

Binding Public Access Counselor Opinion Clarifies When FOIA Requests May Be Personally Delivered

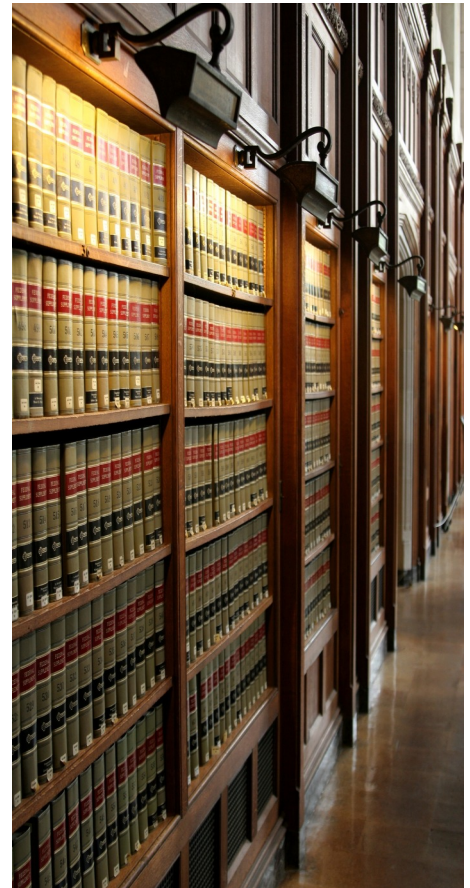
A recent binding opinion by the Public Access Counselor ("PAC") clarified when public bodies are required to accept Freedom of Information Act ("FOIA") requests by personal delivery. The opinion, released on January 26th, concluded that a village official's refusal to accept personal delivery of a FOIA request at a board meeting amounted to a violation of the Act. The opinion also noted that while public bodies are required to accept FOIA requests at public meetings, public officials are not required to accept the requests at any time or place, such as while walking down the street, at their private residence, or at their place of business.

The opinion stemmed from an occurrence last October in the Village of Smithfield when a citizen attempted to hand-deliver a FOIA request to the Village President at a regular meeting of the Village Board. The Village President replied that all FOIA requests had to be submitted to the Village by mail, and therefore the citizen's request was denied. The Village had previously determined that due to its lack of full-time staff and office hours, it would only accept FOIA requests by mail, and had posted this policy on its website. The policy was adopted in part because the requesting citizen had previously submitted FOIA requests to Board members on private property and on public streets, which the Board considered harassment.

In addressing this issue, the PAC noted that the Act states in plain language that written requests for information "may be submitted to a public body via personal delivery, mail, telefax, or other means available to the public body." (Emphasis added by the PAC.) Consequently, a public body cannot refuse to accept requests under FOIA by any of these methods of delivery. The PAC also found it relevant that the Village did not maintain regular office hours or retrieve its mail on a regular basis, leaving personal delivery of requests at board meetings as a reasonable alternative under the circumstances.

Yet the PAC was careful to note that this ruling does not give requesters free reign to submit requests in person whenever they happen to come into contact with public officials. For instance, an official is not obligated to accept delivery of a FOIA request during a chance encounter on the sidewalk, at their home, or at their work.

For more information about matters discussed in this issue, please feel free to contact Klein, Thorpe and Jenkins.



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