

A Guide to the Attorney General's Public Access Counselor (PAC) *Effective January 1, 2010*

Open and honest government depends on the full participation of members of the public in their government and the free exchange of information between public bodies and the public. But too often, members of the public are denied information that they seek or are prevented from participating fully in government decision making.

To increase government transparency and accountability, Attorney General Madigan, working with legislators and open government advocates, drafted legislation in 2009 to rewrite the state [Freedom of Information Act \(FOIA\)](#) and revise the [Open Meetings Act \(OMA\)](#). The new law, which goes into effect on January 1, 2010, will further empower people to view, understand and take part in their government. It provides new tools and provisions to make sure the public has timely access to information and public meetings, and adds new penalties for government officials who knowingly try to prevent public access to government information.

The new law will give the public greater access to information about their government, which will mean a more accountable, more transparent and, ultimately, more ethical government for all of us.

Under the new law, one of the most significant improvements to FOIA and OMA is the codification of the **Public Access Counselor (PAC)**. In 2004, Attorney General Madigan created the Public Access Counselor position in her office. Under the new law, this position will be a permanent part of the Attorney General's office. Working under the direction and supervision of the Attorney General, the PAC's mission is to help people obtain public documents and access public meetings.

The changes to FOIA and OMA give new and significant powers to the Public Access Counselor in the Attorney General's office. Specifically, working through the PAC, the Attorney General's office may issue subpoenas, advisory opinions to guide public bodies in properly following the law, and binding opinions to resolve FOIA and OMA disputes. The Attorney General also can take legal action to enforce those binding opinions in court.

This Guide will introduce you to the Attorney General's PAC, explain the PAC's role under FOIA and OMA, and outline what happens when a member of the public requests the PAC's assistance following a FOIA denial or an OMA dispute. After reviewing this Guide, if you have additional questions, please review the other educational material on our website at www.illinoisattorneygeneral.gov. You can also contact the Public Access Counselor at 217-558-0486.

Who is the Public Access Counselor (PAC)?

The Public Access Counselor is an attorney in the Attorney General's office whose responsibility it is to ensure that public bodies comply with the [Freedom of Information Act \(FOIA\)](#) (5 ILCS 140/1 *et seq.*) and the [Open Meetings Act \(OMA\)](#) (5 ILCS 120/1 *et seq.*). The PAC works under the direction and supervision of the Attorney General and oversees the Public Access Bureau in the Attorney General's office, which includes several attorneys as well as professional support

staff who are available to members of the public and representatives of public bodies to provide a variety of services, ranging from education and free training programs to resolving disputes between public bodies and citizens over public access to information and open government.

The purpose of the work of the Attorney General's Public Access Bureau is to ensure that FOIA and OMA fulfill their goal of providing the public with access to government documents and decision making.

The Role of the Public Access Counselor Under FOIA and OMA

Under both the Freedom of Information Act (FOIA) and the Open Meetings Act (OMA), the Attorney General, through the Public Access Counselor (PAC), has several responsibilities, including:

- to provide electronic training to all FOIA officers and all persons designated by public bodies to receive OMA training and to provide model policies to public bodies;
- to provide educational materials to the public and to respond to informal inquiries;
- to issue advisory opinions on FOIA and OMA in response to requests by public bodies;
- to work to resolve or mediate disputes between members of the public and public bodies over FOIA and OMA; and
- to investigate and issue opinions in response to Requests for Review submitted by members of the public when a FOIA request has been denied by a public body, or when it is alleged that a public body has violated OMA.
(15 ILCS 205/7(c)).

The PAC also has another responsibility under FOIA: if a public body wants to withhold information from a requestor based on one of two specific exemptions under the FOIA statute—(1) that disclosure of personal information would result in an unwarranted invasion of personal privacy; or (2) that the information requested falls under the exemption for preliminary policy drafts—the public body must provide written notice to the PAC before asserting these exemptions.

This Guide will take you through each of the PAC's major responsibilities.

Electronic Training

Under FOIA, each public body is required to designate a FOIA officer. (5 ILCS 140/3.5(a)) Under OMA, a public body must identify which employees, officers or members must complete OMA training. (5 ILCS 120/1.05(a)) All of these individuals must complete a free electronic training created and made available by the Attorney General's office.

All FOIA officers and designated OMA employees, officers and members must complete the initial electronic training on FOIA and OMA by July 1, 2010. They must complete the free electronic training on an annual basis after that. (5 ILCS 140/3.5(b); 5 ILCS 120/1.05)

If the public body designates additional or new FOIA officers or others who need OMA training after the initial training, they must complete the PAC electronic training within 30 calendar days of being designated by the public body. For example, if a new city employee is designated as the city's FOIA officer and also designated to receive OMA training, that employee needs to

complete the PAC's free electronic training within 30 days of these designations. (5 ILCS 140.3.5(b); 5 ILCS 120/1.05)

The electronic training for FOIA officers and designated OMA employees, officers and members will be available from the Attorney General's office after January 1, 2010.

Educational Materials

The Attorney General's website has materials for the public and public bodies to answer their questions and educate them about FOIA and OMA. Please visit our website at www.illinoisattorneygeneral.gov to access these materials. Over the coming weeks and months, we will continue to add new educational information to the website.

The public and public bodies should also feel free to contact the Attorney General's office with questions and inquiries regarding FOIA and OMA. You can contact the Public Access Bureau by phone at 217-558-0486 or e-mail at publicaccess@atg.state.il.us. The address of the Attorney General's Public Access Bureau is 500 S. 2nd Street, Springfield, Illinois 62706.

Advisory Opinions

A public body may request an advisory opinion from the Attorney General regarding compliance with FOIA or OMA by sending a written request to the PAC. The written request must be from the head of the public body or from its attorney. For the Attorney General to issue an advisory opinion, the written request must contain sufficient accurate facts in order for a determination to be made. The PAC may request additional information from the public body to facilitate the review. The Attorney General is not obligated by law to issue an advisory opinion and may decline to do so. (5 ILCS 120/3.5(h); 5 ILCS 140/9.5(h))

If a public body relies in good faith on an advisory opinion of the Attorney General in complying with either FOIA or OMA and is later sued over that particular issue, the public body is *not* liable for penalties under either statute, so long as the facts upon which the opinion is based were fully and fairly disclosed to the PAC. (5 ILCS 120/3.5(h); 5 ILCS 140/9.5(h))

Request for Review by the Public Access Counselor

If a member of the public believes that a public body has wrongly denied his or her FOIA request, or that a public body has violated OMA in the way that it conducted, or failed to conduct, a public meeting, then the member of the public may submit a Request for Review to the PAC.

In the case of FOIA, the Request for Review is a formal way of asking the PAC to take a look at the original FOIA request, as well as the public body's response, and determine if a FOIA violation has occurred. In the case of OMA, the Request for Review is a formal way of asking the PAC to determine if the alleged actions of the public body in connection with a public meeting are in violation of OMA. (5 ILCS 140/9.5(a); 5 ILCS 120/3.5(a))

The Request for Review must be made in writing, be signed by the requestor, and include a summary of the facts supporting the allegation. In a FOIA Request for Review, the member of

the public must also include a copy of the original FOIA request and any responses from the public body. (5 ILCS 140/9.5(a), (b); 5 ILCS 120.3.5(a))

A Request for Review must be submitted to the PAC within 60 calendar days after the denial of the FOIA request or the alleged violation of OMA. (5 ILCS 140/9.5(a); 5 ILCS 120/3.5(a))

A Request for Review may be submitted to the PAC by either electronic mail or U.S. Mail.

To submit a Request for Review by electronic mail, please e-mail the request to: publicaccess@atg.state.il.us.

To submit a Request for Review by U.S. Mail, please send the request to:

Public Access Bureau
Office of the Attorney General
500 S. 2nd Street
Springfield, Illinois 62706

A more detailed description of the Request for Review process is below.

Resolving the Dispute Through Mediation or Other Informal Means

Once the PAC receives a written Request for Review from a member of the public alleging that a public body has violated FOIA by denying his or her request for documents, or that the public body has violated OMA, the PAC can choose a number of ways to try to resolve the dispute. While the PAC may go through the formal process of issuing a binding opinion, described below, the PAC also has the discretion to use a more informal means to work with the parties to resolve the dispute.

The PAC may chose to try to mediate a dispute over FOIA or OMA between a member of the public and a public body. Mediation is an informal way of resolving the dispute where the PAC will work with both the member of the public and the public body in an attempt to reach an agreement and resolve the dispute. While the results of mediation will not include a binding opinion, this process may be more efficient and effective for the parties involved. (5 ILCS 120/3.5(e); 5 ILCS 140/9.5(f))

Permission to Assert Two Specific Exemptions Under FOIA

If a public body believes that the records requested under FOIA fall into one of two specific exemptions in FOIA and intends to assert those exemptions and withhold the records in whole or in part from disclosure, the public body must provide written notice to the PAC before asserting either of those exemptions.

Specifically, if the public body intends to withhold information from disclosure because either: (1) disclosure of the information would result in an unwarranted invasion of personal privacy (5 ILCS 140/7(1)(c)); or (2) the information falls into the exemption for preliminary policy drafts (5 ILCS 140.7(1)(f)), the public body must provide written notice (5 ILCS 140.9.5(b)) to the PAC before asserting either of these exemptions.

With the written notice to the PAC, the public body must include:

- a copy of the FOIA request;
- the proposed answer by the public body; and
- a detailed summary of the public body's basis for asserting the exemption.
(5 ILCS 140/9.5(b))

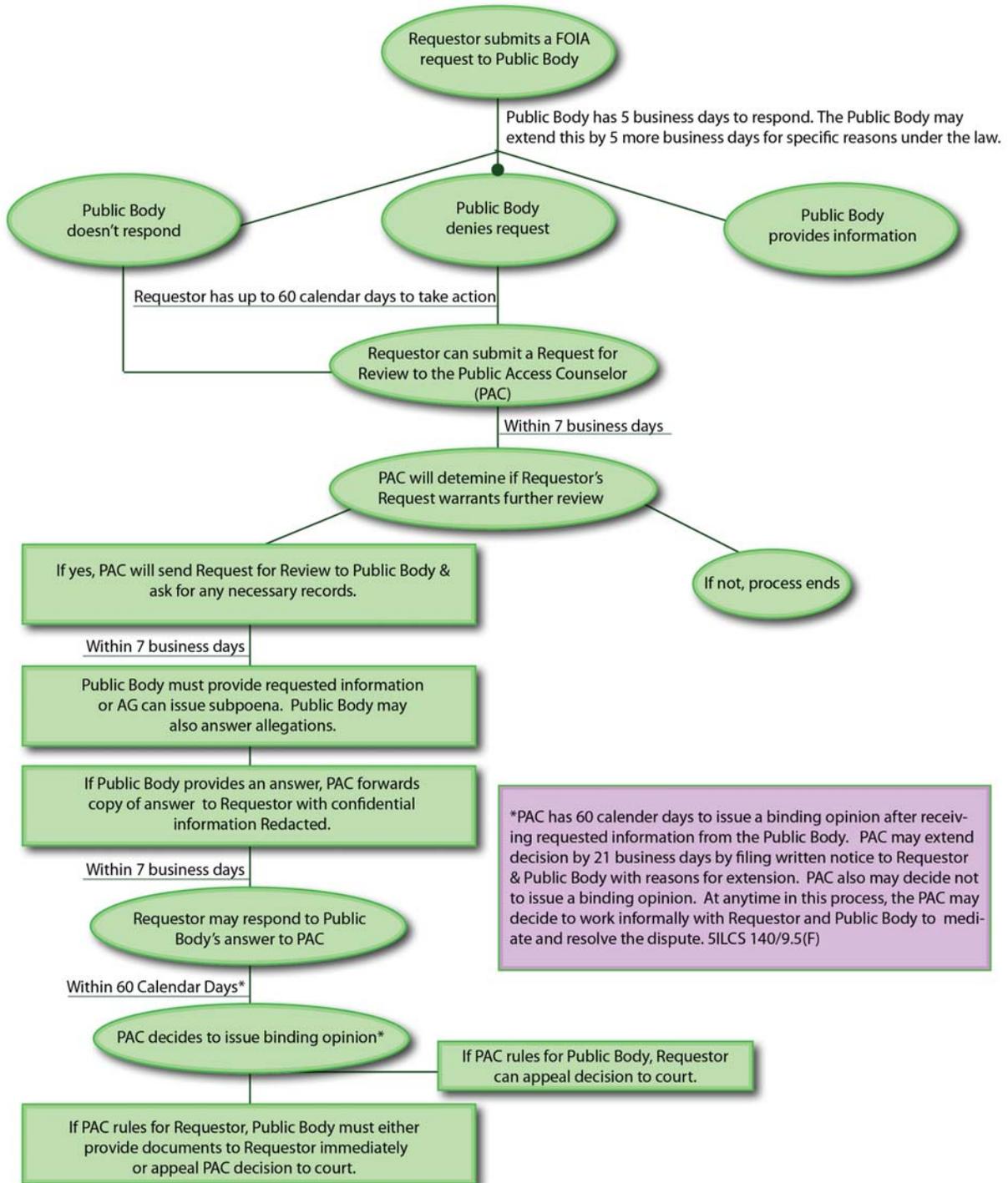
Once the PAC receives the written notice from the public body, the PAC has five working days (5 ILCS 140/9.5(b)) to determine if further inquiry is necessary. If the PAC decides that further inquiry is necessary to determine whether either of the exemptions may be used, the timeline for a Request for Review begins, and the public body must provide any information requested by the PAC within seven working days of receiving the PAC's request. (5 ILCS 140.9.5(c))

During the time period that the PAC is reviewing whether a public body can assert either of these exemptions, the clock stops running for the public body to respond to the FOIA request. (5 ILCS 140/9.5(b))

PAC Request for Review Process for Alleged FOIA Violations

When the PAC receives a Request for Review from a member of the public alleging that he or she has been denied access to documents by a public body in violation of FOIA, certain timelines are triggered and the PAC has specific statutorily defined responsibilities. This section will take you through the PAC Request for Review process for FOIA. (5 ILCS 140/9.5)

PAC Request For Review Process Under FOIA



Receipt of Request for Review

When the PAC receives a written Request for Review from a member of the public, the PAC has seven working days to do one of two things:

- Decide that no further review is necessary. (5 ILCS 140/9.5(c)) If the PAC decides that the alleged violations of FOIA are unfounded, the PAC will advise the requestor and the public body of that decision. The PAC will not conduct any further review.
- Send a copy of the Request for Review to the public body and request more information from the public body. (5 ILCS 140/9.5(c)) If the PAC decides that further review of the request is necessary, the PAC will forward a copy of the request to the public body. The PAC also can decide to seek additional information from the public body. In this case, the PAC will ask for any records needed to complete the review.

Public Body's Opportunity to Answer

After receiving the Request for Review forwarded by the PAC, plus any requests for documents from the PAC, the public body has seven working days (5 ILCS 140/9.5(c)) to provide the requested information. The PAC can request any information or documents necessary to decide whether a FOIA violation has occurred. The PAC may request and review copies of the records that the public body claims are exempt from FOIA disclosure. Under the law, if the PAC obtains copies of the records that the public body claims are exempt from disclosure, the PAC is prohibited from disclosing those records to the requestor or the public.

If the public body does not provide the information requested by the PAC, or does not otherwise cooperate, the Attorney General has the authority to issue a subpoena (5 ILCS 140/9.5(c)) to the public body. Once the PAC receives the documents requested from the public body, the PAC may request additional documents (5 ILCS 140/9.5(c)) if necessary to complete the review.

In response to the Request for Review and the PAC's request for documents, the public body also may provide a written answer to the allegations, and may provide affidavits in support of its position. (5 ILCS 140/9.5(e)) While the answer and affidavits are not required, they may be helpful to the public body in articulating its position.

Requestor's Opportunity to Respond

If in response to the Request for Review the public body provides a written answer to the allegations, the PAC must forward the public body's written answer to the requestor, redacting any alleged confidential information. The requestor is allowed, but not required, to respond to the public body's written answer within seven working days of its receipt. (5 ILCS 140/9.5(d))

Outcomes of a Request for Review by the PAC

There are three ways that the PAC may resolve a Request for Review:

- Decide that no further review is necessary. (5 ILCS 140/9.5(c)) If the PAC decides that the alleged violations of FOIA are unfounded, the PAC will advise the requestor and the public body of that decision. The PAC will not conduct any further review.

- Work to resolve the FOIA dispute with the public body. (5 ILCS 140/9.5(f)) The PAC may choose to mediate the dispute or resolve the matter by means other than the issuance of a binding opinion. The PAC's decision to refuse to issue a binding opinion is not reviewable.
- Issue a binding opinion. (5 ILCS 140/9.5(f)) After obtaining and reviewing any information needed to analyze the FOIA dispute and any additional information that the requestor or the public body chose to provide, the PAC may issue a binding opinion. If the PAC decides to issue a binding opinion, the PAC must issue that opinion within 60 calendar days after the PAC receives all the documents needed to complete its review. The PAC may extend the 60-day time period by 21 business days by sending a written notice to the requestor and the public body, and must include the reasons for the extension.

If the opinion orders the public body to produce the records, the public body may appeal the opinion to the circuit court. If the public body does not appeal the opinion and fails to disclose the records as ordered by the opinion, the Attorney General's office may sue the public body to enforce the opinion. If the opinion concludes that the records fall within a FOIA exemption and need not be disclosed, the requestor may appeal the opinion to the circuit court.

Ways in Which the PAC Can Assist Public Bodies

The PAC may assist any public body by issuing an advisory opinion to provide guidance on how to comply with FOIA. (5 ILCS 140/9/5(h)) The public body may request an advisory opinion to obtain guidance on FOIA compliance. A public body that relies in good faith on an advisory opinion of the PAC is not liable for penalties in a subsequent lawsuit on that particular issue, so long as the facts upon which the opinion is based have been fully disclosed to the PAC.

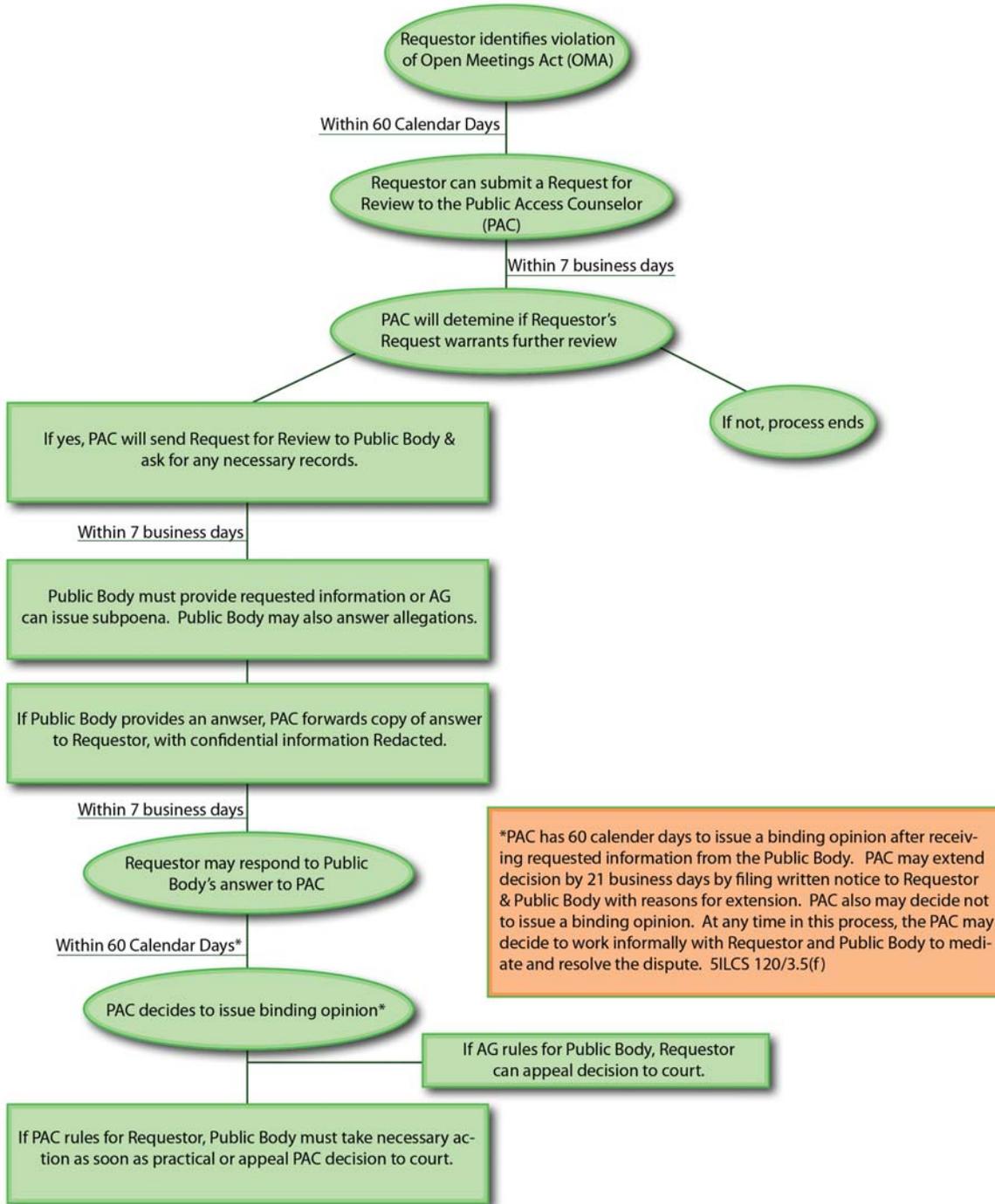
If a public body gets a FOIA request and has questions about how to respond, the public body may contact the PAC with such questions and can obtain general guidance from the PAC. The statutory timelines to respond to FOIA, however, will not be tolled (stopped) while the public body seeks guidance from the PAC. Therefore, it is important for the public body to respond to FOIA requests within the required time period.

If a FOIA request is denied, the requestor may submit a request for review to the PAC. The PAC will assist the requestor and public body by examining the request for review, thereby ensuring FOIA compliance.

PAC Request for Review Process for Alleged OMA Violations

When the PAC receives a Request for Review from a member of the public alleging that a public body has violated OMA within the last 60 calendar days, certain timelines are triggered and the PAC has specific statutorily defined responsibilities. This section will take you through the PAC Request for Review process under OMA. (5 ILCS 120/3.5)

PAC Request For Review Process Under OMA



Receipt of Request for Review

When the PAC receives a written Request for Review from a member of the public, the PAC has seven working days to do one of two things:

- Decide that no further review is necessary. (5 ILCS 120/3.5(b)) If the PAC decides that the alleged violations of OMA are unfounded, the PAC will advise the requestor and the public body of that decision. The PAC will not conduct any further review.
- Send a copy of the Request for Review to the public body and request more information from the public body. (5 ILCS 120/3.5(b)) If the PAC decides that further review of the request is necessary, the PAC will forward a copy of the request to the public body. The PAC also may ask the public body to provide any records the PAC needs to complete the review.

Public Body's Opportunity to Answer

After receiving the Request for Review from the PAC, plus any requests for documents or information from the PAC, the public body has seven working days to provide the requested information. The PAC can request any information or documents necessary to decide whether an OMA violation has occurred. This includes any records, notes or recordings, transcripts or minutes of closed meetings. Under OMA, the PAC is prohibited from disclosing any documents that the PAC obtains from a public body as part of the Request for Review. (5 ILCS 120/3.5(b))

If the public body fails to provide the information requested by the PAC, or does not otherwise cooperate, the Attorney General has the authority to issue a subpoena to the public body. Once the PAC receives the documents requested from the public body, the PAC may request additional documents if necessary to complete the review. (5 ILCS 120/3.5(b))

In response to the Request for Review and the PAC's request for documents and information, the public body also may provide a written answer to the allegations (5 ILCS 120/3.5(c)), and may provide affidavits in support of its position (5 ILCS 120/3.5(d)). While the answer and affidavits are not required, they may be helpful to the public body in articulating its position.

Requestor's Opportunity to Respond

If in response to the Request for Review the public body provides a written answer to the allegations, the PAC must forward the public body's written answer to the requestor, redacting any confidential information. The requestor is allowed, but not required, to respond to the public body's written answer within seven working days of receiving it. (5 ILCS 120/3.5(c))

Outcomes of a Request for Review by the PAC

There are three ways that the PAC may resolve a Request for Review regarding OMA:

- Decide that no further review is necessary. (5 ILCS 120/3.5(b)) If the PAC decides that the alleged violations of OMA are unfounded, the PAC will advise the requestor and the public body of that decision. The PAC will not conduct any further review.
- Work to resolve the OMA dispute with the public body. (5 ILCS 120/3.5(e)) The PAC may choose to mediate the dispute or resolve the matter by means other than the issuance

of a binding opinion. The PAC's decision to refuse to issue a binding opinion is not reviewable.

- **Issue a binding opinion.** (5 ILCS 120/3.5(e)) The PAC may issue a binding opinion finding either that the public body violated OMA or that it did not. If the PAC decides to issue a binding opinion, the PAC has 60 calendar days from the date it receives all the documents and information necessary to complete its review to issue a binding opinion. The PAC may extend the 60-day time period by 21 business days by sending a written notice to the requestor and the public body, and must include the reasons for the extension. (5 ILCS 120/3.5(e))

If the PAC issues a binding opinion finding that the public body violated OMA, the public body must either take action as soon as practical to comply with the opinion or appeal the PAC's opinion to the circuit court. If the public body does not appeal the PAC's opinion and fails to follow the PAC's recommendations, the Attorney General's office may seek to enforce the opinion in the circuit court. If the PAC concludes that the public body's actions did not violate OMA, the requestor may appeal that decision to the circuit court.

Advisory Opinions to Public Bodies

The PAC may assist any public body by issuing an advisory opinion to provide guidance on how to comply with OMA. (5 ILCS 120/3.5(h)) The public body may request an advisory opinion to obtain guidance on OMA compliance. The request must contain sufficient accurate facts from which a determination can be made. The PAC may request additional information from the public body to facilitate the review. A public body that relies in good faith on an advisory opinion of the PAC is not liable for penalties in a subsequent lawsuit on that particular issue, so long as the facts upon which the opinion is based have been fully disclosed to the PAC.

Review of a Binding FOIA or OMA Opinion from the PAC

If the PAC issues a binding opinion in response to a Request for Review and either the requestor or the public body disagrees with the opinion, either the requestor or the public body may ask a court to review the opinion by filing a lawsuit in the circuit court. (5 ILCS 140/11.5; 5 ILCS 120.7.5)

We hope this Guide helps you understand the Attorney General's office and the Public Access Counselor. You can find additional educational information on FOIA and OMA on the Attorney General's website at www.illinoisattorneygeneral.gov. You may also contact the Public Access Bureau of the Attorney General's office at:

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