

For any questions or comments you might have regarding this newsletter, please feel free to contact:

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LEGAL ALERT

PAC OMA and FOIA Guidance

As part of Illinois' continuing response to the COVID-19 crisis, the Public Access Counselor ("PAC") of the Illinois Attorney General has issued [guidance](#) on compliance with the Open Meetings Act and FOIA based on the Governor's Executive Orders and the current public health situation.

Executive Orders 2020-07, 2020-10, and 2020-20, first signed on March 16, 2020 and extended on March 20, 2020 and April 1, 2020, suspend two provisions of the Open Meetings Act: (1) the requirement in Section 2.01 that members of a public body be physically present, and (2) the limitations in Section 7 on remote participation. The Executive Orders are effective for the duration of the Gubernatorial Disaster proclamation, which currently expires on April 30, 2020. The PAC's guidance is summarized below.

Changes or Cancellations of Public Meetings

The COVID-19 outbreak may require a public body to postpone, cancel, or otherwise change the date of a meeting. If the meeting is cancelled after the agenda and notice have already been posted, the cancellation notice should be posted on the website, at the principal office of the public body, and at the meeting location. However, the change does not require 10 day notice of publication—the publication requirement applies only to a change in the regular schedule of meetings, and not to the cancellation, or rescheduling of individual meetings.

Remote Participation by Members of the Public Body

Executive Order 2020-10, issued on March 20, 2020, limited public and private gatherings to no more than 10 people. Executive Order 2020-20 extended that limitation through April 30, 2020. Both orders encourage public bodies to postpone meetings where possible. If the public body proceeds with a meeting, it can do so with any or all of the members accessing and participating in the meeting by remote access—either by telephonic, audio, or audiovisual participation.

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Public Comment and Observation

Whether or not the public body chooses to convene by electronic means, the public body must still provide the opportunity for the public to both observe and comment at the meeting. The public body may consider taking public comment by email or written submission and reading those public comments at the public meeting. This policy was challenged in a Request for Review to the PAC (2020 PAC 62329) containing an allegation that the McHenry County Board of Health violated OMA at its March 23, 2020 meeting, because public comments were required to be submitted by e-mail two hours in advance of the virtually held meeting. The PAC determined that the Board did not unreasonably restrict public comment, and that public comment does not need to be in-person or interactive to meet the requirements of OMA in light of the current circumstances. The PAC dismissed the complaint without requiring the public body to respond to the allegation. For more information, see Klein, Thorpe and Jenkins, Ltd.’s full [E-note on the PAC’s decision, published April 7, 2020](#). The public body may also consider sharing conference call or log-in information in the notice of the meeting so that members of the public may make public comment via conference call. For those public bodies who do not televise or stream their meetings, the public body should also consider recording the meeting and placing any recording of open session on the website. If utilizing a web-based conference call service, particular attention should be paid to the provider’s data collection and privacy policies.

Physical Precautions

If a meeting must take place and it is less than 10 people, additional precautions may be taken. Public bodies are encouraged to hold meetings in a large space (for example, an auditorium) so that parties can keep distance between them; to have a separate room for the public which is video or audio linked to the meeting room in order to promote social distancing; or to have only one person at a time approach a microphone so that there are no lines. Public bodies can use enhanced signage to lessen the amount of interaction between the public and any staff members.

FOIA

The Freedom of Information Act is still in full force and effect, and public bodies should make attempts to comply. If the request is unduly burdensome or requires a specific staff member who is unavailable due to quarantine or other restriction, the public body can utilize the provision for extension of time. Because even a 10-day window may be difficult to comply with; the Public Access Counselor notes that the requester and the public body can come to a mutually agreeable response period and encourages the parties to attempt to accommodate each other with reasonable and appropriate response time arrangements.