

WHAT YOU REALLY NEED TO KNOW ABOUT THE OPEN MEETINGS ACT AND THE FREEDOM OF INFORMATION ACT

A quick overview of the Open Meetings Act and the Freedom of Information Act and discussion of some recent issues

Presented by:

Maura K. McKeever

Matuszewich, Kelly & McKeever, LLP

(815) 459-3120

mmckeever@mkm-law.com

April 30, 2014

ELECTRONIC TRAINING

- ALL elected officials must complete the Open Meetings Act electronic training no later than the 90th day after taking the oath of office or, if no oath is required, assuming the responsibilities of public office.
- The Open Meetings Act designee and the FOIA officer must successfully complete the initial training within 30 days of being named to the position and must also complete the electronic training annually.
- http://foia.ilattorneygeneral.net/electronic_foia_training.aspx

Open Meetings Act

5 ILCS 120/et seq

Public Body

- Deliberations and actions of a public body MUST be open to the public

Public

- The public has a right to advance notice of and to attend all meetings of a public body at which business is discussed or acted upon.

Open Meetings Act

Key Terms

- Public body – funded by or spends tax revenue
- Meeting – gathering of a majority of a quorum to discuss public business

What is an Open Meeting?

- Notice – date, time, location
- Post an Agenda at least 48 hours before the meeting
 - At the principal office of the public body or if no office exists at the place where the meeting will be held
 - If the public body has a website that is maintained by full-time staff, the notice must also be posted on the website
- Quorum must be physically present
- Allow public participation
- Keep accurate Minutes

Closed Meetings

- Meetings can only be closed in limited circumstances – 5 ILCS 120/2(c)
- Procedure – vote to close the meeting, cite the specific exception, and record the vote and the specific citation in the minutes of the meeting
- Keep a verbatim record of the closed session
- **NO FINAL ACTION CAN BE TAKEN DURING A CLOSED SESSION**

What happens if a public body fails to comply with the Open Meetings Act?

- Civil and criminal penalties
- Public body may need to pay for attorney's fees and costs if the requester prevails in a civil lawsuit

Freedom of Information Act

5 ILCS 140/et seq

Public Body

- Has a duty to assist the public in obtaining information about their government and about the decision making process

Public

- Has a right to full and complete information regarding the affairs of their government

Freedom of Information Act – Key Terms

- Public body – all legislative, executive, administrative or advisory bodies; does not include the courts or the judicial branch.
- Public record – any document that pertains to government business.

FOIA Officer

- Every public body must identify at least one FOIA officer.
- Every public body must post the name of the FOIA officer, the procedure for submitting a FOIA request, and a brief description of the office.
- FOIA officer must post a list of documents that the public body will immediately make available.

Responding to a FOIA Request

- Requests may be submitted via personal delivery, mail, fax or other means available
- Must make records available for inspection or copying unless exempt from disclosure
- Must respond to the request within 5 business days
- Day 1 is the day AFTER the FOIA request is received
- In limited circumstances the time for responding may be extended by up to 5 business days
- Failure to respond within the required time is considered a DENIAL of the request
- The requester and the public body can enter into a written agreement to extend the time for compliance
- These deadlines do not apply to a request made for a commercial purpose and to requests made by recurrent requesters

Why should a public body pay attention to these deadlines?

- Failure to respond within the required time is considered a DENIAL of the request
 - Potential civil penalties of between \$2,500 and \$5,000 per FOIA violation
 - Public body cannot charge for the cost of the copies
- Public body may need to pay for attorney's fees and costs if the requester prevails in a civil lawsuit

Denials of FOIA Requests

- Public body must provide WRITTEN notification
 - Reason for the denial
 - Name/title of the person responsible for the decision
 - Inform requester of right to seek review by the Public Access Counselor
 - Inform requester of right to seek judicial review

Fees

- Paper records
 - Black and white, letter or legal sized copies – first 50 pages are free, .15 per page after that; actual cost of color copies or unusual sizes
- Electronic records
 - Public body can only charge for the actual cost of the recording medium
- Public body has discretion over whether to grant a fee reduction or waiver

Exceptions to the Duty to Disclose

- Exemptions from the Freedom of Information Act – 5 ILCS 140/7
- Exceptions to disclosure are to be read narrowly
- If a request is denied on the grounds that the excepted material is exempt, the written denial must identify the authority for the denial

Examples of information and records that may be exempt from disclosure

- Personal information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the person who is the subject of the information. Under FOIA, the “unwarranted invasion of personal privacy” means the “disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject’s right to privacy outweighs any legitimate public interest in obtaining the information.” Disclosing information that relates to the public duties of public employees is not considered an invasion of personal privacy.
- Law enforcement records that, if disclosed, would interfere with a pending or reasonably contemplated proceeding or that would disclose the identity of a confidential source.
- Information that, if disclosed, might endanger anyone’s life or physical safety.
- Preliminary drafts or notes in which opinions are expressed or policies are formulated, unless the record is publicly cited and identified by the head of the public body.
- Business trade secrets or commercial or financial information that is proprietary, privileged or confidential and disclosure would cause a competitive harm to the person or business.
- Proposals and bids for any contract, until a final selection is made.