

Illinois Open Meetings Act

Better Understanding and Compliance

Public Access Bureau
Illinois Attorney General's Office
September 20, 2024

1

Overview

- Public Policy Behind OMA
- Training
- Covered Entities
- Definition of "Meeting"
- Meeting Location, Attendance,
Remote Attendance
- Notice and Agenda
- Closed Sessions
- Public Participation
- Attorney General's Role



2

Public Access Counselor

Added to the Attorney General Act in 2010, the Office of the Public Access Counselor within the Attorney General's office is authorized to:

- Provide advice and education with respect to FOIA and OMA
- Resolve complaints concerning compliance with FOIA and OMA without litigation (Requests for Review)
15 ILCS 205(7)



3

Public Access Counselor

- In 2023, the Public Access Counselor (PAC) received more than 3,800 complaints concerning FOIA and OMA
- Many are resolved informally or with just one letter to a public body
- 199 Binding Opinions Issued
- Thousands of determination letters issued
- Required online training plus presentations
- Hotline (877-299-3642)

4

OMA Public Policy

“The General Assembly * * * declares it to be the public policy of this State that its citizens shall be given **advance notice of and the right to attend** all meetings at which any business of a public body is discussed or acted upon in any way.”

5 ILCS 120/1

“[T]he people have a right to be informed as to the conduct of their business.”

5

OMA Training Requirement – Member

- Each elected or appointed member of a public body subject to OMA must complete the electronic training curriculum developed and administered by the Public Access Counselor, available at:
<https://foiapac.ilag.gov>
- The member must file a copy of the certificate of completion with the public body.
- New members must complete within 90 days.
- The requirement is ongoing; if for any reason a public body member has failed to take the training, he or she must still do so.

5 ILCS 120/1.05(b)

6

OMA Training Requirement - Designee

- Each public body must appoint one person who will complete the training annually.
- Designee must file a copy of each certificate of completion with the public body.

5 ILCS 120/1.05(a)

7

The screenshot shows the website for the Illinois Attorney General, Kwame Raoul. The header includes the state seal, the text "ILLINOIS ATTORNEY GENERAL Kwame Raoul", and the website URL "www.IllinoisAttorneyGeneral.gov". There are "Login to the Portal" and "Register" buttons in the top right corner.

On the left side, there is contact information for the Public Access Counselor:

- Public Access Counselor
- Office of the Attorney General
- 500 S. 2nd Street
- Springfield, Illinois 62701
- Phone: 1-877-299-FOIA (1-877-299-3642)
- Fax: (217) 782-1396
- Email: PublicAccess

 Below this is an "Email Tech Support" link.

The main content area is titled "FOIA and OMA Training Portal". It contains the following text:

The Attorney General's Office has made several security enhancements to our training portal site. If you are required by statute to complete the OMA or FOIA training, you must first register to the new portal, even if you have previously completed OMA and FOIA training on the Attorney General's Office's website. Please note that a password that you used prior to April 2021 will no longer work without a new registration.

Once registered, you will need to click the "Login to the Portal" button on the top right of this page. A multifactor authentication is included in the login process to protect this site and your information.

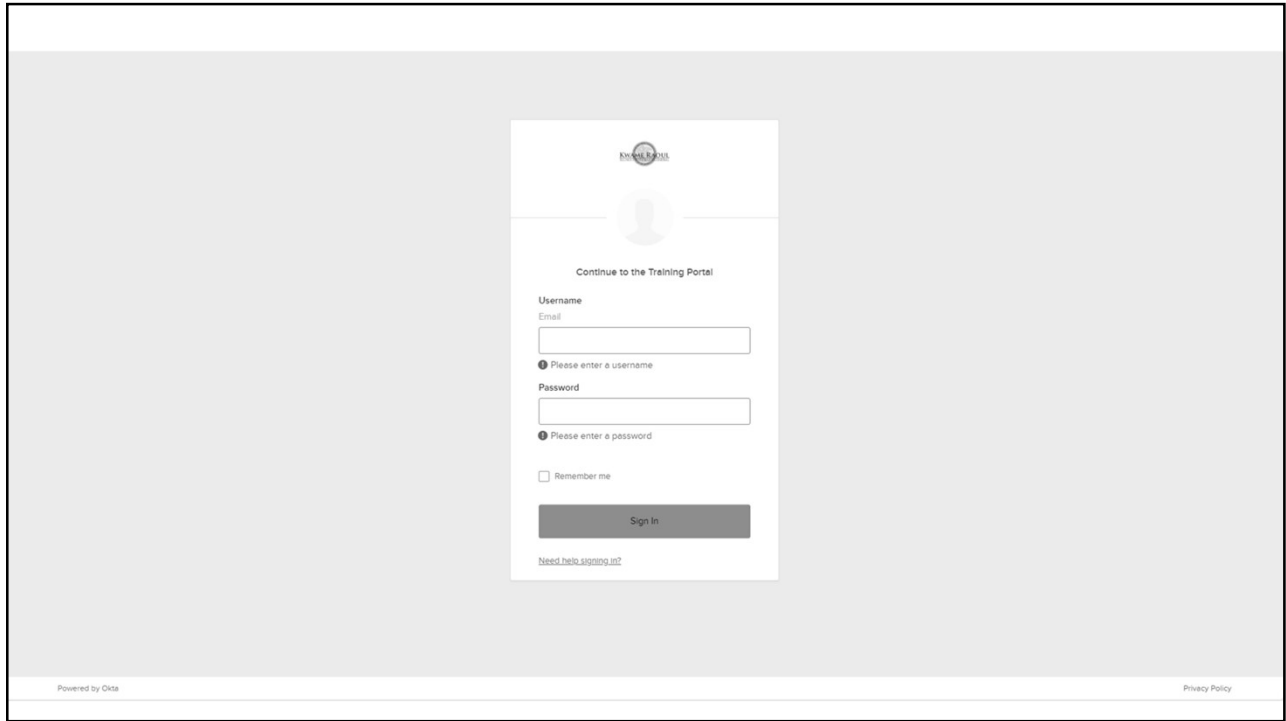
Once you have successfully logged in to the website, please locate the "Training/Registration Portal" menu on the left side of the screen. That menu is available only if you are logged in. You will find the OMA and FOIA trainings as the first choice under that menu.

Below this text is a link: [How to Register on the FOIA/PAC Portal Site](#)

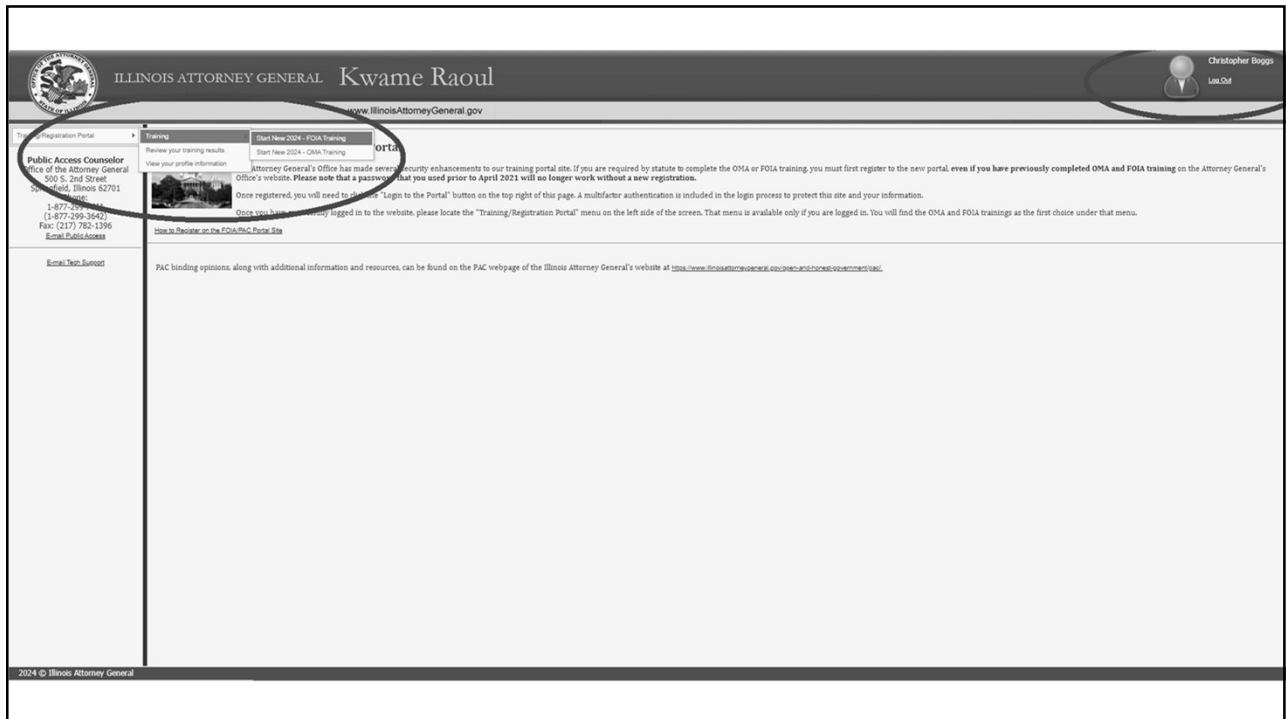
At the bottom of the main content area, it states: PAC binding opinions, along with additional information and resources, can be found on the PAC webpage of the Illinois Attorney General's website at <https://www.illinoisattorneygeneral.gov/pac-and-honest-government/faq>.

The footer of the page reads: 2024 © Illinois Attorney General

8



9



10

OMA Training Requirement - Alternatives

- Conducted by specified organizations
 - Certain content must be included
 - Certificate Required
 - Available for:
 - School Board Members
 - Drainage District Commissioners
 - Soil & Water Conservation Districts
 - Park, Forest Preserve, Conservation, and Fire Protection District Members
 - Municipal Members
- 5 ILCS 120/1.05(c) – (h)**

11

Openness Required

All **meetings** of **public bodies** shall be **open to the public** unless:

- excepted in subsection 2(c), and
- closed in accordance with Section 2a.

5 ILCS 120/2(a)

12

What is a Public Body?



State Boards and Commissions



Municipalities



Counties



School Boards



All subsidiary bodies of the foregoing bodies

5 ILCS 120/1.02

13

What is a Not Covered?

General Assembly and its Committees or Commissions, also ...



Condominium Associations



Private Companies and their Boards



Individual Officers



Not-for-Profit Organizations

14

Is an Entity a “Public Body” under OMA?

Some Factors to Consider:

- How is the entity formed? (By statute? Part of organized structure? This is a primary consideration.)
- Who appoints the members?
- What are the entity’s assigned duties?
- Is the entity subject to government control or accountable to another public body?
- Does the entity have a budget?

University Professionals of IL v. Stuckel, 344 Ill. App. 3d 856 (1st Dist. 2003)

15

“Public Body” under OMA

If in doubt as to whether a group is a “public body” for purposes of OMA, the entity is free to follow OMA’s requirements of advance notice of meetings, the opportunity for the public to attend, keeping appropriate records, and providing an opportunity for the citizens to address public officials.

16

What is a Meeting?

OMA defines a **meeting** as “any **gathering** * * * of a **majority of a quorum** of the members of a public body held for the **purpose of discussing public business.**”

- Any gathering that meets these requirements is subject to OMA – it must be previously noticed and open to the public.

5 ILCS 120/1.02

17

What is a Gathering?

Gathering can occur:

- in person,
- by video or audio conference,
- electronic means, or
- by other means of **contemporaneous interactive communication.**

5 ILCS 120/1.02

➔ Members can “gather” through reply-all emails and texts!

18

Majority of a Quorum

“Quorum”: minimum number of members of a public body who must be present at a meeting in order for the body to take official action.

Usually, a majority of the total members.

“Majority of a Quorum”: smallest number of members of a public body able to control action when a bare quorum is present.

19

Majority of a Quorum

Member Number	Quorum	Majority of Quorum
13	7	4
11	6	4
9	5	3*
7	4	3
5	3	3**
3	2	2

*A quorum cannot include half-a-person.

**Special rule for 5-member public body (5 ILCS 120/1.02).

20

Purpose of Discussing Public Business

A “meeting” occurs only when the requisite number of members gathers for the “purpose of discussing public business.”

So, a social gathering of public body members is not prohibited, but it could turn into a meeting if a majority of a quorum discusses public business.

Also, be mindful of the appearance of impropriety when holding social gatherings.



21

Purpose of Discussing Public Business

- “Informal gathering” that included a majority of a quorum and staff members to “meet, get to know each other and ask questions or state concerns any staff had.”
- “[S]taff members presented questions and concerns about substantive [public body] issues.”
- This gathering constituted a “meeting” subject to the requirements of OMA.

III. Att’y Gen Pub. Acc. Op. No. 23-003

22

Meeting Location

Meetings must be held at locations that are “convenient and open to the public.” **5 ILCS 120/2.01**

Most common complaint: Meeting room was too small

Gerwin v. Livingston Co. Bd., 345 Ill.App.3d 352 (4th Dist. 2003)

- “A meeting can be open in the sense that no one is prohibited from attending it, but it can be held in such an ill-suited, unaccommodating, unadvantageous place that members of the public, as a practical matter, would be deterred from attending it.”
- However, rule of reasonableness, not absolute accessibility.

23

Meeting Location and Date

- Meeting at private residence not open. **Ill. Att’y Gen. Pub. Acc. Op. No. 12-008**
- Special meeting 26 miles from usual location not convenient. **Ill. Att’y Gen Pub. Acc. Op. No. 13-014**
- “No meeting required by this Act to be public shall be held on a legal holiday unless the regular meeting day falls on that holiday.” **5 ILCS 120/2.01**

24

Meeting Attendance by Members

- Except in special circumstances, a quorum must be *physically present* at the meeting in order for the member to attend by other means.

5 ILCS 120/7(a)

- Before allowing a member to attend remotely, a public body must adopt a rule or regulation permitting electronic attendance.

5 ILCS 120/7(c)

25

Meeting Attendance by Members

If those conditions are met, another member may attend a meeting remotely for these reasons **only**:

- Personal illness or disability;
- Employment purposes or business of the public body;
- Family or other emergency; or
- **unexpected childcare obligations.**

5 ILCS 120/7(a)



Member **may not** attend remotely if absence is due to a **vacation or planned out of town trip** that is not related to “employment purposes” or “business of the public body.”

26

Meeting Attendance by Members

In summary, only if:

- A public body has adopted rules allowing for attendance by other means, and
- A quorum of members are attending in person, and
- The member is absent for one of the listed reasons,

A majority of public body may allow member to attend a meeting by other means. **5 ILCS 120/7(c)**

27

2020 Amendments re: Remote Meetings

In June 2020, **section 7(e)** was added to OMA to allow public bodies to hold meetings by video or audio conference when there is a public health emergency.

- Quorum of public body members (or all) may attend remotely
- Public may be accommodated through “alternative arrangements” such as participating in video or audio conference, or viewing through live streaming.

5 ILCS 120/7(e)

28

Remote Meetings in 2024?

- Section 7(e)(1) permits a remote meeting only when the Governor or Director of IDPH has issued a disaster declaration related to public health concerns and all or part of the jurisdiction of the public body is covered by the disaster area.
- The gubernatorial Disaster Proclamation related to the COVID-19 pandemic expired on May 11, 2023.
- Without a gubernatorial/IDPH disaster declaration related to public health covering its jurisdiction, a public body **may not** hold a meeting in which a quorum of its members attend remotely.

29

Public Notice of Meetings

Advance notice of meetings is part of OMA's policy that public business is to be conducted openly.

At beginning of calendar or fiscal year, public body must post schedule of regular meetings.

- Date
- Time
- Place

5 ILCS 120/2.02, 5 ILCS 120/2.03

30

Public Notice of Meetings

What? Notice and Agenda (agenda alone will suffice)

Where? Principal office + location of meeting + website
(if full-time staff of PB maintains website)

5 ILCS 120/2.02(a), (b)

31

Public Notice of Meetings

When? 48 hours before regular or special meeting
(if emergency meeting being held because of bona fide emergency, post as soon as possible)

How long? Notice and Agenda must be continuously available for public review during entire 48-hour period preceding the meeting
(Website posting satisfies this continuous posting requirement)

5 ILCS 120/2.02(c)

32

Content of Agenda and Final Action

- Date, time, and location of meeting
(Remote meeting? Video conference link, call-in number)
- Additionally, meeting agenda “shall set forth the general subject matter of any resolution or ordinance that will be a subject of final action at the meeting.”

5 ILCS 120/2.02(c)

→ Intent is to ensure that agenda provide sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action.

33

“General Subject Matter” of Final Action

Agenda must provide main element of action item:

- “[R]ecommendation ... regarding farming options for the County Farm.” Ill. Att’y Gen. Pub. Acc. Op. No. 22-008, issued June 30, 2022
- “Action ... as a result of closed session discussion” when agenda merely described closed session as pursuant to section 2(c)(1) of OMA. Ill. Att’y Gen. Pub. Acc. Op. No. 23-004, issued March 27, 2023

But specific details are not required:

- “Approve contract for City Manager” is sufficient

34

Final Action vs. Discussion Items

To comply with section 2.02(c), a public body may not take final action on any matter not on the agenda or amend agenda to add action items less than 48 hours before the meeting. Ill. Att’y Gen. Pub. Acc. Op. No. 14-003, issued May 5, 2014

However, a public body may **discuss** matters not on the agenda, or add **discussion items** less than 48 hours before the meeting, including holding a closed session that was not listed or adding it to the agenda.

In re Foxfield Subdivision, 396 Ill. App. 3d 989 (2d Dist. 2009)

35

Final Action: Public Recital

- Before a public body votes on a matter (takes final action), the vote must be “preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted.” **5 ILCS 120/2(e)**
- Recital must describe the “general nature of the matter under consideration” with “specific detail sufficient to identify the particular transaction.”

Board of Education of Springfield School District No. 186 v. Attorney General of Illinois, 2017 IL 120343, 77 N.E.3d 625 (2017).

36

Final Action: Must Be Open

"[N]o public body in Illinois subject to the Open Meetings Act can take final action by merely circulating some document for signature and not voting on it publicly."

Howe v. Retirement Board of the Firemen's Annuity & Benefit Fund,
2013 IL App (1st) 122446, ¶129 (2013)

➤ Court vacated the board's decision to deny disability benefits because the board had circulated the decision for signatures privately rather than voting on it in open session.

Also, no final action in closed session. **5 ILCS 120/2(e)**

37

Final Action: In Summary

- Must be listed in agenda posted 48 hours prior to meeting
- Must be preceded by public recital at meeting
- Must be taken openly (cannot be taken outside of meeting or in closed session).

38

Meeting Minutes (Open Session)

- Public body must approve and make available to the public written meeting minutes of open session.
- Minutes must include, but need not be limited to:
 - ✓ Date, time, and place of meeting;
 - ✓ Names of all members present or absent;
 - ✓ Whether members were physically present or present by video or audio conference;
 - ✓ Summary of discussion of all matters proposed, deliberated, or decided;
 - ✓ Record of any votes taken.

5 ILCS 120/2.06

39

Meeting Minutes (Open Session)

Minutes must be approved by the public body either:

- Within 30 days of the meeting, or
- At the public body's second subsequent regular meeting
(whichever is later)

Minutes must be available for public inspection and posted on website (if applicable) no later than 10 days after approval.

5 ILCS 120/2.06

40

Closed Meetings/Executive Sessions

Section 2(c) of OMA authorizes 39 exceptions for a public body to close a portion of its meeting to the public (*i.e.*, closed or executive sessions)

- Exceptions authorize but do not require the holding of a closed session.
- Exceptions are to be **narrowly construed** – topics must fit squarely within the cited exceptions.

41

Closed Meetings/Executive Sessions

- Exceptions relate to, among other things, employment, litigation, land acquisition, collective bargaining, and student disciplinary cases.
- Many are quite specific; review the exceptions to determine whether any apply to your public body.

42

Closed Meetings/Executive Sessions

General Rules for closed/executive sessions:

- Vote in open session to enter closed session – vote must identify the applicable section 2(c) exceptions. **5 ILCS 120/2a**
- Create verbatim recording of the closed session (audio or video). Recording is confidential. **5 ILCS 120/2.06(a)**
- Must generate and approve minutes **5 ILCS 120/2.06(a)** (may maintain as confidential).
- No final action in closed session. **5 ILCS 120/2(e)**

43

Exceptions: Employment, 2(c)(1)

- Discussion to consider “appointment, employment, compensation, discipline, performance, or dismissal” of specific employees or legal counsel.
- Must relate to ***specific employee or employees***
 - Not general budgetary matters that impact employees. *See, e.g.*, Ill. Att’y Gen. Pub. Acc. Op. No. 15-007, issued September 16, 2015.
 - Not general processes involving evaluation of employees. *See, e.g.*, Ill. Att’y Gen. Pub. Acc. Op. No. 20-004, issued June 2, 2020.

44

Exceptions: Litigation, 2(c)(11)

Discussion to consider “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[.]”

Discussion must be limited to the strategies, postures, theories, and possible consequences of the litigation itself.

45

Exceptions: Litigation, 2(c)(11)

Also, “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.”

Discussion must be limited to the strategies, postures, theories, and possible consequences of the litigation.

Ill. Att’y Gen. Pub. Acc. Op. No. 21-003, issued March 4, 2021

46

Exceptions are to be narrowly construed

III. Att’y. Gen. Pub. Acc. Op. No. 23-016, issued December 27, 2023: A Board held a closed session discussion concerning the removal of a book from school district curriculum, initially citing 4 OMA exceptions.

- 2(c)(1) authorizes closed session discussion of, among other things, "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees[.]"
- 2(c)(4) authorizes closed session discussion of "[e]vidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, * * * provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning."
- Section 2(c)(10) authorizes closed session discussion of "[t]he placement of individual students in special education programs and other matters relating to individual students."
- Section 2(c)(11) – Board ultimately acknowledged 2(c)(11) was not utilized

47

Exceptions are to be narrowly construed

III. Att’y. Gen. Pub. Acc. Op. No. 23-016, issued December 27, 2023

- 2(c)(1) was inapplicable because the Board entered closed session to deliberate on whether book should be part of curriculum, as opposed to deliberation on specific employees' job performance or other matters concerning specific employees.
- 2(c)(4) was inapplicable because even if the Board acted as a quasi-adjudicative body to resolve grievances, the grievance at issue was against employees rather than the book itself. Instead of entering closed session as a quasi-adjudicative body to assess whether employees violated Board policies, the Board discussed whether to keep the book as a classroom text. Further, the closed session discussion involved minimal, if any, evaluation of evidence or testimony presented in an open hearing, or in a closed hearing where specifically authorized by law.
- 2(c)(10) was inapplicable to all but less than a minute of the recording in total, as the allusions or references to an individual student were momentary in nature, and the Board spent the overwhelming majority of the closed session discussing curriculum matters that broadly impacted whole groups of students.

48

Ending Closed/Executive Session

- Adjourn closed session and return to open session
- If public body wishes to take final action, may do so after closed session **only if** item was identified on agenda.

49

Closed/Executive Session Minutes

- Minutes of closed session are exempt from disclosure under section 7(1)(I) of FOIA (**5 ILCS 140/7(1)(I)**) unless the public body votes to make them available.
- Closed session minutes must be reviewed every six months to determine whether the need for confidentiality still exists.
5 ILCS 120/2.06(d)
- OMA specifically allows access to closed session minutes to duly elected or appointed officials of the public body.
5 ILCS 120/2.06(f)

50

Closed/Executive Session Minutes

- **Ill. Att’y. Gen. Pub. Acc. Op. No. 23-014, issued December 1, 2023: Ill. Att’y. Gen. Pub. Acc. Op. No. 23-014, issued December 1, 2023:** Public body violated section 2(e) of OMA by taking final action to approve past closed session minutes during a closed session.
 - As a general matter, a preliminary poll or tentative consensus in closed session is allowed, so long as any determinative action in closed session is immediately ratified in open session.
 - Further, approving the closed session minutes in open session would not have compromised the public body’s ability to maintain the confidentiality of the substance of those closed session minutes.
- Public body violated section 2(e) of OMA by taking final action to approve past closed session minutes during a closed session.
- As a general matter, a preliminary poll or tentative consensus in closed session is allowed, so long as any determinative action in closed session is immediately ratified in open session.
 - Further, approving the closed session minutes in open session would not have compromised the public body’s ability to maintain the confidentiality of the substance of those closed session minutes.

51

Closed/Executive Session Minutes

Ill. Att’y. Gen. Pub. Acc. Op. No. 23-014, issued December 1, 2023: Ill. Att’y. Gen. Pub. Acc. Op. No. 23-014, issued December 1, 2023

Remember: The approval of closed session minutes is separate and apart from the semi-annual review (every 6 months) of closed session minutes.

- Approval of CSM establishes their status as the official record of those proceedings, whereas
- Semi-annual review allows public bodies to determine whether CSM still require a need for confidentiality or may otherwise be made available to the public at that time

52

Right to Record Meeting

Section 2.05 of OMA provides any person the right to record a meeting, subject only to reasonable rules of the authority holding the meeting.

5 ILCS 120/2.05

Because OMA specifically provides that meetings may be recorded, a public body would have a steep burden to overcome to show that any rule or policy requiring advance notice is reasonable.

Ill. Att’y Gen. Pub. Acc. Op. No. 16-014, issued December 28, 2016

53

Public Comment

“Any 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)

Common Permissible Rules:

- Time limits (per speaker, total time for public comment)
- Matters relating to decorum (no profanity, no electioneering)

54

Public Comment Rules

Residency limitations/provision of home address → Improper

Ill. Att’y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014

Advance sign-up requirements → Improper

Ill. Att’y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014 (5 days notice improper)

55

Empowering Public Participation Act

- Public Act 102-0348, effective August 13, 2021.
- Act prohibits law enforcement agencies from conducting a criminal history check on meeting speakers using the Law Enforcement Agencies Data System (LEADS);
- Does not apply if reasonable suspicion of criminal conduct or threat to security.

56

Review of OMA Violations

Any person may file a Request for Review with the Public Access Counselor within 60 days of discovery of the alleged violation.

5 ILCS 120/3.5

Any person, including the State's Attorney of the county, may bring a civil action in the circuit court where the alleged noncompliance has or is about to occur.

5 ILCS 120/3

57

Public Access Counselor Review

Requests for Review (RFR) under OMA:

- Any person may file RFR within 60 days of violation
- PAC determines whether further action is warranted on allegations; if so, contacts public body to request relevant records and response to allegations.
- PAC may issue determination letter or AG may issue binding opinion (subject to administrative review).

5 ILCS 120/3.5

58

Possible OMA Resolutions

If PAC finds an OMA violation, it may direct the public body to:

- Release closed session recording and minutes;
- Instruct the public body to re-vote on a matter; and/or
- Instruct the public body on how to avoid future violations.

59

PAC Contact Information

PAC Hotline: **877-299-3642**
(Voicemail, 9 a.m. – 5 p.m. on business days)

public.access@ilag.gov
pacttechnicalsupport@ilag.gov

Public Access Bureau, Office of the Attorney General
500 South Second Street
Springfield, Illinois 62701

60