

April 24, 2020

Governor J.B. Pritzker
207 State House
Springfield, IL 62706

Attorney General Kwame Raoul
500 South Second Street
Springfield, IL 62701

Dear Governor Pritzker and Attorney General Raoul,

The undersigned write to support continued transparency in Illinois and oppose the efforts of the Illinois Municipal League to curtail the Freedom of Information Act during the COVID-19 pandemic. With Governor Pritzker extending the reach of Executive Orders issued to date in response to the COVID-19 pandemic into May, the current recommendations for public bodies in navigating FOIA issued by the Attorney General's Office should remain in place to protect both public health and the public's right to participate in the policy decision-making process.

State and local government officials must keep Illinois residents safe and healthy during this crisis, even as they face staffing constraints required by safety orders issued in response to the pandemic. Yet this is no time to sacrifice transparency measures; on the contrary, transparency is more important than ever to inform the citizenry and maintain public trust. In short, FOIA remains essential for a functional democracy.

The Freedom of Information Act is the heart of government transparency; it is the public and the press's most potent tool for monitoring and understanding the workings of local government. Writing for a 7-2 majority of the Supreme Court, Justice Thurgood Marshall affirmed that "the basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed."¹ When the Illinois General Assembly overhauled FOIA in 2009, it left no doubt as to the importance and inviolability of the law, emphasizing "that providing records in compliance with the requirements of this Act is a primary duty of public bodies to the people of this State."² For these reasons, an essential business duty of public bodies is to respond to FOIA requests.

In addition to building an informed citizenry, government transparency provides a strong basis for public trust in government. Trust is essential at this moment, as the state and nation face a generational crisis. The public needs to be able to trust its government to make critical decisions about health and safety in this time of uncertainty, even as its leaders take unprecedented action to combat the coronavirus and to

¹ *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214 (1978) at 242.

² 5 ILCS 140/1.

eventually reopen our economy. Likewise, public trust is the basis by which our leaders can ask the public to play a vital role in protecting vulnerable populations and reducing the pandemic's burden on our health care system through social distancing measures that slow virus transmission.

Thus, government officials and employees continuing to work at the office or who are equipped to work from home should provide records in response to FOIA requests. Because current conditions may pose health and safety concerns, some records may be temporarily inaccessible. In such circumstances, public bodies may invoke the unduly burdensome provision of FOIA, as long as they reply to FOIA requests within five business days. They should additionally inform the requester that these records will be provided when regular business resumes. When a public body believes that compliance with a particular FOIA request would be unduly burdensome, the public body should contact the requester to narrow their request. The Attorney General's "Guidance to Public Bodies on the Open Meetings Act and the Freedom of Information Act during the COVID-19 Pandemic," likewise encourages members of the public and the media to work with public bodies to agree on reasonable response times. Significantly, the unduly burdensome provision also requires the public body to consider the public interest in receiving the information: if the public interest outweighs the burden, the public body should fulfill the request.

During this time, the FOIA process will undoubtedly operate less efficiently than usual. However, it remains a "fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]."³ Public bodies must fulfill their responsibility to inform the public. The Governor's Office and Attorney General's Office must not forsake public trust by allowing public bodies to avoid their obligations under FOIA.

Sincerely,

Citizen Advocacy Center

ACLU of Illinois

Better Government Association

Carmi Chronicle

Carterville Courier

CHANGE Illinois

Chicago Headline Club

Chicago Lawyers' Committee for Civil Rights

The Chicago Reporter

Franklin County Gazette

³ 5 ILCS 140/1.

Herrin Independent
Illinois College Press Association
Illinois Community College Journalism Association
Illinois PIRG
Illinois Press Association
League of Women Voters of Illinois
The Marion Star
McLeansboro Gazette
The Navigator and Journal-Register
Northern Illinois Newspaper Association
O'Fallon Weekly
Perry County Weekly-Press
Raise Your Hand
Reform for Illinois
Republic-Times
Southern Illinois Editorial Association
S&R Media
Swinford Publications