September 2024 Transparency Reporter
Recent IAG/PAC Opinions, Judicial Decisions, and Legislation Regarding FOIA and OMA

This report covers recent developments under the Freedom of Information Act ("FOIA") and the Open Meetings Act ("OMA"). This includes binding Public Access Counselor ("PAC") Opinions, appellate cases, legislative developments, and Public Acts between April 16th and September 25, 2024.

As you read, watch for the pivotal turning point where the analysis found a violation did or did not occur. This will go far in understanding how FOIA and OMA are interpreted and will aid you in your public role.

If you are more of a skimmer, we've summarized the "top hits" of the recent decisions. The following are the "need to know" changes and affirmations seen in the realm of FOIA and OMA in the last few months:

FOIA

- Property addresses of vacant or unoccupied properties of the Chicago Housing Authority were not "security measures" under Section 7(1)(v) of FOIA.
- PAC again finds violation where Police Department withholds entire report based on pending investigations, rather than redacting the limited and segregable portions of the records that would actually interfere or identity a potential suspect.
- Court reiterated that failure to maintain a record that was required under statute did not defeat the affirmative defense that a record does not exist.
- Personally identifiable educational records protected by the Federal Educational Records Protection Act ("FERPA") are exempt under Section 7(1)(a) of FOIA.

OMA

- Attending remotely for employment purposes merely means there is conflicting obligations to the Board member's employer, the scope of which can be determined by the individual public body.
- Appellate Court held that public comment requirements under OMA did not transform public meeting into designated public forum under the First Amendment and upheld a requirement that public comment must be germane to agenda items under a First Amendment analysis.
- Failure to make changes to a location of a meeting when the public body knows its current location is not sufficient, especially based on prior meetings, is a violation of OMA.

Freedom Of Information Act

Proposed Legislation:

Senate Bill 3171
Current Status: Referred to Assignments on 6/26/2024

If adopted, this bill would amend FOIA to exempt proposals or bids submitted by engineering consults in response to requests for proposal or other competitive bidding request by the Illinois Department of Transportation or the Illinois Highway Authority from disclosure.

Senate Bill 2640
Current Status: Referred to Assignments 6/26/2024

If adopted, this bill would exempt administrative or technical information associated with automated data operations from inspection and copying. This information would only be exempt to the extent that disclosure would jeopardize the security of the system or its data or the security of materials exempt under FOIA.

Senate Bill 3076
Current Status: Referred to Assignments 6/26/2024

If adopted, this bill requires a public body to include in its list of records available under FOIA the identification and plain-text description of each of the types or categories of information of each field of each database of the public body. Further, a public body shall provide sufficient descriptions of the structures of all databases under the control of the public body to allow the requestor to request specific database queries in their FOIA requests.

Public Access Counselor Opinions:

Public Access Opinion 24-008 (June 21, 2024)
Meaning of "Security Measures" in Section 7(1)(v) of FOIA

The PAC addressed the Chicago Housing Authority's ("CHA") argument that redacting all but the second digit from property addresses was a "security measure" that exempted the redacted digits from disclosure under Section 7(1)(v) of FOIA.

Here, the requester sought an Excel file on each CHA Scattered Site Property, including the "Unit Address" and "Unit Status" (i.e., occupied or vacant). The CHA responded to the request with a spreadsheet of responsive information, redacting all but the second digit in the street number for each vacant unit. CHA asserted that the full addresses were exempt from disclosure under Section 7(1)(v). 5 ILCS 140/7(1)(v) (exempting records including

"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, but only to the extent that disclosure could reasonably be expected to expose the vulnerability or jeopardize the effectiveness of the measures, policies, or plans, or the safety of the personnel who implement them or the public").

The PAC Opinion explained that the plain meaning of Section 7(1)(v) applies to records that meet three requirements. First, records must be either vulnerability assessments, security measures, and response policies or plans. Second, those records must be created for the purpose of identifying, preventing, or responding to potential attacks on a community or its infrastructure. Finally, the disclosure of the records could reasonably be expected to expose the vulnerability or jeopardize the effectiveness of the measures, policies, or plans, or the safety of the personnel who implement them or the public.

Here, CHA stated its redaction was a security measure under Section 7(1)(v) because CHA has faced problems with squatters entering vacant units. CHA relied on *Chicago Sun-Times v. Chicago Transit Authority*, 2021 IL App (1st) 192028, ¶¶ 1148-51 and claimed that "Illinois law provides that such redactions as a security measure are appropriate under the [section] 7(1)(v) exemption if it 'could reasonably be expected' that releasing the full addresses will cause a potential breach in CHA keeping these vacant units secure and free from squatters."

The PAC Opinion concludes that CHA misconstrued Section 7(1)(v) as authorizing public bodies to redact records as a security measure in and of itself. Instead, Section 7(1)(v) permits redactions of records that consist of or depict existing vulnerability assessments, security measures, or response policies or plans. The street addresses of vacant Scattered Site public housing units are simply pieces of data in a spreadsheet and not vulnerability assessments, security measures, or response policies or plans.

The redaction was deemed improper under FOIA, and CHA was instructed to provide the full addresses to the requestor.

Public Access Opinion 24-009 (June 28, 2024)

Village of Lyons Fails to Respond to FOIA Request

In a straightforward opinion, the PAC ruled that the Village of Lyons ("Village") failed to timely respond, deny in whole or in part, or otherwise reply to a FOIA request seeking records regarding an employee of the Village Police Department.

The FOIA request was submitted to the Village on April 12, 2024. On May 17, 2024, the PAC sent a letter to the Village asking whether they had responded to the FOIA request. The Village did not reply. On June 7, 2024, the PAC e-mailed the Village requesting an update on the status of the Village's response to the FOIA request. The Village responded on June 13, 2024, stating that its attorneys were assisting with the response, but provided no indication

on when the Village would respond. The PAC sent additional e-mails to the Village regarding the status of their response. The Village did not respond.

Based on the failure to respond, the Village was in violation of Section 3(d) of FOIA. 5 ILCS 140/3(d).

Public Access Opinion 24-011 (September 20, 2024)

Police Department Fails to Prove that Law Enforcement Records Would Interfere with any Ongoing Law Enforcement Proceeding

In this binding opinion, the Elk Grove Police Department ("Police Department") failed to prove by clear and convincing evidence that the disclosure of records pursuant to a FOIA request would interfere with a law enforcement proceeding. Thus, Section 7(1)(d)(i) did not exempt the Police Department's records from disclosure. 5 ILCS 140/7(1)(d)(i).

Here, the requestor sought a copy of a case/incident report, and other records related to a specific case that the Plaintiff was involved in. Pursuant to Section 7(1)(d)(i), the Police Department denied the request in its entirety.

Section 7(1)(d)(i) exempts records that are created in the course of administrative enforcement proceedings, and any law enforcement or correction agencies for enforcement purposes are exempt to the extent that disclosure would "interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request." 5 ILCS 140/7(1)(d)(i).

To properly assert an exemption under Section 7(1)(d)(i), it must be shown that in the particular case, the disclosure of information classified as "law enforcement" or "investigatory" would interfere with law enforcement, and thus not be in the public interest. *Baudin v. City of Crystal Lake,* 192 Ill.App.3d 530, 536 (2nd Dist. 1989). Conclusory statements that disclosure would "obstruct a law enforcement proceeding" are not enough to support an assertion of Section 7(1)(d)(i). *Day v. City of Chicago,* 388 Ill. App. 3d 70, 76 (1st Dist. 2009).

Here, the PAC asked the Police Department for a detailed explanation for the applicability of the Section 7(1)(d)(i) exemption. The Police Department responded, stating they did not provide the requested information because 1) the Police Department is currently working with agencies that have had an incident with an Offender matching the same description, motive, and vehicle; 2) the Offender had not been detained or arrested; 3) releasing records pertaining to the case report requested would hinder an ongoing investigation.

The Opinion concluded that the Police Department's response nor its own review of the contents of the records establish by clear and convincing evidence that disclosure of the records would interfere with any pending law enforcement proceeding. It emphasized that the Police Department had already administratively closed its investigation. Also notable is that the Police Department had withheld the records in their entirety, and the PAC stated that they did not provide enough specificity as to how all of the portions of the records would interfere with the joint efforts of law enforcement. Therefore, the Police Department did not

meet their burden of demonstrating that the records were exempt from disclosure under Section 7(1)(d)(i) of FOIA. The PAC did go on to state that to the extent a report documents the name and details of a potential motive to which the identity of a suspect could be discerned, *those limited and segregable portions* may be redacted under Section 7(1)(c) of FOIA.

Appellate Court Cases:

***Gakuba v. Winnebago County Public Defender's Office*, 2024 IL App (4th) 230052-U (Published May 20, 2024)**

Unduly Burdensome FOIA Request

Plaintiff appealed to the Fourth District Appellate Court ("Court") after the trial court dismissed his complaint brought under FOIA. Plaintiff alleged that the Defendants, Winnebago County State's Attorney's Office (State's Attorney's Office) and the Winnebago County Sherriff ("Sherriff") improperly denied his FOIA requests.

Plaintiff was found guilty of three counts of aggravated criminal sexual abuse. After his release from prison, Plaintiff sent a FOIA request to the Winnebago County Public Defender's Office ("Public Defender's Office") for "ALL records (including but not limited to): Discovery documents, notes, memos, emails, faxes, correspondences, [and] letters that specifically name 'Peter Gakuba' or make references to 'Peter Gakuba'" and "ALL personnel records (including but not limited to): employment applications, salaries, wages, performance/employment evaluations and reviews, [and] public correspondences /letters/emails/faxes" of four attorneys in the Public Defender's Office." The FOIA requests were denied because the Public Defender's office is not subject to disclosure under FOIA since it operates under the Chief Judge's authority, and judiciary and its non-judiciary components are exempt from disclosure.

Then, Plaintiff sent a FOIA request to the State's Attorney's Office for "Any and ALL records of 'Peter Gakuba' used in the malicious prosecution and wrongful conviction" in his criminal case, specifying that "[t]his would include ALL discovery tendered to [him] (previously when he was pro se in the case), and, subsequent court-appointed counsel (over objection): asst. public defender ('APD') Shauna Gustafson for preparation of a kangaroo trial on April 27, 2015." The State's Attorney's Office denied the request because, after a reasonable search, they could not locate the requested documents.

Plaintiff filed another FOIA request to the State's Attorney's Office for "any and all documents, letters, memorandums, emails, telephone records, photographs, court pleadings and filings, exhibits, evidence, intra-departmental correspondences, [and] inter-departmental correspondences between the Office of the Illinois Attorney General and ANY other government/quasi-government/agency/proxy of any American or foreign

governments," which was denied because it was overly broad and would be unduly burdensome to search for these documents.

Lastly, Plaintiff sent a FOIA request to the Sheriff requesting "ANY and ALL records for 'Peter Gakuba'" and asserting he is "the only one in America" by that name. The Sheriff denied the request because it failed to state with a reasonable degree of specificity the type of record requested, and thus the request was unduly burdensome.

Regarding the first FOIA request, the Court upheld the trial court's dismissal of the Public Defender's Office as a party to the case because the Public Defender's Office is not subject to FOIA. Additionally, Plaintiff had not presented any case law refuting the classification of the Public Defender's Office as an entity subject to FOIA.

Regarding the second FOIA request (which was the first one sent to the State's Attorney's Office) the Court found that the State's Attorney's Office's response satisfied FOIA requirements, and agents of the State's Attorney's Office extended the response period by five (5) days, allowable under Section 3(e)(iv). 5 ILCS 140/3(e)(iv). Since there were no files to answer Plaintiff's request and they could not be located within the initial 5-day period, four (4) business days later, an agent of the State's Attorney' Office wrote to him and explained that, after a reasonable search, the State's Attorney's Office could not find the documents requested. Further, when Plaintiff submitted another FOIA request to the State's Attorney's Office, it declined the request; the State's Attorney's Office followed FOIA protocol, and explained that it lacked access to the requested documents. The Court concluded that the State's Attorney's Office's response satisfied Section 3(g) of FOIA which stated that a public body may decline a request on the grounds that compliance would be "unduly burdensome" so long as the person requesting the information was given an opportunity to narrow the request. 5 ILCS 140/3(g).

Regarding the final FOIA to the Sheriff, the Court agreed with the trial court's dismissal of the Sheriff as a defendant. The Court found that the Sheriff acted in compliance with the court order to produce documents when the Sheriff's Office submitted an affidavit. The affidavit stated that, while there was no way of knowing whether any of the Sheriff's paper files that were destroyed after his death had contained documents pertaining to Plaintiff, the office had provided the Plaintiff "[e]verything that [it] was able to obtain" after searching both the "old and new computer systems." Thus, at that point, the Sheriff complied with the Plaintiff's request and the Court agreed that it was no longer necessary for him to be a party to the case.

***Hickman v. Mann*, 2024 IL App (5th) 230247-U (Published May 7, 2024)**

State's Attorney's Office Properly Denied Various FOIA Requests

Plaintiff sent a Freedom of Information Act ("FOIA") request to the Bond County Sheriff's Office ("Sheriff's Office") requesting "[a]ll policies and rules enacting [sic] and in regard to § 5/103-2.1 of the Illinois Code of Criminal Procedure at and upon Bond County Sheriff's Office and its employees." The Defendant, Bond County State's Attorney ("State's Attorney"), responded that no such documents existed at that agency. Plaintiff filed another FOIA request to the Sheriff's Office seeking "a copy of a reasonably current list of all types or categories of records under its control. Such shall be reasonably detailed." Defendant responded that the request was unduly burdensome because it would require searching voluminous documents, so she asked Plaintiff for a timeframe to search within. Plaintiff also sent a FOIA request to the State's Attorney's Office requesting "all records of funds, receipt, obligation and use of such funds and all payroll records of this office within the last twelve (12) months or since January 1 of 2021, whichever is longest and copy of such." The State's Attorney responded that no such documents existed at the agency.

Plaintiff sued Defendant and sought a declaratory judgment that Defendant violated FOIA, an injunction requiring the defendant to produce the requested documents, and statutory penalties. The district court granted Defendant's motion to dismiss, which Plaintiff timely appealed.

The Fifth District Appellate Court ("Court") held that FOIA does not require public bodies to turn over information they do not normally retain or to create a new record. *Barner v. Fairburn*, 2019 IL App (3d) 180742; *Chicago Tribune Co. v. Department of Financial & Professional Regulation*, 2014 IL App (4th) 130427. Here, for Plaintiff's first two FOIA requests directed to the Sheriff's Department, an affidavit showed that the Department did not maintain any responsive documents. The Court held that the nonexistence of the responsive documents was an affirmative defense to a FOIA complaint.

In Plaintiffs first FOIA request for "all policies and rules" of Section 103-2.1 of the Code of Criminal Procedure (the "Code"), he insisted that the documents must exist because Section 103-2.1 of the Code was binding upon Bond County Sheriff's Office. The Court explained that the Code has requirements for recording custodial interrogations in certain scenarios, but it does not require any agency to openly publish a written policy for compliance. Therefore, just because the Code existed and applied to the Sheriff's Department, it did not prove that the Sheriff's Department had enacted "policies and rules" for compliance. Even so, Plaintiff's FOIA request was for "policies and rules," not recordings of interrogations. Thus, the Court concluded that whether the Sherriff's Department was required to preserve recordings on interrogation had no relation to whether the Sheriff's Department maintained written policies and rules.

In relation to Plaintiff's second FOIA request for a copy of a reasonably current list of all types or categories of records under its control, he argued that FOIA required agencies to maintain these lists. 5 ILCS 140/5. However, the failure to keep this list was not actionable under the statute. *Walker*, 2019 IL App (2d) 170775.

For Plaintiff's third FOIA request directed to the State's Attorney's Office, the State's Attorney's Office attached documents obtained from the County Treasurer's Office because the requested records were not maintained at the State's Attorney's Office.

After filing the original complaint in the Circuit Court, Plaintiff sent another FOIA request to State's Attorney seeking the budget for 2022. Defendant provided the requested budget. Then Plaintiff claimed that her fulfillment of his FOIA request demonstrated that she had failed to fully comply with his earlier requests.

This argument lacked merit. His first FOIA request did not ask for the State's Attorney's budget. Rather, the plaintiff sought "records of funds, receipt, obligation and use of such funds and all payroll records of this office within the last twelve (12) months or since January of 2021, whichever is longest." Thus, the request sought a record of funds actually received and used since January of 2021. The later FOIA request, by contrast, asked for the State's Attorney's budget for 2022. The 2022 budget FOIA request sought a different record, and therefore, State's Attorneys response did not demonstrate that she violated FOIA by not turning over the budget in response to the earlier request. The Court ruled that even if Plaintiff's earlier request could have been construed as having sought the budget, he has since received it, and therefore, this claim was moot.

***Harsy v. Perry County Sheriff's Office*, 2024 IL App (5th) 180483-U. (Published June 3, 2024)**

Mootness of FOIA Complaint and No Willful, Intentional, or Bad Faith Compliance in FOIA Response

The Plaintiff sent a FOIA request to the Defendant, the Perry County Sheriff's Office ("PCSO"), requesting "a printed transcript of all conversations between the PCSO police officers and police dispatch" on 23 separate dates. PCSO acknowledged the receipt of the FOIA request and informed Plaintiff that the requested information would take time to compile. PSCO included the office's standardized policy listing information that could be redacted under FOIA and the 14 different reasons for exemptions from producing the documents requested. PSCO informed Plaintiff that they "printed all the logs" and the total cost was $106.20. Then, the price changed to $119.20 for "materials." Plaintiff responded to PSCO, pointing out mistakes in PCSO's FOIA policy, including, pursuant to Section 3(d) of FOIA, that FOIA responses are to be made within five (5) business days, whereas PCSO's policy stated they would respond within seven (7) working days of a FOIA request. PSCO responded, stating that weekends do not count in the five (5) days.

Plaintiff states that the circuit court erred in dismissing his complaint, arguing that: (1) he raised a material question of fact regarding PCSO's FOIA violation or bad faith response; (2) the response letters provided were an inadequate response to Plaintiff's initial request; (3) they failed to find a genuine and material issue of fact existed as to whether or not PCSO

acted in bad faith in respect to the money Plaintiff was charged; and (4) they failed to order an index of redactions after an *in camera* inspection pursuant to Section 11(e) of FOIA. 5 ILCS 140/11(e).

The Court reasoned that the nonexistence of the requested document was an affirmative defense to a FOIA complaint. *Bocock v. Will County Sheriff*, 2018 IL App (3d) 170330, ¶ 52. FOIA does not create an obligation for the public entity to maintain or prepare a public record which was not maintained by the public entity. 5 ILCS 140/1. Yet, in this case, the language Plaintiff used to describe the public records sought was reasonably clear, and requests to inspect or copy must reasonably identify a public record. *Chicago Tribune Co. v. Department of Financial & Professional Regulation*, 2014 IL App (4th) 130427, ¶ 33. Instead of requested "transcripts of conversations," PCSO provided radio logging reports showing communications between police officers and dispatch. PCSO did not deny the existence of the requested transcripts and Plaintiff did not claim that the provided documents were not what he requested, therefore the Court cannot find that PCSO was not under an obligation to respond to Plaintiff's FOIA request.

While the Court found that PCSO was under an obligation to respond, the case was properly dismissed because it was moot. A FOIA claim is moot once the requested records had been produced. *Roxana Community Unit School District No. 1 v. Environmental Protection Agency*, 2013 IL App (4th) 120825, ¶ 42. A public body must comply with a FOIA request unless an exemption applies. *Illinois Education Ass'n v. Illinois State Board of Education*, 204 Ill. 2d 456, 463 (2003). To prove an exemption applies, the public body must provide a detailed explanation addressing the requested documents and justifying an exemption. *Peoria Journal Star v. City of Peoria*, 2016 IL App (3d) 140838, ¶ 12. The Court found that Plaintiff had received the information he was entitled to and therefore the circuit court did not err in determining the exemptions applied. Furthermore, the issue was moot because there was no other relief that could be granted to Plaintiff, as he had already received all documents, he was entitled to in response to his FOIA request.

Even though the Court found the case to be moot, they still addressed Plaintiff's request of civil penalties because a request for a civil penalty would survive moot FOIA claims. To obtain civil penalties pursuant to Section 11(j), Plaintiff had to demonstrate that PCSO: (1) failed to comply with FOIA; and (2) did so willfully, intentionally, and in bad faith. *Williams v. Bruscato*, 2021 IL App (2d) 190971, ¶ 14. FOIA does not define "bad faith". *Williams* defined bad faith as failing to comply with FOIA by acting "deliberately, by design, and with a dishonest purpose." *Id.* ¶ 15. Here, the circuit court's statement that it did not find that PCSO had willfully or intentionally violated FOIA means that it could not have found that PCSO failed to comply with FOIA deliberately, by design, and with a dishonest purpose. In reviewing the record and the lower court findings, the Court held that the circuit court's ruling was not against the manifest weight of evidence. In applying the same logic, the Court found that Plaintiff was not entitled to sanctions pursuant to Section 11(j) of FOIA.

Plaintiff also argued that his request for an index of redactions should have been granted because the language of FOIA indicated that an index may be requested before or after an *in-camera* inspection. Plaintiff requested an index pursuant to Section 11(e) of FOIA, which provides that, "prior to or after in camera inspection, the court shall order the public body to provide an index of the records to which access has been denied." 5 ILCS 140/11(e). The Court reasoned that the index is supposed to balance an individual's right to disclosure of documents pursuant to FOIA's purpose of opening government conduct to an informed public. In this instance, Plaintiff failed to request an index prior to the circuit court's inspection and, if he thought an index was required, he should have requested one. The Court found that the necessity of an index is moot when the court has determined a defendant proved redacted material was properly withheld, as they did here.

The Court affirmed the circuit court's order that granted PCSO's motion to dismiss because Plaintiff's claims were moot, PCSO explained their applicable exemptions, and there was no evidence of bad faith. Additionally, the Court denied Plaintiff's request for an index because the issue of a specific index was moot.

***Better Government Ass'n v. City Colleges of Chicago,* 2024 IL App (1st) 221414 (issued September 19, 2024)**

Disclosure of Records under FOIA protected by FERPA

Plaintiff, Better Government Association ("BGA") submitted a FOIA request to Defendant, City Colleges of Chicago ("City Colleges") for education records regarding City Colleges' graduation rates. City Colleges refused to turn over the records, asserting that the records were exempted from disclosure under section 7(1)(a) of FOIA (5 ILCS 7(1)(a)) and pursuant to the Family Educational Rights and Privacy Act of 1974 ("FERPA") (20 U.S.C. § 1232g (2012)). The circuit court granted summary judgment for BGA, finding that the records were not exempt from FOIA because FERPA did not "specifically prohibit" the release of such records. City Colleges appealed to the First District Appellate Court ("Court").

The FOIA states that "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." 5 ILCS 140/1.2. Section 7 of FOIA provides exemptions to that presumption, such as when information is "specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." 5 ILCS 7(1)(a). Additionally, the FERPA statute states that no funds shall be made available to an educational agency or institution that permits the release of educational records without consent. 20 U.S.C. § 1232g(b)(1).

On appeal, City Colleges argued that the circuit court erred in finding for BGA because FERPA acts as a prohibition on the disclosure of student record to which the exemption in Section 7(1)(a) of FOIA applies. City Colleges further contends that it is bound by FERPA's confidentiality provisions as a matter of federal law because it has accepted federal funds.

The central question on appeal is whether FERPA "specifically prohibits" the release of the education records BGA sought in part 2 of its FOIA request, such that the records are exempt from disclosure.

The Court reasoned that case law supports the finding that FERPA does "specifically prohibit" the release of education records even though FERPA was intended to protect these records – specifically, records that contain personally identifiable information. The information within the records is of high importance because FERPA prohibits the release of personally identifiable information without the consent of students or guardians. Additionally, City Colleges has accepted federal funding and was therefore prohibited from releasing students' personally identifiable information without consent due to conditions in FERPA. The Court finds that under section 7(1)(a) of FOIA, the disclosure of the requested unredacted records was not intended by FERPA and the circuit court erred in granting summary judgment in favor of BGA.

The Court reversed the circuit court decision and remanded the case to the circuit court to review whether there were any of the requested educational records that might contain information that is "personally identifiable."

Open Meetings Act:

Public Access Counselor Opinions:

Public Access Opinion 24-007 (June 21, 2024)
Taking Final Action on Matter Not on Meeting Agenda; Remote Meeting Attendance Because of Employment Purposes

In a two-part analysis, the PAC addressed the requestor's allegations that the Village of Princeville ("Village") Board of Trustees ("Board") 1) violated section 2.02(c) of OMA by failing to include the general subject matter of a resolution subject to final action at the meeting (5 ILCS 120/2.02(c)); and 2) violated Section 7(a) of OMA by allowing a Board member to attend three meetings remotely due to employment purposes. 5 ILCS 120/7(c).

Regarding the first allegation, the Board held a meeting on March 5, 2024, whose agenda included the item "Report from the Superintendent of Public Works[.]" The meeting minutes show that the Board approved a motion to purchase a truck the Superintendent of Public Works had reported on.

Here, the Board conceded that their action to approve the purchase of a truck was not in compliance with OMA because the action for the truck purchase was not listed on the meeting agenda. Therefore, it is undisputed that the Board violated section 2.02(c) of OMA, 5 ILCS 120/2.02(c) (requiring that any agenda required under OMA "shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the

meeting.”). The Board remedied its failure to provide sufficient notice of the truck purchase on the agenda by placing the specific details of the truck purchase on the meeting agenda for a later meeting where the Board re-voted and approved the truck purchase.

Regarding the second allegation, the Board allowed the Board President to attend three meetings remotely because his job required him travel and stay in hotels during the week. The requestor argued that the Board member chose to have a job that required travel and that the distance to travel to attend the meeting in person is commutable.

Under Section 7(c) of OMA, a majority of the public body may allow its members to attend meetings by other means in accordance with and to the extent allowed by rules adopted by the public body. 5 ILCS 120/7(c). Remote attendance may only be allowed to the four reasons stated in Section 7(a), or its rules may be more restrictive. Here, the Board’s rules for electronic participation allow members to attend remotely “because of conflicting obligations to the Board member’s employer.”

Section 7(a) of OMA provides that "[i]f a quorum of the members of the public body is physically present as required by Section 2.01, a majority of the public body may allow a member of that body to attend the meeting by other means if the member is prevented from physically attending because of *** (ii) employment purposes[.]" 5 ILCS 120/7(a)(ii). OMA does not define “employment purposes” and no court decisions have analyzed the meaning of “employment purposes” under OMA.

The PAC Opinion cites Merriam-Webster Dictionary’s definitions and finds that actions while executing a person’s job responsibilities fit the plain and ordinary meaning of “employment purposes “under Section 7(a)(ii) of OMA. Therefore, a public body member’s conflicting obligation to his employer is an employment purpose under OMA.

The PAC concluded that a member of a public body may attend a meeting remotely due to "employment purposes" only if employment purposes is an authorized reason pursuant to the public body's own rules, and if a majority of the public body chooses to grant the member's request to attend remotely.

Here, the Board member’s job contains frequent out of town assignments that provide a permissible reason for remote attendance under the Board’s Rules.

Accordingly, the Attorney General held that the Board did not violate Section 7(a) of OMA by allowing the Board member to attend meetings by video conference.

Public Access Opinion 24-010 (September 3, 2024)
Village Board Fails to Provide Reasonable Access to their Meetings

The PAC concluded that the Village Board of Dolton (“Village”) Board of Trustees (“Board”) violated Section 2.01 of OMA when they failed to make their June 3, 2024 and July 1, 2024 meetings convenient and open to the public.

Here, three individuals separately submitted a request to the Public Access Bureau alleging that the Board failed to make its June 3, 2024, meeting convenient and open to the public. Later, two individuals made a similar request about the Board's July 1, 2024 meeting. Specifically, the requests allege that there was inadequate space in the meeting rooms and no alternative accommodation was offered to participate in the meeting. There were parking barricades blocking the parking lot at the location of the meeting. Both requests allege that the Board violated Section 2.01 of OMA. 5 ILCS 120/2.01.

Section 2.01 of OMA states that "all meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public." 5 ILCS 120/2.01. "Convenience" does not require public bodies to hold their meetings at places that accommodate all interested members of the public, such that they can attend in reasonable comfort and safety. Instead, public bodies are required to take measures to ensure that they give the public reasonable access to their meetings. *Gerwin v. Livingston County Board*, 345 Ill.App.3d 352, 362 (4th Dist. 2003).

Here, the Board had notice before each meeting that there was heightened public interest in these meetings because it was reported the Board may take action to override the Mayor's veto of a Board vote, and in past meetings there was not enough space to accommodate all members of the public who attended. The Board knew the location and set-up of the meetings would be insufficient to accommodate all interested members of the public. The Board made no changes to give the public reasonable access to the meetings and many individuals were not allowed to enter the meeting due to inadequate space. Further, the Board added restrictions to entry of the meeting by placing parking barricades.

The Board's June 3, 2024, and July 1, 2024 meetings were not convenient and open to the public. Therefore, the Attorney General concluded that the Board violated Section 2.01 of OMA. The Board was directed to take measures to make future meetings convenient and open to the public, including holding meetings in a location with enough space to be reasonably accessible and configuring the meeting set-up to accommodate the public.

Appellate Court Cases:

Eberhardt v Village of Tinley Park, 2024 IL App (1st) 230139 (issued 4/24/2024)

Open Meetings Act does not Define the Scope of Free Speech under Illinois Constitution

In this case, the First District Appellate Court ("Court") addressed various constitutional arguments against the Village of Tinley Park ("Village"). As relevant to the Open Meetings Act, Plaintiff argues that free speech rights should be construed more broadly under the Illinois Constitution than the United States Constitution because of the purposes and legislative intent of the Open Meetings Act and FOIA. Plaintiff argues that "the interplay of

the statutory mandates contained therein *** the exercise of bedrock Constitutional rights under both the federal and state Constitutions."

Plaintiff's argument stems from a Village ordinance which required public comments at special Village board meetings, special commission, or special committee meetings to be germane to items on that particular meeting agenda. Tinley Park Code of Ordinances § 43.01. Plaintiff alleges that by enacting this ordinance, the Village imposed content-based restrictions on public comments that violated the Open Meetings Act and the free speech and peaceful assembly rights under the Illinois Constitution.

The Court concluded that the freedom of speech argument under the United States Constitution regarding the Village ordinance was barred under collateral estoppel as it was previously litigated in *Eberhardt v. Village of Tinley Park,* No. 1:20-cv-01171 (N.D.Ill. 2021). The Court discusses the previous case that dismissed the Plaintiff's claim that the Village's ordinance violated his freedom of speech. The federal court found that special Village board meetings were not designated public forums and thus the lowest level of scrutiny (viewpoint neutrality and reasonableness) applied to the germaneness requirement in the ordinance. The federal court held that Section 2.06(g) of the Open Meetings Act did not transform the public comment section of the special Board meeting to a public forum because the Village is allowed to impose rules for how individuals address Village officials. Further, the federal court stated that a municipality's restrictions under Section 2.06(g) must only be reasonably necessary to further a significant government interest. Thus, the germaneness requirement in the ordinance was reasonable under the U.S. Constitution because public bodies may confine meetings to a specific subject matter.

Similarly, the Court dismissed that the Plaintiff's freedom of speech claim under the Illinois Constitutions because the Village ordinance satisfies viewpoint neutral and reasonableness criteria similar to the U.S. Constitution analysis.

The Plaintiff's argument that free speech should be more broadly construed under the Illinois Constitution because of the Open Meetings Act is forfeited because the Plaintiff fails to cite any legal authority. Even though the argument is forfeited, the Court still analyzed it. Section 2.06(g) of the OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." 5 ILCS 120/2.06(g). The Court concluded that the Open Meetings Act does not define the scope of the free speech rights under the Illinois Constitution. Further, even if the Village did violate Section 2.06(g), a violation of OMA would not establish that the Village ordinance deprived the Plaintiff of free speech.

The Court addressed the Plaintiff's remaining claims that are unrelated to the Open Meetings Act.