. 5 ILCS 120/2.02. Illinois courts have upheld the OMA's strict notice provision. For example, an adopted ordinance was invalidated because it was listed as "new business" on the meeting agenda rather than with sufficient detail to notify the public that the item was a local law proposed for adoption. *Rice v. The Board of Trustees of Adams County*, 326 Ill.App. 3d 1120, 762 N.E. 2d 1205 (Ill.App. 4 Dist., 2002)

The Illinois Attorney General's Public Access Counselor (PAC) is a valuable asset. The PAC is a non-statutorily created office that takes an active role in ensuring that public bodies conduct their business openly and that members of the public have access to the governmental information to which they are entitled. Although the PAC does not have the power to sanction government bodies that violate the OMA, it will proactively mediate complaints from the public and media regarding OMA concerns. For instance, in responding to a resident's complaint regarding potential OMA violations, the PAC will investigate, intercede, and promote adherence to the OMA through such measures as ordering OMA training to help advance good government practices. The PAC's commitment to OMA accountability and transparency positively impacts the public's open government rights in Illinois.

Weaknesses of Illinois' Open Meetings Act

While there are several weaknesses in Illinois' OMA statute, the most significant stems from lack of effective enforcement.

The Illinois penalty provisions are rarely utilized to enforce compliance with the OMA.

The Illinois OMA is one of two states surveyed that provide for criminal penalties for violating the law. The OMA allows for punitive measures that include a Class C misdemeanor punishable by a fine of up to $1,500 and imprisonment for up to 30 days. 5 ILCS 120/4. However, State's Attorneys throughout Illinois rarely pursue criminal actions against government officials or governmental bodies that violate that statute. Furthermore, while the courts have the power, they never assess criminal penalties, even for egregious OMA violations. The failure to implement penalties leads public bodies to openly violate the OMA without fear of reprisal. Furthermore, the courts' failure to impose criminal penalties for intentional violators and repeat offenders discourages OMA compliance and serves as a disincentive for state's attorneys who want to pursue criminal charges. With State's Attorneys failing to file OMA claims and the PAC not having enforcement capacity, the burden inappropriately rests solely on the average citizen to hold public bodies accountable through filing civil litigation. Lastly, even if a lawsuit is filed

seeking the invalidation of an improper final action, a public body may simply re-enact the illegal action properly, thereby mooting the legal claim. Allowing for subsequent remedial action permits a public body to overtly violate the law without fear of accountability.

Reform: Implement mandatory fines against public bodies that violate the OMA pursuant to a civil claim. Revise the OMA to disallow the mooting of a legal claim by subsequent remedial action by a public body. Statutorily create the PAC with enforcement capacity to file and intervene in lawsuits through statutory provisions. Mandate annual OMA training for public officials and require public officials to sign a certification form.

Short statute of limitation deadlines are a disincentive for members of the public to file lawsuits to hold public bodies accountable.

Illinois has a very short statutory deadline for which the public can file an OMA civil claim. As compared, Minnesota has no time limits to file a claim and Wisconsin and Ohio have a two year statute of limitations. Michigan has a short deadline of 30 or 60 days depending on the claim. Illinois' statute of limitations is 60 days. 5 ILCS 120/3. Members of the public who identify an OMA violation have three alternative avenues to address grievances prior to filing litigation: organizing and speaking out publicly against the governmental body to pressure public officials to address the indiscretion through a re-vote; mediating the dispute through the PAC; or filing a complaint with the appropriate State's Attorney. However, none of these options suspend the 60 day time bar, thus immense pressure is placed on an individual to quickly decide whether or not to pursue costly litigation.

Reform: Extend the statute of limitations to two years.

Meeting minutes are often a vague documentation of the public meeting.

Illinois OMA mandates that a public body record votes taken and summarize discussions on all matter proposed, deliberated or decided at a public meeting. 5 ILCS 120/2.06 While the OMA details what must be included in meeting minutes, the practical application often results in vague documentation of meeting activity and a failure to effectively apprise the public of what took place at a meeting. The Attorney General has opined that minutes must include sufficient data so that either the body or a court examining its minutes will be able to ascertain what, in fact, was discussed, the substance of that discussion, and what, if any, action was taken. However, the OMA itself does not include such specific requirements, nor have Illinois courts required substantive detail within minutes. As a result, members of the public who were not present at a meeting, but seek to become informed, are often unable to ascertain the full extent of meeting activity.

Reform: Amend the statute to require that meeting minutes include substantive information regarding discussions or that audio or video tape records of all meetings covered by the OMA be made and available to the public.

Legally permissible reasons to close public meeting discussions are routinely abused.

As with the Illinois FOIA, the OMA has far more legally permissible reasons to close a meeting as compared to the other states surveyed. Minnesota and Ohio have seven permissible reasons to close a meeting, Michigan has ten, Wisconsin has eleven, and Illinois has twenty-four. In contradiction to the statute, the extensive list is often broadly construed, allowing public bodies to operate in a non-transparent manner. Furthermore, the Illinois OMA does not require that a subsequent vote of an illegal discussion in closed session be voided, providing the public body with substantial leeway to violate the statute. A public body merely has to reconvene in open session and vote on the matter that was illegally deliberated.

Further, the exemption that allows for the discussion of pending litigation in closed session is widely exploited by public bodies. While the Attorney General has indicated that litigation must be probable, imminent, or pending for the exception to apply, public bodies sweep a vast amount of deliberation under the umbrella of pending litigation. This is especially seen in meetings of school district officials, given that they regularly discuss personnel issues or pending litigation in closed session. Since a large number of education matters involve staff issues, and any action or inaction regarding staff can result in a lawsuit, some school districts interpret the closed session exemptions in an overly broad manner and close meetings unnecessarily. In general, as compliance with closed sessions is difficult to police, and because filing litigation is a costly and an undesirable alternative, the public is forced to rely only on those who participate within the closed session to ensure compliance.

Reform: Amend the OMA to reduce permissible reasons for a public body to convene in closed sessions and prohibit a public body from taking remedial action in open sessions for impermissible closed meeting action. Additionally, public bodies are required to make a verbatim record of closed session meetings, however those records under current law are not publicly available, therefore require public bodies to make the verbatim recordings of closed sessions public after one year.

The following section provides a summary of the main components of the Illinois OMA. This summary provides an overview of the nuts and bolts of the statute, including what types of meetings are covered by the law, the procedures for closed sessions, how to appeal a violation and what relief is available through the courts. Also included are assessments based on a review of the relevant case law of the main issues in OMA litigation and whether attorneys' fees are actually awarded to successful plaintiffs.

Summary of the Law

Who is Covered Under the Law?

The law applies to any public body, which includes legislative, executive, administrative, or advisory bodies of the state, counties, townships, cities, villages, incorporated towns, school districts, and all other municipal corporations, boards, bureaus, committees, or commissions, and any subsidiary bodies of any of the foregoing. Coverage applies whether the public body is paid or unpaid. Home rule units must comply with the law, and may not adopt weaker standards. However, the law does not apply to private, not-for-profit corporations, even if they administer programs funded primarily by governmental agencies and are required to comply with

government regulations, if the boards of directors and employees of such corporations are free from direct governmental control.

Are Committees, Advisory Groups, Sub-Committees Covered?

Yes. Committees are covered by the law. Sub-committees and advisory committees that are supported in any part by tax revenue or which expend tax revenue also are covered by the law. However, the General Assembly's committees, subcommittees and advisory committees are exempt.

Types of Gatherings Covered

The law applies when the following requirements are met. There must be (1) a gathering (2) of a majority of a quorum of the public body (3) to discuss public business. Gatherings include in-person, telephonic and electronic meetings (*e.g.*, electronic mail and Internet chat rooms). Intent to discuss public business is necessary for the OMA to apply. A recently passed amendment provides an exemption from the meeting coverage requirement for public bodies with five members. Under the OMA amendment, public discussions by three, rather than two, members trigger coverage of the law for meeting purposes.

What Meetings Must Be Open?

Any meeting that includes a majority of a quorum of the members of a public body must be open if it is held for the purpose of discussing public business.

Exceptions: Closed Meetings

There are twenty-four authorized subjects permitted for closed meetings. The closed meetings exceptions authorize but do not require the holding of a closed meeting to discuss a covered subject.

(1) The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity.
(2) Collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees.
(3) The selection of a person to fill a public office, as defined in the OMA, including a vacancy in a public office, when the public body is given power to appoint under law or ordinance, or the discipline, performance, or removal of the occupant of a public office, when the public body is given power to remove the occupant under law or ordinance.
(4) Evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined in the OMA, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

(5) The purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired.
(6) The setting of a price for sale or lease of property owned by the public body.
(7) The sale or purchase of securities, investments, or investment contracts.
(8) Security procedures and the use of personnel and equipment to respond to an actual, threatened, or reasonably potential danger to the safety of employees, students, staff, the public, or public property.
(9) Student disciplinary cases.
(10) The placement of individual students in special education programs and other matters relating to individual students.
(11) Litigation, when an action against, affecting, or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting.
(12) The establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act, if otherwise the disposition of a claim or potential claim might be prejudiced, or the review or discussion of claims, loss or risk-management information, records, data, advice, or communications from or with respect to any insurer of the public body or any intergovernmental risk-management association or self-insurance pool of which the public body is a member.
(13) Conciliation of complaints of discrimination in the sale or rental of housing, when closed meetings are authorized by the law or ordinance prescribing fair housing practices and creating a commission or administrative agency for their enforcement.
(14) Informant sources, the hiring or assignment of undercover personnel or equipment, or ongoing, prior or future criminal investigations, when discussed by a public body with criminal investigatory responsibilities.
(15) Professional ethics or performance when considered by an advisory body appointed to advise a licensing or regulatory agency on matters germane to the advisory body's field of competence.
(16) Self-evaluation, practices and procedures, or professional ethics, when meeting with a representative of a statewide association of which the public body is a member.
(17) The recruitment, credentialing, discipline or formal peer review of physicians or other health care professionals for a hospital or other institution providing medical care that is operated by the public body.
(18) Deliberations for decisions of the Prisoner Review Board.
(19) Review or discussion of applications received under the Experimental Organ Transplantation Procedures Act.
(20) The classification and discussion of matters classified as confidential or continued confidential by the State Employees Suggestion Award Board.
(21) Discussion of minutes of meetings lawfully closed under the OMA, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06.
(22) Deliberations for decisions of the State Emergency Medical Services Disciplinary Review Board.
(23) The operation by a municipality of a municipal utility or the operation of a municipal power agency or municipal natural gas agency when the discussion involves (i) contracts relating to the

purchase, sale, or delivery of electricity or natural gas or (ii) the results or conclusions of load forecast studies.
(24) Meetings of a residential health care facility resident sexual assault and death review team or the Residential Health Care Facility Resident Sexual Assault and Death Review Teams or the Executive Council under the Abuse Prevention Review Team Act.

Public Notice of Time and Place for Meetings: Requirements for Agendas

The OMA requires public bodies to give public notice at the beginning of each calendar or fiscal year of the dates, times and places of their regular meetings to be held that year. Public bodies must post an agenda for each regular meeting at least 48 hours in advance of the meeting at the principal office of the public body and at the location where the meeting is to be held. Public notice of any special, rescheduled, or reconvened meeting must be given at least 48 hours in advance, except that public notice is not necessary for a meeting to be reconvened within 24 hours or if the time and place of the reconvened meeting was announced at the original meeting and there is no change in the agenda. Notice of a meeting held in the event of a bona fide emergency need not be given 48 hours prior to such meeting, but notice must be given as soon as practicable.

In addition, the schedule of regular meetings must be available at the office of the public body listing the times and places of regular meetings. If a change is made in regular meeting dates, notice of the change must be given at least 10 days in advance by posting a notice at the public body's office or at the place of meeting and sending a notice to each news medium that filed an annual request to receive such notice. Further, notice of the change must be published in a newspaper of general circulation in the area. However, if the population served by the public body is less than 500 and there is no newspaper published there, the 10 days notice may be given by posting a notice in three prominent places within the unit served.

Procedures for Closed Meetings

A majority of a quorum must vote during an open meeting to close a meeting or to hold a closed meeting at a specific future date. The vote of each member on the question of holding a closed meeting must be publicly disclosed at the time of the vote and recorded and entered in the minutes of the meeting at which the vote is taken. The public statement and minutes must recite the language of the exemption.

A series of meetings may be closed by a single vote as long as each meeting in the series involves the same particular matter and is scheduled to be held within three months of the vote.

Recordkeeping for Meetings: Minutes Requirements

Minutes must include the following: (1) the date, time and place of the meeting; (2) the members of the body recorded as present or absent; and (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken. With respect to the summary requirement, the Attorney General has opined that the minutes must include sufficient

data so that either the body or a court examining its minutes will be able to ascertain what, in fact, was discussed, the substance of that discussion, and what, if any, action was taken.

Taping or Filming Meetings

Individuals may tape or film open session meetings so long as it does not interfere with the meeting. Rules regarding taping or filming should be written and published after appropriate public notice and deliberation rather than spontaneously created. Individuals giving testimony at public hearings may request that they not be recorded under certain conditions. If a witness before a commission, administrative agency or other tribunal refuses to testify because his or her testimony will be taped or filmed, the authority holding the meeting must prohibit the recording during the testimony of the witness.

Are Electronic Mail Communications a Meeting?

Yes. Electronic mail and Internet chat room communications are considered communications for meeting purposes under the law.

Summary of Pivotal State Supreme Court OMA Decisions

The OMA is designed to prohibit secret deliberations and action on matters which, due to their potential impact on the public, should properly be discussed in a public forum. *People ex rel. Difanis v. Barr*, 83 Ill. 2d 191, 202 (1980).

Nothing in the OMA provides a cause of action against a public body for discussing information from a closed meeting. *Swanson v. Board of Police Comm'rs*, 197 Ill. App. 3d 592 (1990).

The exemptions to the OMA are limited in number, very specific and must be strictly construed. *I.N.B.A. v. City of Springfield*, 22 Ill. App. 3d 226, 228 (1974).

Enforcement

Enforcement is weak. While the State's Attorneys have the ability to prosecute OMA violations, they almost never do. The Illinois Office of the Attorney General has established a Public Access Counselor's (PAC) office to take an active role in assuring that public bodies understand the requirements of open government laws such as the OMA and conduct their business openly, and that the public has access to the governmental information to which they are entitled. While the PAC Office has no punitive authority, it responds to resident's complaints and occasionally refers OMA matters to the State's Attorney for investigation.

Penalties for Violation

Civil and criminal penalties are available for OMA violations. A civil lawsuit may be filed by any private individual or the State's Attorney of the county in which a violation occurred. The lawsuit must be filed within 60 days after the meeting alleged to have been held in violation of the law, or within 60 days of the discovery of a violation by the appropriate State's Attorney.

Mandamus and injunction are available. Criminal penalties are limited to Class C misdemeanor charges, which are punishable by a fine of up to $1,500 and imprisonment for up to 30 days. Criminal charges may only be initiated by the appropriate State's Attorney.

Are Criminal Penalties Assessed Regularly?

Criminal penalties are rarely imposed in OMA cases.

Availability of Attorneys' Fees for OMA Litigation

Attorneys' fees are available for a prevailing party in OMA litigation. *Pro se* plaintiffs (individuals who serve as their own lawyers) may not be awarded attorneys' fees.

Whether Attorneys' Fees Are Usually Granted

Attorneys' fees are usually not granted to prevailing parties.

General Areas Litigated Most Commonly and Typical Outcomes

The area that appears to trigger the most litigation is when a public body improperly enters an executive session under the OMA. Courts generally construe the closed session exceptions narrowly. Courts also have considered several cases interpreting the notice requirement and have mostly invalidated final actions where notice was defective.

Intake Examples

FOIA

In connection with an open government survey, the Citizen Advocacy Center sent FOIA requests to several dozen public bodies in the Chicago area asking for basic election-related referendum records. Addison Township initially responded to the Center's FOIA request with a letter stating that the Center was required to fill out the Addison Township FOIA request form. Although the form inappropriately requires a requestor to state the purpose for the FOIA request, the Center complied for the sake of obtaining information for its survey. Thereafter, Addison Township sought a valid extension of time. They failed to meet their statutory deadline then requested several additional extensions that are not statutorily permitted. Approximately three months after the Center's original FOIA request, Addison Township supplied the requested records.

OMA

While the Citizen Advocacy Center monitored a meeting of the DuPage County Board, the Chairman of the Board provided his "Chairman's Report." The agenda published prior to the meeting only had the title of "Chairman's Report" with no subsections listed. During the Chairman's report, he called on the Board to vote on a resolution altering DuPage County's

policy position opposing O'Hare Airport expansion, a controversial issue at the time. The Board immediately voted to pass the resolution. A lawsuit was filed alleging a violation of OMA notice requirements, specifically that the DuPage County Board failed to appropriately notify the public of business to be conducted. After three years litigation, the DuPage County Board rescinded the resolution pursuant to a settlement agreement.

Midwest Open Government Project: Freedom of Information Law Summary
February 12, 2008

Categories of Concern	Ohio	Illinois	Michigan	Minnesota	Wisconsin
Coverage	All public bodies, including state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by any alternative school in the state of Ohio kept by a non-profit or for profit entity.	All public bodies, including 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 the state.	All public bodies, including state agencies, county and other local governments, school boards, other boards, departments, commissions, councils, and public colleges and universities. If an entity receives more than half of its funding through a state or local authority, it is considered a public body.	All government entities, including state agencies, record-keeping systems, political subdivisions, corporations or non-profits under contract, state university system and school districts, and any officer, board, or authority appointed for an agency or ordinance or any level of local government (counties, districts, charter cities, towns, etc.).	All government "authorities," including a state or local office, elected official, agency, board, commission, committee, council, department, or public body corporate and politic created by constitution, law, ordinance, rule, or order, and any governmental or quasi-governmental corporation (except for the Bradley Center sports and entertainment corporation).
Public Records Open to Disclosure	Regardless of physical form, any document, device, or item which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.	Any handwriting, typewriting, printing, photostating, photographing, photocopying and every other means of recording, including letters, words, pictures, sounds or symbols, or combinations thereof, as well as papers, maps, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.	A writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function.	Regardless of physical form, all information collected, created, received, maintained, or disseminated by the government.	Regardless of physical form, all material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved and has been created or is being kept by an authority.
Form of Records	Requestor's choice; can be paper or other medium if public body normally maintains records in that form.	Requestor's choice; can be paper or other medium if public body normally maintains records in that form.	Requestor's choice; can be paper or other medium.	Must be "easily accessible for convenient use."	Requestor's choice; can be paper or other medium.
Electronic Mail	E-mails relating to office functioning are covered.	E-mails are covered.	E-mails are covered.	E-mails are covered.	E-mails are covered.
Fees for Public Records	Only for actual cost of reproduction and mailing; not for cost of labor.	Only for actual cost of reproduction and certification; not for cost of labor.	Fees may be charged for the necessary copying of a public record for inspection or providing a copy of a public record to a requestor. Fees also may be imposed for search, examination and review and the separation of exempt information in those instances where failure to charge a fee would result in unreasonably high costs to the public body. The fee must be limited to actual duplication, mailing and labor costs.	If copied amount is less than 100 pages, the fee is limited to 25 cents per page. If over 100 pages, charge can cover actual costs of searching for, compiling, or electronically transmitting the data (including employee time under certain conditions).	Only for the "actual, necessary, and direct cost" of reproducing records; not for the cost of labor. Costs associated with locating records may be assessed when more than $50 is required to locate records.

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Categories of Concern	Ohio	Illinois	Michigan	Minnesota	Wisconsin
Public Records Exempt from Disclosure	Key specific exemptions include: - medical records - trial preparation records - records pertaining to adoption hearings - trade secrets	Key specific exemptions include: - records related to litigation - medical records - personnel records - tax assessments	Key specific exemptions include: - information or records subject to the attorney-client privilege - law enforcement information - trade secrets	Key specific exemptions include: - law enforcement information - proprietary information and trade secrets - personnel data - private, confidential, nonpublic and protected nonpublic data	Key specific exemptions include: - law enforcement information - proprietary information and trade secrets - patient health care records - personnel records
Deadline for Production of Public Records	"Promptly prepared," but no exact time period.	Seven business days, additional seven business days with extension.	Five business days, additional ten business days with extension for unusual circumstances.	"As soon as reasonably possible," but no exact time period. Ten days for private and summary data.	"As soon as practicable and without delay," but no exact time period.
Denial of a Records Request	Public body must provide explanation, including legal authority. The explanation is not required to be written, unless the requestor so requests.	Public body must, in writing, provide explanation, identify responsible parties, and explain appellate process.	Public body must provide written explanation and inform requestor of right to seek judicial review within five days, or within fifteen days under unusual circumstances.	Requestor has right to be informed of the specific law or classification that justifies the denial.	If oral request, the government authority may deny the request orally unless the requestor asks for a written statement of the reasons for denial within five business days of the oral denial. If written request, a denial or partial denial must be in writing. Reasons for the denial must be specific and sufficient.
What Information Must a Requestor Provide	None. Public body may ask for written request, requestor's identification and reason, but must disclose non-mandatory nature.	None. Requestor may provide identification and purpose for a waiver of fees in the "public interest."	None. Reason for request may be disclosed but cannot constitute effective denial.	None for public and summary data. Specifications vary regarding access to private data and confidential data.	None. A requestor does not need to provide his or her identity or the reason why the requestor wants particular records.
Appeal Process (Administrative or State)	No administrative appeal process exists. Requestor may file a mandamus action to compel disclosure in the court of common pleas.	Requestor must appeal denial to the head of the public body in writing. If such administrative appeal is denied or ignored, requestor may file action in circuit court for injunctive or declaratory relief.	Requestor must appeal denial to the head of the public body in writing. If such administrative appeal is denied or ignored, requestor may try to compel disclosure in circuit court.	No administrative appeal process exists. Requestor may try to compel disclosure in district court. Personally affected individuals have the right to appeal to the government authority administratively regarding their personally identifiable information.	No administrative appeal process exists. Requestor may bring a mandamus action asking a court to order release of the record or submit a written request to the district attorney of the county where the record is located or to the Attorney General requesting that a mandamus action be brought. Personally affected individuals have the right to appeal to the government authority administratively regarding their personally identifiable information.
Penalties for Violation	*Statutory damages* : $100 per business day, up to $1,000.	None.	*Punitive damages* : Up to $500. *Actual or compensatory damages* : awarded by courts.	*Exemplary damages* : Between $1,000 and $10,000. *Civil penalties* : Up to $1,000 awarded by courts, payable to the state general fund.	*Statutory damages:* minimum $100 and other actual costs (except no such recovery by committed or incarcerated persons). *Punitive damages:* up to $1,000 for a government authority's custodian who is responsible for an arbitrary and capricious delay or denial.

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Categories of Concern	**Ohio**	**Illinois**	**Michigan**	**Minnesota**	**Wisconsin**
Availability of Attorneys' Fees for Prevailing Plaintiffs in Litigation	Yes, but not for *pro se* plaintiffs.	Yes, but not for *pro se* plaintiffs.	Yes, but not for *pro se* plaintiffs.	Yes, but not for *pro se* plaintiffs.	Yes, but not for *pro se* plaintiffs.
Typical Outcome of Request for Attorneys' Fees by Prevailing Plaintiffs in Litigation	Not often awarded.	Not often awarded.	Not often awarded.	Not often awarded.	Usually awarded.
Statute of Limitations to File Administrative Appeal or to File Action in Circuit Court.	None.	None	FOIA requestors who face a full or partial denial of their records requests may submit a written appeal to the head of the appropriate public body, or may directly file a claim in court within 180 days of the purported denial.	None	When the request comes from a committed or incarcerated person, the claim must be filed within 90 days after the request is denied.

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Categories of Concern	Ohio	Illinois	Michigan	Minnesota	Wisconsin
Coverage	Any public body, including any board, commission, committee, council, or similar decision-making body of a state agency, any county, township, municipal corporation, school district, or other political subdivision. Coverage can be trumped by individual city charters due to the home rule provision in the State Constitution.	Any public body, including any legislative, executive, administrative, or advisory bodies of the state, counties, townships, cities, villages, incorporated towns, school districts, and all other municipal corporations, boards, bureaus, committees, or commissions, and any subsidiary bodies of any of the foregoing. Does not apply to private, non-profit corporations under any conditions.	Any public body, including any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, which is empowered by state constitution, statute, charter, ordinance, resolution, or rul to exercise governmental or proprietary authority or perform such a function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement. A board of a nonprofit corporation formed by a city under the Home Rule City Act is a public body, however, courts have found no coverage for a nonstock, nonprofit corporation created independent of state or local authority without the assistance of public funds or generally for private non-profit corporations.	Any public body, including any state agency, board, commission, or department when it is required or permitted by law to transact public business in a meeting, the governing body of any school district, unorganized territory, county, city, town, or other public body, and a committee, subcommittee, board, department, or commission of a public body subject to the law. A 2000 amendment established that corporations created by political subdivisions are subject to coverage.	Any public body, including state or local agencies, commissions, departments, and councils The law also applies to the state Legislature, but not to a partisan caucus of the Senate or Assembly. Governmental or quasi-governmental corporations are also covered by the law. The statute does not address coverage for non-profit corporations, though Attorney General opinions lean toward coverage for non-profits as quasi-governmental entities.
Are Committees, Advisory Groups, Sub-Committees Covered?	Committees and sub-committees are covered by the law. Advisory groups are not expressly covered under the law and Ohio courts are split on whether advisory groups constitute public bodies.	Committees and sub-committees are covered by the law. Advisory committees that are supported in any part by tax revenue or which expend tax revenue are covered by the law pursuant to a balancing test.	Committees and sub-committees are covered by the law so long as they exercise governmental authority or perform a governmental function. Advisory groups are not expressly covered under the law. The Attorney General has suggested there is no coverage, however state appellate courts have found advisory committees subject to coverage in certain cases.	Committees and sub-committees are covered by the law. Advisory groups are not expressly covered under the law, but courts have held that an advisory committee may be covered depending on the number of members of the governing body involved and on the form of the delegation of authority from the governing body to the members.	Committees and sub-committees are covered by the law. Bodies created by a directive and advisory bodies created by a constitution, statute ordinance, rule, or order and bodies created by a directive also are covered.
Types of Gatherings Covered	Coverage extends to a prearranged meeting of a public body in which a majority of its members attend and discuss public business.	Coverage extends to a gathering of a majority of a quorum to discuss public business.	Coverage extends to any meeting of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy, or any meeting of the board of a nonprofit corporation formed by a city under the Home Rule City Act. Also covered are information-gathering and fact-finding sessions called by the governmental body where a quorum of members are present and the session relates to the body's public business.	Coverage extends to gatherings of a governing body reaching a quorum, or a quorum of a committee, subcommittee board, department or commission at which members discuss, decide or receive information as a group on issues relating to the official business of that governing body.	Coverage extends to gatherings of a majority of the public body where the body meets to engage in business, including discussion, decision, or information-gathering on issues within the body's responsibilities. A negative quorum (sufficient number of members to determine a public body's course of action if the group votes as a block) or walking quorum (series of meetings, telephone conferences, or some other means of communication such that groups of less than a quorum are effectively meeting) can satisfy the majority requirement.
Exemptions: Closed Meetings	**A meeting may be closed under _____ exemption.** Examples include personnel matters, purchase of property and collective bargaining.	A meeting may be closed under 24 exemptions. Examples include personnel matters, purchase of property, probable or imminent litigation and collective bargaining.	A meeting may be closed under 10 exemptions. Examples include personnel matters, purchase of property, pending litigation and collective bargaining.	A meeting *must* be closed for a limited range of subjects, for instance if data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults, to discuss data regarding educational data, health data, medical data welfare data, or mental health data that are not public data or for preliminary consideration of allegations against an individual subject to the government's authority. A meeting *may* be closed under limited conditions, for instance if disclosure of the information discussed would pose a danger to public safety or compromise security, fo labor negotiations purposes, purchase of property or attorney-client privileged matters.	A meeting *may* be closed under____ exemptions. Exemptions include personnel matters, purchase of property, pending litigation and collective bargaining.

Midwest Open Government Project: Open Meeting Law Summary
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Categories of Concern	Ohio	Illinois	Michigan	Minnesota	Wisconsin
Public Notice of Time and Place for Meetings: Requirements for Agendas	Public bodies must establish at least one reasonable method of informing the public of meetings (sign on the front door of town hall, published information in a general circulation). News media must be informed at least 24 hours before meetings (exempting emergency meetings).	Public bodies must post an agenda for each regular meeting at least 48 hours in advance at both the principal office of the public body and at the meeting location. A schedule listing the times and places of regular meetings must be available at the office of the public body . A public body that has a website maintained by the full time staff of the public body must post all agendas and notices on its website regarding all public body meetings.	Public bodies must post a notice containing the dates, times, and places of the public body's regular meetings, as well as the name of the public body, its telephone number and its address at least 18 hours before a meeting. It is required that public bodies post this notice at their principal office and any other location deemed appropriate.	Public bodies must keep schedules of regular meetings on file at their offices. The law fails to specify agenda requirements for meetings covered by the statute. However, if printed materials relating to agenda items are prepared by or at the direction of the governing body, and are distributed or available to those members, one copy o these same materials must be available in the meeting room for inspection by the public. No time limit is provided in the statute for posting notices for regular meetings, though special meetings require at least three days' notice.	Public notice must contain the time, date, place, and subject matter of the meeting, including issues that will be considered in a closed session. No detailed agenda is required. The public body must provide 24-hour notice of a meeting, which may be accomplished by posting in places likely to be seen by the public. The Wisconsin Attorney General has suggested a minimum of three locations.
Procedures for Closed Meetings	The public body must hold a roll call vote and have a majority of the quorum vote to enter executive session. The motion and vote must state which one or more of the closed session exemptions will be considered at the executive session.	A majority of a quorum of the public body must vote to hold a closed meeting. The vote of each member and the citation to the specific closed session exemption must be publicly disclosed and entered into the minutes of the meeting.	A 2/3 roll call of members of the public body is required, except for the closed sessions permitted. The roll call vote and the purpose for calling the closed session must be entered into the minutes of the meeting where the vote takes place.	A public body must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed. Special provisions apply to close a meeting to discuss labor negotiations or to evaluate the performance of an individual subject to the government's authority.	The chief presiding officer must announce and record the nature of the business to be discussed and the closed session exemption that allows for the closed session. Then, the public body must pass a motion, by recorded majority vote, to mee in closed session.
Recordkeeping for Meetings: Minutes Requirements	Minutes of regular or special meetings of any public body need to be prepared promptly, filed, and maintained so that they are available to public inspection.	Minutes must include the date, time and place of the meeting, the members of the body recorded as present or absent and a summary of discussion on all matters proposed, deliberated or decided, and a record of any votes taken.	Meeting minutes must be kept for each meeting showing the date, time, place, members present or absent, any decisions made, the purpose for which a closed session is held and all roll call votes taken at the meeting. Proposed minutes must be made available for public inspection within 8 business days after the meeting to which the minutes refer, and approved minutes must be available for public inspection within 5 business days after the meeting at which the minutes are approved by the public body.	The law does not specifically require that minutes be taken at a regular meeting. The only statutory requirement is that votes taken at a meeting required to be public will be recorded in a journal kept for that purpose, which must be open to the public during normal business hours.	Governmental bodies do not need to keep detailed minutes of their meetings. The body must keep a record of the motions and roll call votes at each meeting. Statutes outside the Open Meetings Law require the county, village, and city clerks to keep a record of proceedings of their governing bodies.
Taping of Filming Meetings	The law does not specifically address, however, an Ohio Attorney General's Opinion states that taping or filming meetings is permissible if it does not unduly interfere with a meeting.	Taping or filming meetings is permissible so long as it does not interfere with the meeting.	Taping or filming meetings is permissible so long as it does not interfere with the meeting.	The law does not specifically address, however, a Minnesota Attorney General's Opinion states that taping is permissible if it does not have a significantly adverse effect on the order of the proceedings or impinge on constitutionally protected rights.	Taping or filiming meetings is permissible so long as it does not interfere with the meeting.
Are Electronic Mail Communications a Meeting?	The law does not address whether electronic mail communications are meetings.	Email and Internet chat room communications are considered communications for meeting purposes under the law.	The law does not address whether electronic mail communications are meetings.	The law does not address whether electronic mail communications are meetings.	The law does not address whether electronic mail communications are meetings, but the state Public Records Law lists "electromagnetic information" in its definition of a record and courts interpreting that law have held that e-mail and other electronic records must be released on request.

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Enforcement	Only individuals may sue to enforce the law in a court of common pleas. However, if a citizen suit results in an injunction against a public body, the attorney general or prosecuting attorney is responsible for bringing an action against officials who violate the injunction.	State's Attorneys and individuals may sue to enforce the law in the circuit court. The Public Access Counselor's Office has no punitive authority but may respond to citizen's complaints and occasionally refers potential violations to the State's Attorney for investigation.	Individuals, the Attorney General, and the prosecuting attorney of the appropriate county all have the authority to enforce the law by filing a civil action in the circuit court to compel compliance or to enjoin further noncompliance.	Only individuals may sue to enforce the law in a district court.	Individuals, the Attorney General and the district attorney have the authority to enforce the law in circuit court (though an individual must first file a verified complaint with the district attorney for his or her office to prosecute the case).
Relief/Penalties for Violation	Available relief and penalties include injunction, $500 civil forfeiture fine, costs, attorneys' fees, invalidation and removal from office. If the court deems the plaintiff's action was frivolous, the court may award all court costs and reasonable attorneys' fees to the public body.	Available relief and penalties include mandamus, invalidation, injunction, costs and attorneys' fees. Criminal penalties include a fine of up to $1,500 and imprisonment of up to 30 days.	Available relief and penalties include injunction, invalidation, damages up to $500, criminal fines, costs and attorneys' fees. Criminal penalties for an intentional violation by a public official include a misdemeanor punishable by a fine of up to $1,000, and a second intentional offense subject to a misdemeanor punishable by a fine of up to $2,000 and/or imprisonment for up to 1 year.	Available relief and penalties include injunction, damages up to $300, costs, attorneys' fees and removal from office. In addition, if a person is found to have intentionally violated the statute in three or more actions involving the same governing body, that person must forfeit any further right to serve on the governing body for a period of time equal to the term of office such person had served.	Available relief and penalties include declaratory relief, injunction, mandamus, invalidation, damages from $25 to $300, costs and attorneys' fees.
Are Criminal Penalties Assessed Regularly?	Criminal penalties are not available for violations.	Criminal penalties are rarely imposed for violations.	Criminal penalties are rarely imposed for violations.	Criminal penalties are not available for violations.	Criminal penalties are not available for violations.
Availability of Attorneys' Fees for OMA Litigation	Attorneys' fees are available for a prevailing party if the court issues an injunction, but not for *pro se* plaintiffs. Public bodies may recover attorneys' fees for frivolous lawsuits brought by plaintiffs.	Attorneys' fees are available for a prevailing party, but not for *pro se* plaintiffs.	Attorneys' fees are available where a violation was intentional and the plaintiff is successful, but not for *pro se* plaintiffs. Attorneys' fees will not be granted unless injunctive or declaratory relief is granted.	The court may award reasonable costs, disbursements, and attorneys' fees of up to $13,000 to any prevailing party, but attorneys' fees may not be awarded against a member of the public body unless the court finds there was an intent to violate the law. Public bodies may recover attorneys' fees for frivolous lawsuits brought by plaintiffs without merit.	Attorneys' fees are available for a prevailing party, but not for *pro se* plaintiffs.
Whether Attorneys' Fees are Usually Granted	Attorneys' fees are generally granted to plaintiffs who prevail in winning injunctive relief. However, they are rarely awarded to defendant public bodies for frivolous lawsuits.	Attorneys' fees are usually not granted to prevailing parties.	Attorneys' fees are generally awarded when declaratory or injunctive relief is granted to a plaintiff.	Attorneys' fees are usually granted to prevailing plaintiffs.	Attorneys' fees are usually granted to prevailing plaintiffs.
Public Comment Mandated at Public Meetings?	No public comment required	No public comment required	Public comment *required*	No public comment required	No public comment required
Statute of Limitation to File Lawsuit	Two years	60 days	60 days , however if the dispute involves the approval of contracts receipt of acceptance of bids, the making of assessments, the procedures related to the issuance of bonds, or other evidence of indebtedness, or the submission of a borrowing provision to electors, the statute tolls at 30 days from approval of minutes. There is a 180 limit in which to file an action against an individual for violating the statute.	No time line	Once an individual files a verified complaint, the District Attorney has 20 days to enforce the law. After 20 days, if the District Attorney does not begin an enforcement action, the individual can bring the action in the name of the state for up to two years.