

Accessing Government:

How difficult is it?

AN ANALYSIS OF
OPEN GOVERNMENT LAWS
IN THE MIDWEST



Excerpted Portions: Ohio

For full report, please visit www.citizenadvocacycenter.org or www.midwestdemocracynetwork.org

ABOUT THE CITIZEN ADVOCACY CENTER

The Citizen Advocacy Center (Center) is an award-winning, non-profit, non-partisan community legal organization based in the suburbs of Chicago. Founded in 1994, the Center's mission is to build democracy for the 21st century by strengthening the public's capacities, resources and institutions for self-governance.

Community lawyers at the Center help citizens and community groups address self-identified issues of public concern through providing resources and training in how to use civic tools, the law, community organizing, coalition building, and the media to affect government decision-making.

The Center's work has a regional and statewide impact due to our focus on identifying systemic reforms that increase government accountability, accessibility, and transparency as well as citizen participation in government affairs. Additionally, the Center monitors government agencies for abuse of power and anti-democratic policies, and, only when necessary, engages in president setting federal and state litigation to hold government agencies accountable for abuse of power.

ABOUT THE MIDWEST DEMOCRACY NETWORK

The Citizen Advocacy Center is a member of the Midwest Democracy Network, an alliance of Midwest state-based civic and public interest organizations, academic institutions, and policy and legal experts.

Members of the Midwest Democracy Network share a commitment to fundamental democratic values and principles, especially those that speak to honesty, fairness, transparency, accountability, citizen participation, competition, respect for constitutional rights and the rule of law, and the public's need for reliable information. They believe that such principles must be continuously reinforced and zealously protected against those who see politics as a means to promote narrow interests rather than the common good.

Toward these ends, members seek to reduce the influence of money in politics; keep courts fair and impartial; promote open and transparent government; create fair processes for drawing congressional and legislative districts; guarantee the integrity of our election systems; promote ethical government and lobbying practices; and democratize the media.

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ANALYSIS OF OPEN GOVERNMENT LAWS

Executive Summary

“A popular government without proper information or the means of acquiring it is but a prologue to a farce or a tragedy—or perhaps both. Knowledge will forever govern ignorance; and the people who mean to be their own governors, must arm themselves with the power which knowledge gives.”

—James Madison, Letter to W. T. Barry, 1822

Strong open government laws that mandate transparency in conducting the people’s business are essential components of a healthy democracy. The ideals of a government that is of the people, by the people, and for the people require that the public have, to the fullest extent possible, the capacity to access the governmental decision-making process and documents that are created and maintained with public tax dollars.

Broad access to government ensures the public’s capacity to play a role in the democratic process and provides a mechanism by which the public can knowledgeably discuss issues of public concern, make informed judgments as to the actions of public officials, and monitor government to ensure that it is acting in the public interest.

Both the federal government and all individual states have open government laws. These laws uphold the ideals of transparency in government and mandate liberal access to government documents and government meetings. By providing public access to government meetings and robust access to information regarding government affairs, open government statutes are cornerstone laws that ensure and protect the free flow of information from government to the people.

However, state open government laws have statutorily weak features that must be reformed. Moreover, the implementation of state open government laws suffers from inconsistent governmental responses, despite strong public policy statements which are supposed to provide a framework to interpret statutory provisions. While public bodies have the legal burden to ensure compliance with open government laws, more often than not compliance rests on the shoulders of the public.

Our democracy is weakened when government can circumvent transparency based on ineffective oversight mechanisms, a lack of penalties or implementation of penalties, a lack of training that leads to inadvertent violations, excessive fees that make information inaccessible, ineffective policies that fail to address the integration of technology in the businesses of governing, or few resources available to provide assistance to people when government is resistant to permitting proper access or disclosure. These are just a few of the barriers that impede public participation.

A healthy democracy requires that open government barriers be identified, dismantled, and replaced with effective statutory language and institutional protocols that ensure citizen participation and government operation in the light of day.

To address systemic barriers that chill public participation and access to government, the Citizen Advocacy Center (Center) conducted a systemic overview of open government laws in the states of Michigan, Ohio, Illinois, Wisconsin, and Minnesota with the goals of evaluating the provisions and implementation of the statutes.

In executing this project, the Center reviewed the relevant statutes and more than 1,000 legal cases, attorney general opinions, and professional publications to produce a comprehensive study of each state's respective strengths and weaknesses. The study serves as a valuable resource for policy makers, good government organizations, the media, and citizens who regularly use open government laws.

Specifically, the Center analyzed how the public in each state is entitled to participate in the democratic process and to what extent policy goals of mandating transparency and accessibility to government operations are achieved.

With regard to the Freedom of Information Act (FOIA) statutes, the Center focused on issues such as:

- Response time to requests;
- Appeal time and procedures;
- Fees and costs associated with requests;
- Fines and penalties for lack of responsiveness by a government body;
- The frequency with which available fines and penalties have been implemented;
- The extent of exempt information from public records requests;
- The presence of government resources to act as an ombudsman; and
- Provisions that mandate access and disclosure of public records created via the Internet.

With regard to the Open Meetings Act (OMA) statutes, the Center reviewed:

- Public notice and agenda requirements;
- Provisions to address the use of the Internet and other forms of electronic communications to conduct meetings;
- Fines and penalties;
- The frequency with which available fines and penalties are implemented; and
- The extent to which a public body can close public meetings.

During the course of completing the Midwest Open Government Project, four major themes surfaced.

The first is that all of the surveyed Midwestern states suffer from a lack of enforcement implementation. In every state surveyed except Illinois, public information laws have some kind of fine or penalty provision to deter non-compliance. While fine and penalty schemes are available, a review of case law indicates that they are rarely enforced in the states where present.

With respect to open government laws, every state statute includes a variety of enforcement and penalty provisions, some of which include criminal charges and removal from office. Despite strong provisions, few states implement their statutory provisions to hold public bodies accountable. The lack of implementation of enforcement provisions has a detrimental ripple effect: public bodies are less likely to be responsive to requests for public information and more likely to inappropriately utilize exemption provisions. In addition, government bodies are less likely to hold open government meetings.

The second theme is that no state surveyed has a statutorily created entity with enforcement powers specifically dedicated to ensuring compliance with sunshine laws. It is laudable that every state examined had either state resources or non-profit organizations available to the media, public officials, and the general public to navigate respective open government statutes, provide training, and advocate for more transparency, accountability, and accessibility of government. Despite these resources and considering the systemic lack of enforcement among open government laws in general, a statutorily created office with enforcement powers would substantially increase the likelihood that governmental bodies will comply with open government laws.

The third theme is the lack of mandated training for public officials and public employees on appropriate utilization of open government statutes. Ohio was the only state surveyed that requires every elected official, or a designee, to receive three hours of training regarding use of that state's open records law during every term in office. Mandatory training for those who fall under the purview of open records and open meetings laws is essential to promoting open government. Required training increases the capacity of public officials and employees to comply with the law and offers a degree of accountability.

The fourth theme is that participatory opportunities for the public during open meetings are absent. The preamble of each state's open meetings statute identifies broad goals as ensuring transparency in the government decisionmaking process and guaranteeing that the public has access to full and complete information regarding the affairs of government.

Beyond having the capacity to access government information and observe how government operates, a healthy democracy requires an engaged public that has the opportunity to publicly comment on issues that public officials intend to take action on. Michigan is the only state surveyed that requires public bodies to provide an opportunity for the public to speak at public meetings, within appropriate restrictions. This is a tremendously important element that is conspicuously absent in other states.

In addition to the major themes identified above, the Midwest Open Government Project brought to light interesting aspects of each state's open government laws. For example:

- Ohio's OMA has outstanding provisions within the statute and remarkable fines and penalties for non-compliance, however, the statute does not apply to home rule units of government per the Ohio Constitution;
- In Illinois, the notice and minutes provisions of the OMA are the most stringent of the five statutes, but its FOIA was the only state surveyed that fails to have any kind of penalties or fines for violations. In addition, Illinois's statute has the longest list of exemptions by far, making the statute perplexing;
- With respect to Michigan, while its OMA mandates public comment opportunity at public meetings and its FOIA covers private entities that receive more than half of its funding from a government agency, the Governor's office, Lieutenant Governor's office and legislature are exempt from the statute. In addition, Michigan has the most stringent requirements regarding the imposition of fees for searching and compiling public records and the shortest statute of limitations for a lawsuit to be filed under OMA when issues of expenditures are at stake;

- Wisconsin, while considered to have fairly strong open government laws, is devoid of an administrative appeals process for when requests are denied and lacks a firm statutory deadline by which public bodies must respond to requests for records. The lack of a firm deadline results in unjustified delays in accessing government information; and
- Minnesota places a high priority on protecting the privacy of a requestor of public records, as well as an individual who may be the subject of a request. The high sensitivity to protecting individual privacy coupled with many regulations, leads to tremendously complex and confusing open records laws. The multi-tiered system regarding the production of government documents renders the statutes virtually unusable to general public. Moreover, public bodies in Minnesota are not required by law to provide public notice of meetings, agendas detailing what action public bodies will take at such meetings, or that any minutes beyond the recording of votes be taken.

As the Center completed its broad overview of each state's statutory provisions, we completed comparative analyses highlighting positive and negative anomalies that influenced our eventual reform recommendations for each state. In addition to the individual state policy reports that provide an overview of each state's open government laws and the identification of specific strengths and weaknesses, the Center drafted ten model statutes that are tailored to each state that good government advocates can use to begin the conversation about how to advance specific reforms.

Additionally, the Center has produced citizen guides that translate dense legalese into an easily understandable format for the public. The combination of the policy reports, model legislation, and citizen guides results in a comprehensive open government tool box that can be effectively deployed to advance systemic democratic protocols. The Midwest Open Government Project is a substantial endeavor embarked on by the Center that has produced significant results to help strengthen democracy and build the capacity of the public to participate and affect government decision-making.

OH

OHIO

OH

OHIO

In recent years, Ohio has made significant efforts to improve its open government laws, which have been considered weak in many regards. In 1963, the Ohio General Assembly enacted the Ohio Public Records Law (OPRL), which codified a rich common law history. The Ohio Supreme Court explicitly stated of the OPRL, “public records are the people’s records, and officials in whose custody they happen to be are merely trustees for the people.” *State ex rel. Warren Newspapers Inc. v. Hutson*, 70 Ohio St. 3d 619, 640 N.E.2d 174 (1994). Within specified limitations, the OPRL allows anyone to inspect and obtain copies of all public records prepared, possessed, used by, or in the control of any public office.

In 1975, the Ohio General Assembly enacted the Ohio Open Meetings Act (OMA). Ohio Revised Code § 121.22 establishes that, “This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically exempted by law.” Ohio courts have generally read this provision as a presumption in favor of finding bodies to be “public,” and therefore covered by OMA.

While there are several strengths of Ohio’s open government laws additional reforms are necessary to promote transparent, accountable, and accessible government. Regarding the OPRL, Ohio is one of three Midwestern states that lacks firm deadlines in mandating responses to request for information and does not have an administrative appeals process to dispute denied requests for public records. Additionally, while Ohio has significant penalties for non-compliance with the OPRL, they are rarely imposed.

With respect to the OPRL, the strong statutory language mandating openness is circumvented by court rulings that home rule charters of municipalities can prevail over the OMA due to provisions within the Ohio Constitution. Moreover, Ohio is one of two states among those surveyed that limits the ability to sue to individuals and allows a public body to recover attorney fees for frivolous OMA suits filed by a plaintiff.

The above-mentioned weaknesses are significant statutory restrictions within the OPRL. Furthermore, the home rule provision within the OPRL is particularly egregious and the lack of fine and penalty implementation allows non-compliant public bodies to ignore laws that provide for public access to government and government decision-making.

The following provides an analysis of the strengths and weaknesses of Ohio's open government laws and a summary of each law's main components. Copies of model versions of both statutes as well as citizen guides are available by contacting the Citizen Advocacy Center.



ANALYSIS OF OHIO'S

Public Records Law

STRENGTHS

of Ohio's Public Records Law

The OPRL benefits from a strong presumption of coverage. Ohio courts have interpreted statutory exemptions strictly and have refused to expand them beyond what is specifically enumerated. Most importantly, penalties for violating the OPRL are substantial and can serve as a serious deterrent to violating the law if applied.

Statutory damages are fixed at \$100 per business day during which the public office fails to comply with a proper request, beginning the day the requestor files a mandamus action. The statutory damages are capped at \$1,000 and are assessed against the public office. However, damages may be reduced or eliminated by a court if it determines the denial by the public body was made in good faith. *State ex rel. Fox v. Cuyaboga County Hospital System*, 39 Ohio St. 3d 108, 111-12, 529 N.E.2d 443, 446-47 (Ohio 1988).

Ohio courts have provided requestors further protection by establishing that a public office cannot avoid statutory penalties by producing requested records only after a lawsuit has been filed to force compliance. *Specht v. Finnega*, 149 Ohio App. 3d 201, 206-07, 776 N.E.2d 564, 569 (Ohio App. 6 Dist. 2002). This is a significant aspect of the statute.

Of the five Midwestern states, Ohio is the only one that specifically prohibits the mooted of a legal claim filed in court by a mere production of records prior to a judgment. While in other states, a lawsuit may immediately end without any penalty to the public office for forcing a requestor to file suit, the OPRL mandates accountability.

Recent amendments have significantly strengthened the OPRL. Under 2007 legislative amendments, every elected official (or his or her appropriate designee) must receive three hours of training regarding the OPRL during every term of office. Ohio Rev. Code § 149.43(E)(1) (2008). Ohio is the only Midwestern state surveyed that mandates open government training. The goal of mandatory training is to ensure that at least one employee of each public office is appropriately educated about the official's obligations under the law.

Notably, the new law requires that the Attorney General develop, provide and certify free training programs and seminars that focus on the duty of public offices to provide access to public records. *Id.* Mandating OPRL training ensures accountability and advances open government in Ohio.

The OPRL also provides leniency in the request process to encourage public access to government documents. While a public office may deny a request that is ambiguous or excessively broad, it must inform the requestor of his or her opportunity to revise the request by indicating the following:

- (1) the manner in which the records are maintained by the public office; and
- (2) how the records are accessed in the ordinary course of the public offices' or persons' duties. Ohio Rev. Code § 149.43(B)(2) (2008).

This recent legislative amendment is a user-friendly provision that ensures public offices do not deny the release of legitimate public records simply because the requesting person does not have a sophisticated knowledge of how the records are kept.

While the OPRL does not mandate specific deadlines in which to comply with the production of records, the statute requires swift compliance by public offices, stating that records must be "promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." Ohio Rev. Code § 149.43(B)(1) (2008).

Notably, the Ohio Coalition for Open Government conducted a statewide audit in 2004 for basic records. The Ohio Coalition for Open Government results indicated that records were produced the same day in 50.1% instances and produced the next day in 2.6% instances, while only 10.2% of public offices were too busy to produce same-day results and nearly the rest of the requests were partially granted or denied.¹



Ohio specifically protects the privacy of a requestor and the purpose of the request. The OPRL is one of the few states that explicitly indicate that a requestor need not identify him or herself, nor identify the purpose for requesting information. Ohio Rev. Code § 149.43(B)(4) (2008). These provisions protect requestors' privacy rights and reduce the possibility of a public office refusing to disclose information based on how the information will be used. They also shield a requestor from potential retaliation by a public body.

Lastly, Ohio has demonstrated an impressive commitment to open government law by establishing an office dedicated exclusively to educating the public and elected officials on Ohio's sunshine laws. Created in 2003, the Ohio Auditor of State's Open Government Unit (OGU) seeks to educate public and private entities about the intricacies of the Ohio PRL and Ohio Open Meetings Act.² Although the OGU is not a statutorily created office and does not have the power to sanction government bodies that violate the OPRL, it is actively involved in advancing governmental compliance. The OGU provides free training seminars to instruct citizens and governments on their rights and obligations under open government laws.

In addition, OGU's comprehensive website contains significant open government resources, including the Open Government Resource Manual, case updates, statutory text, and even pending legislation impacting open government laws. Notably, the OGU permits members of the public to file OPRL inquiries through an online submission form that can be filed electronically or printed out and mailed.

¹ www.ohionews.org/pdf/ocogspring2004se.pdf

² *Id.*

WEAKNESSES

of Ohio's Public Records Law

The lack of an administrative appeal process and the imposition of enforcement provisions weakens the OPRL.

While the OPRL has strong enforcement provisions, the lack of administrative remedies and the failure to implement sound enforcement provisions weaken the statute's effectiveness.

Once an individual makes a request for public information and it is denied, the OPRL provides no mechanism for resolving the dispute outside of litigation. Ohio is one of three Midwestern states surveyed that does not have an administrative appeal process for reconsideration of a request by the head of a public body.

Once a request is denied, the only enforceable remedy available is to file a lawsuit for disclosure of the public documents, Ohio Rev. Code § 149.43(C)(1) (2008). Litigation is a costly endeavor and has a chilling effect. Moreover, once an individual files litigation for public records and prevails, a review of relevant case law reveals that penalties for violations and attorneys' fees are rarely recoverable under OPRL, providing a further disincentive to pursue litigation.

REFORM: An administrative appeal process and statutory authority of the OGU is necessary to provide an alternative mechanism to accessing public records. Additionally, mandatory attorney fees for a plaintiff who prevails in a lawsuit are necessary, as well as the mandatory imposition of current fines.

Statutory language mandating a firm deadline to respond to requests is necessary.

While studies from the Ohio Coalition for Open Government documented that half of public bodies surveyed produced basic information requests the same day, firm statutory deadlines are necessary to remove ambiguity as to the meaning of “promptly prepared” within the OPRL. A review of case law indicates that Ohio courts have failed to establish a legal definition of “promptly prepared” or determine how much response time is too long. Additionally, the courts have not ruled on what length of delay would constitute a constructive denial under the OPRL.

REFORM: A firm statutory deadline, such as five days, is necessary to mandate when public documents must be produced.

Exemptions within the OPRL that limit incarcerated individuals’ access to information create a tiered system of access public records.

The OPRL has relatively few exemptions as compared to other Midwestern states despite the legislature expanding the exemptions three separate times since 2004 (mainly involving privacy and security issues). While the exemption list is relatively small, an exemption exists stating that a person who is incarcerated may not access a copy of any public record concerning a criminal investigation or prosecution.

The only circumstances under which public records may be accessible is if the judge who imposed the sentence finds that the public information sought by the incarcerated individual is necessary to support what appears to be a justiciable claim of the person. Ohio Rev. Code § 149.43(B)(8). This provision unfairly denies access to public records to a certain class of individuals.

REFORM: Strike this provision from the OPRL as it creates unequal access to public records.

SUMMARY OF LAW

of Ohio's Public Records Law

The following section provides a summary of the main components of the OPRL. This summary provides an overview of the nuts and bolts of the law, including what records are covered, and what relief is available through the courts. Also included are assessments based on a review of the relevant case law of the main issues in public records litigation and whether attorneys' fees are actually awarded to successful plaintiffs.

Who is Covered Under the Law?

The OPRL sets requirements for the disclosure of public records by any public office. The OPRL defines "public office" as "... any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government." Ohio Rev. Code § 149.011(A).

"Public records" are defined as "...any document, device, or item, regardless of physical form or characteristic... which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office." Ohio Rev. Code § 149.011(G).

Public Records Open to Disclosure

Under the statute, public records are "records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code." Ohio Rev. Code § 149.43(A)(1). Public records are presumed to be open and accessible. A public office refusing to release records has the burden of proving that the records are exempt from disclosure. Public records covered include, but are not limited to, meeting minutes, administrative manuals, expenditure reports, personnel records, state licensing requirements and lists, police incident reports, Department of Motor Vehicle records and property titles.

Form of Records

Applicable records must be supplied at the requestor's choice on paper, or via the medium upon which it is kept by the public office or via any other medium the person in charge of keeping the records determines such records can be reasonably duplicated on such media.

The Ohio Supreme Court has established that records may consist of a single document within a larger file of documents or a compilation of documents, regardless of physical form or characteristics, that is created, received or used by a public office or official in the organization, functions, policies, decisions, procedures, operations or other activities of the office. *Kish v. Akron*, 109 Ohio St.3d 162 (2006).

Special Provisions Regarding Electronic Mail

Electronic mail is generally considered to be a public records. The OPRL defines “records” as including an electronic record as defined in Ohio Rev. Code § 1306.01: “... a record created, generated, sent, communicated, received, or stored by electronic means.”

However, not all electronic mail sent or received on a public office’s electronic mail system are subject to disclosure. Electronic mail that does not “document the organization, functions, policies, decisions, procedures, operations or other activities of the office” are not subject to disclosure. Electronic mail between employees that are not related to the organization are not “records” under the statute, just as a personal note written by a public office employee on public office stationary would not be subject to disclosure. There is very little case law defining the interpretation of the statute with respect to electronic mail.

Fees for Public Records

Public records shall be available “at cost.” Public offices can only charge for actual duplicating and mailing costs, but not for the cost of the labor of the employees compiling the records.

Prior to an amendment on December 16, 1999, public offices were only required to have records available for pick up during regular business hours at reasonable times. The amendment provided that public offices must mail copies if so requested.

Public Records Exempt from Disclosure

The OPRL includes a “catch-all exception” which mandates non-disclosure of certain types of information or records, including the following:

- Attorney-client privileged materials;
- Certain medical records (birth and death);
- Trade secrets or fair use copyrighted materials;

- Trial preparation records specifically compiled in reasonable anticipation of a civil action;
- Records the release of which is prohibited by state or federal law; and
- Certain confidential law enforcement investigatory records

The OPRL also lists specific types of records that a public office *may* be permitted to withhold in its discretion, including the following:

- Records of probation and parole hearings;
- DNA records stored in the DNA database;
- Records pertaining to adoption hearings; and
- Public service child agency records

Notably, the law includes an exemption stating a person who is incarcerated is not required to be allowed to access a copy of any public record concerning a criminal investigation or prosecution unless the judge who imposed the sentence finds that the information sought is necessary to support what appears to be a justiciable claim of the person.

Primary Areas of Litigation and Typical Outcomes

Litigation frequently addresses what constitutes a public office, particularly pertaining to the proper coverage of the law regarding private entities. The Ohio Supreme Court has developed a test for determining when a private entity is a public institution and thus a public office under the OPRL:

- (1) Does the private entity perform a governmental function?;
- (2) What is the extent of the government involvement or regulation?;
- (3) What is the level of government funding?; and
- (4) Was the private entity formed by the government for the purpose of avoiding the requirements of the Public Records Act? *State ex rel. Fox v. Cuyaboga Co. Hospital Sys.*, 529 N.E.2d 443 (Ohio 1988).

A private entity's records are not open to public scrutiny merely because it performs services on behalf of the government, but the Ohio courts have often found that such records are public. For example, a private non-profit organization that acted a solicitor of gifts for a public university was found to be subject to the OPRL.

The question of what constitutes a public record is often litigated. Outside of the exemptions, the Ohio courts adopt the viewpoint that records are presumed public and the public entity who denies a request for records must show that the record in question fits under one of the enumerated exemptions. The Ohio courts have not generally expanded the exemptions beyond their plain meaning.

Deadline for Production of Public Records

The OPRL does not specify a time period by which records must be produced, only that they must be "promptly" prepared. There is no case law clarifying how long is too long, but Ohio courts have held that public offices cannot avoid statutory penalties by complying only after a requestor has filed suit.

Denial of a Records Request

If a request is denied in part or in whole, the public office shall provide the requestor with an explanation, including the underlying legal authority, setting forth why the request was denied. The explanation is not required to be written, unless the requestor so requests.

What Information Must a Requestor Provide

Unless it is specifically required or authorized by federal law, a provider of records may not require that the requestor provide his or her identity or intended use. Any such requirement constitutes a denial.

Previously, public offices could *request* that a public records request be placed in writing; however, public offices could not *require* that a request be placed in writing. Under a recent amendment to OPRL, a public office may ask that a request be placed in writing only if the following two conditions are satisfied:

- (1) it may do so only after disclosing that a written request is not mandatory, and that the requesting person may decline to reveal his or her identity or the intended use of the information; and

- (2) the public office may ask that the request be placed in writing when a written request or disclosure of the requestor's identity or intended use would benefit the requestor by enhancing the ability of the public office to identify, locate or deliver public records.

Appeal

The only appeal provided for by OPRL is for the aggrieved requestor to file a mandamus action asking a court to compel disclosure. The person who files the mandamus action is called the "relator" and is not required to prove a lack of adequate remedy at law to prevail.

A relator may file a mandamus action in any one of three courts: the local court of common pleas, the appellate court for that district or the Ohio Supreme Court. If a relator files in the Ohio Supreme Court, the case may be assigned to mediation.

Penalties for Violation

Under a 2007 amendment to OPRL, a person who transmits a valid written request for public records by hand-delivery or certified mail is entitled to receive statutory damages if a court finds that the public office failed to comply with its obligations.

The OPRL provides for statutory damages fixed at \$100 per business day during which the public office fails to comply with a proper request, beginning on the day the requestor files a mandamus action. The statutory damages cap at \$1,000 and may be reduced or eliminated by the court for the following reasons: (1) if the court determines the denial was made either because a well-informed public official or records custodian would believe that the withholding of the records was not a failure to comply with an obligation under the law; or (2) that his or her actions served the public policy that underlies the authority asserted for withholding the information.

If the court determines the public office failed to grant a proper request, the court must award court costs. A court must also award reasonable attorneys' fees when it determines a proper request was denied.

A court must award reasonable attorneys' fees when the public office either failed to respond affirmatively or negatively to the request in the allotted time, or promised to permit the requestor to inspect or receive copies within a specified period of time but failed to fulfill that promise. Relators representing themselves (*i.e., pro se*) are generally not awarded attorneys' fees.

Typical Outcome or Request for Attorney Fees

Attorneys' fees are difficult to collect. They are generally not awarded if the public office can show some good faith justification for the denial. The Ohio Supreme Court has established that a court may award attorney fees where:



- (1) a person makes a proper request for public records pursuant to R.C. 149.43;
- (2) the custodian of the public records fails to comply with the person's request;
- (3) the requesting person files a mandamus action pursuant to R.C. 149.43 to obtain copies of the records; and
- (4) the person receives the requested public records only after the mandamus action is filed, thereby rendering the claim for a writ of mandamus moot. *State ex rel. Pennington v. Gundler*, 75 Ohio St.3d 171 (1996).

Some courts have held that the requestor must also show that there will be a public benefit in the awarding of fees, however that requirement is generally met by the fact that the requestor seeks public disclosure of records. *See, e.g., State ex rel. Toledo Blade Co. v. Board of Hancock County Co.*, 82 Ohio St.3d 34, 36 (1998) (Relators established a sufficient public benefit by making respondents provide access to the requested records, having them charge a public record copy fee closer to actual cost, and respondents refusing to comply for reasons that were unreasonable and unjustifiable).

Courts have ruled that they will not award attorneys' fees on a case of first impression, because the lack of precedent justifies the public office's claim of good faith on the denial.

Ranking in 2007 National Study of 50 States' Freedom of Information Laws

In 2007, the nonpartisan, nonprofit organizations Better Government Association and National Freedom of Information Coalition conducted a 50-state study of FOIA responsiveness.

Three of the criteria—Response Time, Attorneys' Fees & Costs and Sanctions—were worth four points each.

Two of the criteria—Appeals and Expedited Process—were assigned a value of two points each.

Response Time, Attorneys' Fees & Costs and Sanctions were assigned a higher value because of their greater importance. These criteria determine how fast a requestor receives an initial answer, thus starting the process for an appeal if denied, and provide the necessary deterrent element to give public records laws meaning and vitality.

Appeals and Expedited Process, although important, were determined to be less critical in promoting open government access and thus assigned only a two-point value.

The following sets forth Ohio's rankings in this study, which may be found at www.bettergov.org/policy_foia_2008.html.

- For response time (analyzing response times, the process of appealing FOIA denials and expediency, and the means to give a case priority on a court's docket in front of other matters because of time concerns), **1 of 4**;
- For appeals (analyzing choice, cost and time), **0.5 of 2**;
- For expedited review (if a petitioner's appeal, in a court of law, would be expedited to the front of the docket so that it is heard immediately), **0 of 2**;
- For fees and costs ((1) whether the court is required to award attorneys' fees and court costs to the prevailing requestor; and (2) what sanctions, if any, the agency may be subject to for failing to comply with the law), **4 of 4**;
- For sanctions (whether there was a provision in the statute that levied penalties against an agency found by a court to be in violation of the statute), **0 of 4**; and
- Percentage (compared to other 49 states), **34 of 100**.

GRADE: F

CASE IN POINT

The Ohio Coalition for Open Government (OCOG)

published a report in 2004 on a statewide audit regarding records access. Newspapers across Ohio conducted public records audit in all of Ohio's 88 counties. The records sought included: county minutes, executive expense reports, police chief pay, police incident reports, superintendent compensation and school treasurer phone bill. The audit found that 52.7% of the total records sought were granted either the same day or the next day. 17.1% of the inspected records were granted after complying with one or more preconditions not provided by law. Records were denied 30.2% of the time. Most auditors also reported that public officials pressed them for more information even though the law sets no prerequisite for obtaining records (although the report did note that many of these questions were asked in an effort to help).

The reasons given by public officials for their denial of a public record included: that they were procedurally forbidden to give the record; that personnel was unavailable or too busy; that the record in question was not a public record. Ohio's open records law states all public records shall be promptly prepared and made available for inspection to any person at all reasonable times during business hours.

The full report can be viewed at www.ohionews.org/pdf/ocogspring2004se.pdf.

Open Meetings Act

STRENGTHS

of Ohio's Open Meetings Act

Ohio's Open Meetings Act (OMA) benefits from a strong presumption of coverage. Ohio Rev. Code § 121.22 establishes that, "This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically exempted by law." Ohio courts have generally read this provision as a presumption in favor of finding bodies to be "public," and therefore covered by OMA.

In nearly every appellate decision on the issue of whether a questionable entity is a public body, Ohio courts have ruled in favor of the plaintiff. For instance, in cases involving political party committees and public hospital advisory boards, courts have found the public body definition is met and coverage applies. *State ex rel. Hayes v. Jennings*, 173 Ohio St. 370, 182 N.E.2d 546 (Ohio 1962) (political party committees); *Stegall v. Joint Township District Memorial Hospital*, 20 Ohio App.3d 100, 484 N.E.2d 1381 (3rd Dist. 1985) (hospital advisory boards).

The OMA also benefits from a strong burden of proof presumption with respect to litigation. Under the OMA, any individual may bring suit for a violation of the statute, and "[i]rreparable harm and prejudice to the party that sought the injunction shall be conclusively and irrebuttably presumed upon proof of a violation or threatened violation of this section." Ohio Rev. Code § 121.22(I)(3).



This provision essentially grants members of the public the right to sue under the OMA without any need to show a personal stake or harm different from that of any other member of the public. It also removes barriers traditionally faced by litigants in seeking an equitable remedy when an injunction is sought. Additionally, the Attorney General or prosecuting attorney is responsible for bringing an action against public officials who violate the injunction. Ohio Rev. Code § 121.22(3)(4).

A significant strength of the OMA is its strong enforcement and penalty provisions. Remedies available under the OMA are extensive, and for the most part mandatory. If a court determines that a public body has violated the OMA, it will automatically issue an injunction. Once a court issues an injunction, full court costs, a \$500 civil forfeiture fine, and invalidation of the public body's action (if applicable) follow by law. Reasonable attorneys' fees are also automatically awarded, but are subject to the trial court's discretion.

Additionally, a public official who knowingly violates an OMA injunction may be removed from office. A public official who is appointed in a closed proceeding in violation of the OMA may be removed from office as well. These forceful provisions are a strong deterrent to public bodies violating the OMA.

Additionally, Ohio courts narrowly construe the eight limited reasons to convene a public meeting in executive session. Of the five Midwestern states surveyed, Ohio and Minnesota have the most limited basis for which to close meetings. Michigan allows for closed meetings in ten circumstances, Wisconsin allows for eleven circumstances, and Illinois allows for twenty-four circumstances.

Furthermore, Ohio courts have been strict in upholding the OMA's limitations for convening closed sessions. Typically, if a public body discusses anything that does not fall into one of the executive session categories, the closed session exception does not apply and the court will find a violation. This is generally the case even if the forbidden topic is discussed in conjunction with a related topic that falls under an exemption. Likewise, even if there is no formal action on the forbidden topic until a later public meeting, courts have found a violation if it is discussed in an executive session. A consideration is whether the discussion contributed to the ultimate decision.

In addition, since the OMA requires courts to invalidate *any* formal action adopted at a closed meeting, the courts have been aggressive in invalidating formal actions that result from improper closed session deliberations.

Lastly, as with the OPRL, the resources of the OGU are significant in providing a public resource to ensure open government. The OGU is proactive in providing education and training to the general public, the media, and government officials. It also serves as a clearing house for information on legal opinions, statutes updates and pending litigation. A valuable resource, the OGU advances open government to its fullest capacity.

WEAKNESSES

of Ohio's Open Meetings Act

Ohio's OMA fails to apply universally to all public bodies.

The most significant weakness of Ohio's OMA arises not due to a deficiency in the statute, but because of the Ohio judiciary's interpretation of provisions of the Ohio State Constitution. The judiciary has ruled that the OMA may be trumped in certain conditions because the statute does not purport to be an exercise of police power by the state legislature.

Ohio Appellate courts have essentially voided the OMA's operation against charter cities as violative of the Ohio Constitution's "home rule provision" in Article XVIII in Section III and have held that a charter municipality has the right to determine by charter the manner in which meetings will be held.³

Since Ohio is a home rule state, courts have concluded that when the local law and the state open government laws conflict, the local law prevails.⁴ This judicial interpretation serves to strengthen city charters that provide for open meetings without any exceptions, thereby offering protection more comprehensively than that envisioned by the statute. It also leaves citizens without any right of access to municipal public meetings if their charter neglects to provide for public access to government meetings.

REFORM: The Ohio Constitution needs to be amended to allow the OMA provision to apply to all public bodies.

³ *State ex rel. Bond v. City of Montgomery*, 63 Ohio App.3d 728, 580 N.E.2d 38 (1st Dist. 1989); *Hill & Dales, Inc. v. Wooster*, 4 Ohio App.3d 240, 448 N.E.2d 163 (9th Dist. 1982).

⁴ Ohio Constitution, Article XVIII, Sections 3 and 7. See also, *State ex rel. Inskeep v. Staten*, 74 Ohio St.3d 676, 660 N.E.2d 1207 (1996); *State ex rel. Fenley v. Kyger*, 72 Ohio St.3d 164, 648 N.E.2d 493 (1995); *State ex rel. Lightfield v. Village of Indian Hill*, 69 Ohio St.3d 441, 633 N.E.2d 524 (1994); *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97, 564 N.E.2d 486 (1990); *State ex rel. Craft v. Schisler*, 40 Ohio St.3d 149, 532 N.E.2d 7 19 (1988); *Fox v. City of Lakewood*, 39 Ohio St.3d 19, 528 N.E.2d 1254 (1988); *Butler Twp. Bd. of Trustees v. Winemiller*, 2003 Ohio 1258, 2003 Ohio App. LEXIS 1177, (2nd Dist. Mar. 14, 2003); *State ex rel Gannett Satellite Info. Network v. Cincinnati City Council*, 137 Ohio App.3d 589, 739 N.E.2d 387 (1st Dist. 2000); *Klaban Ford, Inc. v. City of Kent*, No. 91-P-2342, 1992 Ohio App. LEXIS 1622 (11th Dist. Mar. 3 1, 1992); *Hill & Dales, Inc. v. City of Wooster*, 4 Ohio App.3d 240, 448 N.E.2d 163 (9th Dist. 1982).



The Ohio OMA allows a public body to circumvent the law by remedial action.

When a public body has violated the OMA, and an individual files a lawsuit to hold the entity accountable, the public body may avoid judgment by merely taking subsequent remedial action.

According to the Ohio Attorney General, the failure of the OMA to specifically address the appropriateness of remedial action has resulted in a split of authority among Ohio Appellate Courts (www.ag.state.oh.us/legal/pubs/ohio_sunshine_laws_2008.pdf). Some courts have held that a public body can cure an illegal action through remedial action while other courts have held that it cannot. The lack of a consistent interpretation among appellate courts favor public bodies who seek to evade accountability by simply remediation.

REFORM: Amend the statute to prohibit subsequent remedial action by a public body to moot a legal claim filed against it.

Recovery of attorneys' fees from plaintiffs who file OMA suits has a chilling effect on the public seeking to use the courts to address grievances.

A significant weakness of the OMA statute is its provisions that allow public body defendants to recover from plaintiffs. While the OMA has outstanding enforcement provisions available for the public, those same provisions have a substantial chilling effect. The Ohio OMA explicitly provides that an individual seeking to enforce OMA may, in fact, be ordered to pay an award to the public body under certain conditions. Ohio Rev. Code § 121.22(I)(2)(b).

If the court does not issue an injunction pursuant to an OMA action, and determines that a citizen's suit was frivolous, the court *must* award to the public body court costs and reasonable attorneys' fees. Although a review of case law indicates that courts have rarely awarded public bodies fees and costs under the law, this is a troublesome provision that its presence alone contradicts open government policies.

REFORM: Remove statutory provisions that allow mandatory or permissible awarding of court costs and reasonable attorneys' fees to public bodies who are the subject of an OMA suit.

The OGU, while a valuable resource, needs enforcement capacity to be truly effective.

As already recognized, the OGU is a creation of the Ohio Auditor of States Open Government Unit that is a valuable resource. However, it is limited in its effectiveness because it is not a statutorily created office and does not have the requisite enforcement capacity to deter OPRL and OMA violations by governmental bodies. Additionally, because the office was created by an individual, there is no guarantee the office will remain in perpetual existence.

REFORM: Statutorily create the office of the OGU with enforcement capacity that includes the ability to issue binding opinions, file lawsuits and intervene in individual lawsuits.

SUMMARY OF LAW

of Ohio's Open Meetings Act

The following section provides a summary of the main components of the Ohio OMA. This summary provides an overview of the nuts and bolts of the law, including what types of meetings are covered by the law, the procedures for closed sessions, how to appeal a violation and what relief is available through the courts. Also included are assessments based on a review of the relevant case law of the main issues in OMA litigation and whether attorneys' fees are actually awarded to successful plaintiffs.

Who is Covered Under the Law?

OMA applies to any public body, which includes “[a]ny board, commission, committee, council, or similar decision-making body of a state agency . . . and any . . . board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision.” Ohio Rev. Code § 121.22(B)(1).

Although the law provides wide coverage, it can be trumped by individual city charters due to the home rule provision in Article XVIII, Section III of the Ohio State Constitution. Where a local government has a home rule charter that does not provide for as much public access as the sunshine law (*i.e.*, OMA), some state appellate courts hold that the charter prevails. *See, e.g., Hills & Dales Inc. v. City of Wooster*, 4 Ohio App. 3d 240, 448 N.E.2d 163 (Wayne 1982); *City Comm'n of Piqua v. Piqua Daily Call*, 64 Ohio App. 2d 222, 412 N.E.2d 1331 (1979).

The Ohio Supreme Court has not provided comprehensive guidance regarding this issue, but has applied OMA to local governments with home rule charters where there was no direct conflict between the charter and the sunshine law, such as where the charter provides for greater public access than the sunshine law. *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 668 N.E.2d 903 (1996); *State ex rel. Inskip v. Staten*, 74 Ohio St. 3d 676, 660 N.E.2d 1207 (1996); *State ex rel. Fenley v. Kyger*, 72 Ohio St. 3d 164, 648 N.E.2d 493 (1995); *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St. 3d 165, 527 N.E.2d 807 (1988).

Are Committees, Advisory Groups, Subcommittees Covered?

Committees and subcommittees are expressly included in the statute's coverage as public bodies under Ohio Rev. Code § 121.22(B)(1)(b). Advisory groups are not expressly covered under the law. The OMA applies to “any” committee or subcommittee of a decision-making body of a political subdivision, and “any” committee or subcommittee of a decision-making body of a state agency, and therefore, can cover advisory bodies.

While Ohio courts are split on whether advisory groups constitute public bodies, they have held that the making of a recommendation is a form of decision-making and thus constitutes the delegation of investigatory duties to a committee. Therefore, giving the committee sufficient decision-making authority allows it to be considered a public body. *Maser v. City of Canton*, 62 Ohio App. 2d 174, 405 N.E.2d 731 (1978); *Thomas v. White*, 85 Ohio App. 3d 410, 620 N.E.2d 85 (1992); see also *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App. 3d 335, 762 N.E.2d 1057 (2001) (an architectural review board that advised and made recommendations was to be considered a public body).

Types of Gatherings Covered

A “meeting” within the scope of the OMA is a prearranged discussion of public business of a public body by a majority of its members. The absence of a quorum ordinarily means that OPRL’s coverage does not apply and members of the public have no right to attend a meeting.

One Ohio court, however, has held that where a public body prearranges back-to-back, repetitive sessions of less than a majority of members at each session, but has a majority present when all sessions are considered together, a meeting under OMA has occurred and must be open to the public. *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 668 N.E.2d 903 (1996).

The Ohio Supreme Court has repeatedly determined that quasi-judicial hearings and the deliberations of the quasi-judicial bodies are not “meetings” under OMA and are therefore not subject to the statute’s requirements. See, e.g., *TBC Westlake, Inc. v. Hamilton County Bd. of Revision*, 81 Ohio St.3d 58, 689 N.E.2d 32 (1998).

What Meetings Must Be Open?

The OMA establishes that all prearranged discussions of public business by a public body with a majority of its members present are subject to statute. Exceptions are provided for grand juries and audit conferences, as well as other public bodies (the adult parole authority, the organized crime investigations commission, the child fatality review board, etc.) under certain conditions.

If a public body meets merely to observe and gather information for ministerial purposes, the fact-finding session is outside the scope of OMA. See *Springfield Local School Dist. Bd. of Ed’n v. Ohio Ass’n of Public School Employees*, 106 Ohio App. 3d 855, 667 N.E.2d 458 (1995); *Holeski v. Lawrence*, 85 Ohio App. 3d 824, 621 N.E.2d 802 (1993); *Piekutowski v. S. Cent. Ohio Educ. Serv. Ctr. Governing Bd.*, 161 Ohio App. 3d 372, 830 N.E.2d 423 (2005).



Exceptions: Closed Meetings

There are a limited amount of authorized subjects permitted for closed meetings. A public body *may* close a meeting for the following eight categories:

- (1) The appointment, employment, dismissal, discipline, promotion, demotion or compensation of an employee or official, or the investigation of charges or complaints against an employee, official, licensee or student, unless the employee, official, licensee or student requests a public hearing;
- (2) The purchase of property for public purposes or the sale of property at competitive bidding;
- (3) Conferences with the public body's attorney to discuss matters which are the subject of pending or imminent court action;
- (4) Preparing for, conducting, or reviewing negotiations or collective bargaining sessions with employees;
- (5) Matters required to be kept confidential by federal law or rules or state statutes;
- (6) Details of security arrangements and emergency response protocols where disclosure could be expected to jeopardize the security of the public body or public office;
- (7) To discuss trade secrets of a county hospital organized under Ohio Rev. Code Chapter 339; and
- (8) Veterans Service Commission meetings to consider an applicant's request for financial assistance, unless the applicant requests a public hearing.

Procedures for Closed Meetings

To call a closed (executive) session, the public body must first hold a roll call vote, and a majority of the quorum must vote affirmatively to enter into executive session. The public body must then immediately convene the closed session. The OMA requires that if a public body holds a closed session for personnel matters, the motion and vote to hold that executive session must state the specific type of personnel matter to be discussed.

Recordkeeping for Meetings: Minutes Requirements

The OMA requires that minutes need only discuss the general subject matter of a public body's discussion. The OMA further provides that the minutes of a regular or special meeting must be promptly prepared, filed, and maintained by a public body and must be open to public inspection.

The Ohio Supreme Court has established that a public body must keep full and accurate minutes, *i.e.*, the minutes must state sufficient facts and information to permit the public to understand and appreciate the rationale behind the public body's decisions. *White v. Clinton County Bd. of Commissioners*, 76 Ohio St.3d 4 16, 667 N.E.2d 1223 (1996); *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54, 748 N.E.2d 58 (2001).

Taping or Filming Meetings

The OMA does not specifically include provisions authorizing the audio or video recording of meetings. While not specifically stated within the statute, an Ohio Attorney General's Opinion states that audio or video recording of meetings is permissible if it does not unduly interfere with a meeting. 1988 Op. Att'y Gen. No. 88-087.

Are Electronic Mail Communications a Meeting?

The statute does not address whether electronic mail communications constitute a meeting. In an unpublished decision, an appellate court held that because the OMA, which was revised in 2002, makes no specific mention of electronic communications, electronic communications are not covered by OMA. *Haverkos v. Northwest Local Sch. Dist. Bd. of Educ.*, 2005 Ohio App. LEXIS 3237 (Ct. App. Ohio, July 8, 2005).

Public Notice of Time and Place for Meetings: Requirements for Agendas

Public bodies are required to establish at least one reasonable method, by rule, "whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings." Ohio Rev. Code § 121.22(F). Placing a sign on the front door of town hall or publishing the information in a newspaper of general circulation constitutes reasonable methods of notice under OMA. *See, e.g., Doran v. Northmont Bd. of Educ.*, 147 Ohio App. 3d 268, 770 N.E.2d 92 (2002).

Notably, a public body is not required to include the agenda items to be discussed at a regular meeting in its notice. A public body must comply, however, with requests to give "reasonable advance notification" of all meetings "at which any specific type of public business is to be discussed," provided the requester paid a reasonable fee. Ohio Rev. Code § 121.22(F).

There are special notice requirements with regard to the news media. Public bodies are required to give notice to the news media who have requested such notice at least twenty-four hours before special meetings. For emergency meetings, OMA requires that notice must be given to such news media immediately.



Summary of Pivotal State Supreme Court Open Meetings Act Decisions

In *State ex rel. Randles v. Hill*, 66 Ohio St. 3d 32; 607 N.E.2d 458; 1993 Ohio 204 (Ohio, 1993), the Ohio Supreme Court determined that a mistake is not a defense to a violation. The court held that Ohio Rev. Code § 121.22 provides only two defenses to a violation: “(1) that the action to be taken is exempt from the open-meetings requirement, or (2) that public access was provided.”

White v. Clinton County Board of Commissioners, 76 Ohio St. 3d 416; 667 N.E.2d 1223 (Ohio, 1996) establishes the duty of county commissions to keep full and accurate minutes during public meetings. The Ohio Supreme Court defines “full” minutes as including details about the rationale and decision-making process of the public body, with “sufficient facts and information to permit the public to understand and appreciate the rationale behind the public body’s decision.” For public bodies other than county commissions, the OMA requires minutes that do more than merely recount the general subject matter of discussions.

State ex rel. Long v. Cardington Village Council, 92 Ohio St. 3d 54; 748 N.E.2d 58; 2001 Ohio 130 (Ohio, 2001) expands on the central holding in *White v. Clinton County Board of Commissioners*, stating that city councils are also required to keep “full and accurate minutes.”

Enforcement

No state or local governmental official is authorized to bring legal action to enforce the OMA. The OMA provides that any member of the public may bring an action to enforce the statute. Any such action must be filed within two years of the date of the violation or threatened violation. If a citizen suit results in an injunction against a public body, the Attorney General or prosecuting attorney is responsible for bringing an action against officials who violate the injunction.

Penalties for Violation

Injunction. Any individual may bring an injunction action in a common pleas court to enforce the OMA. The OMA mandates that a court *must* issue an injunction whenever a public body violates the OMA. Ohio courts generally agree that a plaintiff need not show harm, the likelihood of future harm or prejudice to receive an injunction. This is because harm and prejudice are conclusively and irrebutably presumed whenever there has been a violation. The OMA also provides for injunctions in the face of a threat of *future* violation.

Mandamus. Any individual may also bring a mandamus action to enforce OMA. Courts have established that mandamus may be appropriate in an OMA action. *State ex rel. Inskeep v. Staten*, 74 Ohio St.3d 676, 660 N.E.2d 1207 (1996), *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St. 3d 97, 564 N.E.2d 486 (1990). For mandamus relief, a lawsuit may be brought in a common pleas court, court of appeals, or the Ohio Supreme Court. *See* Art. IV, § 2, Ohio Constitution.

Civil Forfeiture. If the court finds a violation by the public body in an OMA action, the statute establishes that the court *must* order it to pay the plaintiff a \$500 civil forfeiture fine. The public body defendant must pay a civil forfeiture for each violation.

Invalidation. Any public rule, resolution, or other formal action that is decided in violation of OMA is invalid. Ohio Rev. Code § 121.22(H) requires courts to invalidate any formal action adopted at a closed meeting (the executive session exception allows only deliberation, not adoption). Additionally, Ohio Rev. Code § 121.22(H) invalidates formal actions adopted at open public meetings if those actions result even partly from deliberations conducted in private in violation of OMA.

Removal from office. A public official who knowingly violates an OMA injunction may be removed from office if the Attorney General or prosecuting attorney brings an action against him or her. *See State ex. rel. Delph v. Barr* (44 Ohio St.3d 77; 541 N.E.2d 59 (Ohio, 1989) (Ohio Supreme Court removed from office a sheriff who was appointed in a non-Act-compliant meeting). In such cases, the court will issue a writ of *quo warranto* ordering the public official's removal.

Plaintiff's penalties. OMA provides that if the court does not issue an injunction, and the court deems the plaintiff's action to have been frivolous, the court may award all court costs and reasonable attorneys' fees to the public body. The court has the discretion to determine the amount of the fee award to the public body.

Are Criminal Penalties Assessed Regularly?

Criminal penalties are not available for violations under OMA.

Availability of Attorneys' Fees for Open Meetings Act Litigation

If the court finds a violation by the public body defendant, it must award the plaintiff reasonable attorneys' fees under the statute. However, the OMA provides that a court has the discretion to reduce an award of attorneys' fees, or to award no attorneys' fees, where both of the following conditions are met:

- (1) based on the ordinary application of statutory law and case law as it existed at the time of violation or threatened violation, a well-informed public body reasonably would believe that the public body was not violating the open meetings statute; and
- (2) a well-informed public body reasonably would believe that its conduct would serve the public policy that underlies the authority asserted by the public body for not acceding to the demands of the person who successfully sought the injunction. Ohio Rev. Code § 121.22(I)(2)(i)-(ii).

Ohio courts have held that attorneys' fees are not available for *pro se* litigants who prevail.

As stated above, the court may award attorneys' fees to a prevailing public body when the court finds that the suit was frivolous.

Whether Attorneys' Fees Are Usually Granted

Attorneys' fees are generally granted to plaintiffs who prevail in winning injunctive relief. However, they are rarely awarded to defendant public bodies for frivolous lawsuits brought by a plaintiff.

General Areas Litigated Most Commonly and Typical Outcomes

Courts have frequently ruled on when a public body may call for an executive session, and what procedures it must follow for such a session. Ohio courts have been strict in upholding OMA's limitations on calling executive sessions. Typically, if a public body discusses anything that does not fall into one of the Ohio Rev. Code § 121.22(G) executive session categories, the exception does not apply and the court will find a violation.

This is generally the case even if the forbidden topic is discussed with other related topics that do fall under closed session exemptions. Likewise, even if there is no formal action on the forbidden topic until a later, public meeting, courts have found a violation if it is discussed in an executive session, so long as the discussion contributes to the ultimate decision.

Courts have also addressed when it is appropriate to remove from office a board member who knowingly violates an injunction which has been granted by a court. In two separate cases, board members have been removed from office in part due to repeated violations of the OMA. In both of these appellate cases, the boards repeatedly held lengthy executive sessions, then returned to open session to vote on matters after little or no public discussion. See *Evans v. Rock Hill Local School District Board of Education*, Lawrence App. No. 04CA39, 2005-Ohio-5318, and *In Re: Removal of Kuehnle*, 161 Ohio App. 3d 399, 2005-Ohio-2373.

CASE IN POINT

The Ohio Coalition for Open Government (OCOG)

exposed a recent OMA violation concerning a vast sum of taxpayer money. As reported in the OCOG's Summer 2008 newsletter, three trustees of the Northeast Ohio Regional Sewer District violated OMA by secretly discussing the district's plans for spending hundreds of millions of taxpayers' dollars. According to the OCOG, a three-member committee of the sewer district's seven-member board met privately in early 2008 to review and give recommendations for the district's proposed \$321 million budget, as set forth in the meeting minutes.

Fred Gittes, a Columbus civil rights lawyer and public records expert, stated that budget deliberations by a public body behind closed doors is a blatant violation because the committee, just like the full board, is a public body subject to the law. "This is really a total disregard of the obligations of the open meetings law," he said. "They were obligated to provide notice to the public of the location, time and purpose of the meeting. And most importantly, the public should have been invited to attend."

The three committee members under scrutiny called the secret meeting an oversight and the District Executive Director acknowledged the violation of the law and promised to send letters to board members explaining the law and cautioning them not to do it again.

The full OCOG article may be viewed at
www.ohionews.org/pdf/ocogsummer2008.pdf.

COMPARE AND CONTRAST

Freedom of Information Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
Coverage	All public bodies, including legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of the state.	All public bodies, including state agencies, county and other local governments, school boards, other boards, departments, commissions, councils, and public colleges and universities. If an entity receives more than half of its funding through a state or local authority, it is considered a public body.
Public Records Open to Disclosure	Any handwriting, typewriting, printing, photostating, photographing, photocopying and every other means of recording, including letters, words, pictures, sounds or symbols, or combinations thereof, as well as papers, maps, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.	A writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function.
Form of Records	Requestor's choice; can be paper or other medium if public body normally maintains records in that form.	Requestor's choice; can be paper or other medium.
Electronic Mail	E-mails are covered.	E-mails are covered.
Fees for Public Records	Only for actual cost of reproduction and certification; not for cost of labor.	Fees may be charged for the necessary copying of a public record for inspection or providing a copy of a public record to a requestor. Fees also may be imposed for search, examination and review and the separation of exempt information in those instances where failure to charge a fee would result in unreasonably high costs to the public body. The fee must be limited to actual duplication, mailing and labor costs.

MINNESOTA	OHIO	WISCONSIN
<p>All government entities, including state agencies, record-keeping systems, political subdivisions, corporations or non-profits under contract, state university system and school districts, and any officer, board, or authority appointed for an agency or ordinance or any level of local government (counties, districts, charter cities, towns, etc.).</p>	<p>All public bodies, including state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by any alternative school in the state of Ohio kept by a non-profit or for profit entity.</p>	<p>All government “authorities,” including a state or local office, elected official, agency, board, commission, committee, council, department, or public body corporate and politic created by constitution, law, ordinance, rule, or order, and any governmental or quasi-governmental corporation (except for the Bradley Center sports and entertainment corporation).</p>
<p>Regardless of physical form, all information collected, created, received, maintained, or disseminated by the government.</p>	<p>Regardless of physical form, any document, device, or item which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.</p>	<p>Regardless of physical form, all material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved and has been created or is being kept by an authority.</p>
<p>Must be “easily accessible for convenient use.”</p>	<p>Requestor’s choice; can be paper or other medium if public body normally maintains records in that form.</p>	<p>Requestor’s choice; can be paper or other medium.</p>
<p>E-mails are covered.</p>	<p>E-mails relating to office functioning are covered.</p>	<p>E-mails are covered.</p>
<p>If copied amount is less than 100 pages, the fee is limited to 25 cents per page. If over 100 pages, charge can cover actual costs of searching for, compiling, or electronically transmitting the data (including employee time under certain conditions).</p>	<p>Only for actual cost of reproduction and mailing; not for cost of labor.</p>	<p>Only for the “actual, necessary, and direct cost” of reproducing records; not for the cost of labor. Costs associated with locating records may be assessed when more than \$50 is required to locate records.</p>

COMPARE AND CONTRAST

Freedom of Information Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
<p>Public Records Exempt from Disclosure</p>	<p>Key specific exemptions include:</p> <ul style="list-style-type: none"> - records related to litigation - medical records - personnel records - tax assessments 	<p>Key specific exemptions include:</p> <ul style="list-style-type: none"> - information or records subject to the attorney-client privilege - law enforcement information - trade secrets
<p>Deadline for Production of Public Records</p>	<p>Seven business days, additional seven business days with extension.</p>	<p>Five business days, additional ten business days with extension for unusual circumstances.</p>
<p>Denial of a Records Request</p>	<p>Public body must, in writing, provide explanation, identify responsible parties, and explain appellate process.</p>	<p>Public body must provide written explanation and inform requestor of right to seek judicial review within five days, or within fifteen days under unusual circumstances.</p>
<p>What Information Must a Requestor Provide</p>	<p>None. Requestor may provide identification and purpose for a waiver of fees in the “public interest.”</p>	<p>None. Reason for request may be disclosed but cannot constitute effective denial.</p>
<p>Appeal Process (Administrative or State)</p>	<p>Requestor must appeal denial to the head of the public body in writing. If such administrative appeal is denied or ignored, requestor may file action in circuit court for injunctive or declaratory relief.</p>	<p>Requestor must appeal denial to the head of the public body in writing. If such administrative appeal is denied or ignored, requestor may try to compel disclosure in circuit court.</p>

MINNESOTA	OHIO	WISCONSIN
<p>Key specific exemptions include:</p> <ul style="list-style-type: none"> - law enforcement information - proprietary information and trade secrets - personnel data - private, confidential, nonpublic and protected nonpublic data 	<p>Key specific exemptions include:</p> <ul style="list-style-type: none"> - medical records - trial preparation records - records pertaining to adoption hearings - trade secrets 	<p>Key specific exemptions include:</p> <ul style="list-style-type: none"> - law enforcement information - proprietary information and trade secrets - patient health care records - personnel records
<p>“As soon as reasonably possible,” but no exact time period. Ten days for private and summary data.</p>	<p>“Promptly prepared,” but no exact time period.</p>	<p>“As soon as practicable and without delay,” but no exact time period.</p>
<p>Requestor has right to be informed of the specific law or classification that justifies the denial.</p>	<p>Public body must provide explanation, including legal authority. The explanation is not required to be written, unless the requestor so requests.</p>	<p>If oral request, the government authority may deny the request orally unless the requestor asks for a written statement of the reasons for denial within five business days of the oral denial. If written request, a denial or partial denial must be in writing. Reasons for the denial must be specific and sufficient.</p>
<p>None for public and summary data. Specifications vary regarding access to private data and confidential data.</p>	<p>None. Public body may ask for written request, requestor’s identification and reason, but must disclose non-mandatory nature.</p>	<p>None. A requestor does not need to provide his or her identity or the reason why the requestor wants particular records.</p>
<p>No administrative appeal process exists. Requestor may try to compel disclosure in district court. Personally affected individuals have the right to appeal to the government authority administratively regarding their personally identifiable information.</p>	<p>No administrative appeal process exists. Requestor may file a mandamus action to compel disclosure in the court of common pleas.</p>	<p>No administrative appeal process exists. Requestor may bring a mandamus action asking a court to order release of the record or submit a written request to the district attorney of the county where the record is located or to the Attorney General requesting that a mandamus action be brought. Personally affected individuals have the right to appeal to the government authority administratively regarding their personally identifiable information.</p>

COMPARE AND CONTRAST

Freedom of Information Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
<p>Penalties for Violation</p>	<p>None.</p>	<p><i>Punitive damages:</i> Up to \$500. <i>Actual or compensatory damages:</i> awarded by courts.</p>
<p>Availability of Attorneys’ Fees for Prevailing Plaintiffs in Litigation</p>	<p>Yes, but not for <i>pro se</i> plaintiffs.</p>	<p>Yes, but not for <i>pro se</i> plaintiffs.</p>
<p>Typical Outcome of Request for Attorneys’ Fees by Prevailing Plaintiffs in Litigation</p>	<p>Not often awarded.</p>	<p>Not often awarded.</p>
<p>Statute of Limitations to File Administrative Appeal or to File Action in Circuit Court</p>	<p>None.</p>	<p>FOIA requestors who face a full or partial denial of their records requests may submit a written appeal to the head of the appropriate public body, or may directly file a claim in court within 180 days of the purported denial.</p>

MINNESOTA	OHIO	WISCONSIN
<p><i>Exemplary damages:</i> Between \$1,000 and \$10,000. Civil penalties: Up to \$1,000 awarded by courts, payable to the state general fund.</p>	<p><i>Statutory damages:</i> \$100 per business day, up to \$1,000.</p>	<p><i>Statutory damages:</i> minimum \$100 and other actual costs (except no such recovery by committed or incarcerated persons). <i>Punitive damages:</i> up to \$1,000 for a government authority's custodian who is responsible for an arbitrary and capricious delay or denial.</p>
<p>Yes, but not for <i>pro se</i> plaintiffs.</p>	<p>Yes, but not for <i>pro se</i> plaintiffs.</p>	<p>Yes, but not for <i>pro se</i> plaintiffs.</p>
<p>Not often awarded.</p>	<p>Not often awarded.</p>	<p>Usually awarded.</p>
<p>None.</p>	<p>None.</p>	<p>When the request comes from a committed or incarcerated person, the claim must be filed within 90 days after the request is denied.</p>

COMPARE AND CONTRAST

Open Meetings Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
<p>Coverage</p>	<p>Any public body, including any legislative, executive, administrative, or advisory bodies of the state, counties, townships, cities, villages, incorporated towns, school districts, and all other municipal corporations, boards, bureaus, committees, or commissions, and any subsidiary bodies of any of the foregoing. Does not apply to private, non-profit corporations under any conditions.</p>	<p>Any public body, including any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, which is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform such a function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement. A board of a nonprofit corporation formed by a city under the Home Rule City Act is a public body, however, courts have found no coverage for a nonstock, nonprofit corporation created independent of state or local authority without the assistance of public funds or generally for private non-profit corporations.</p>
<p>Are Committees, Advisory Groups, Sub-Committees Covered?</p>	<p>Committees and sub-committees are covered by the law. Advisory committees that are supported in any part by tax revenue or which expend tax revenue are covered by the law pursuant to a balancing test.</p>	<p>Committees and sub-committees are covered by the law so long as they exercise governmental authority or perform a governmental function. Advisory groups are not expressly covered under the law. The Attorney General has suggested there is no coverage, however state appellate courts have found advisory committees subject to coverage in certain cases.</p>
<p>Types of Gatherings Covered</p>	<p>Coverage extends to a gathering of a majority of a quorum to discuss public business.</p>	<p>Coverage extends to any meeting of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy, or any meeting of the board of a nonprofit corporation formed by a city under the Home Rule City Act. Also covered are information-gathering and fact-finding sessions called by the governmental body where a quorum of members are present and the session relates to the body's public business.</p>

MINNESOTA	OHIO	WISCONSIN
<p>Any public body, including any state agency, board, commission, or department when it is required or permitted by law to transact public business in a meeting, the governing body of any school district, unorganized territory, county, city, town, or other public body, and a committee, subcommittee, board, department, or commission of a public body subject to the law. A 2000 amendment established that corporations created by political subdivisions are subject to coverage.</p>	<p>Any public body, including any board, commission, committee, council, or similar decision-making body of a state agency, any county, township, municipal corporation, school district, or other political subdivision. Coverage can be trumped by individual city charters due to the home rule provision in the State Constitution.</p>	<p>Any public body, including state or local agencies, commissions, departments, and councils. The law also applies to the state Legislature, but not to a partisan caucus of the Senate or Assembly. Governmental or quasi-governmental corporations are also covered by the law. The statute does not address coverage for non-profit corporations, though Attorney General opinions lean toward coverage for non-profits as quasi-governmental entities.</p>
<p>Committees and sub-committees are covered by the law. Advisory groups are not expressly covered under the law, but courts have held that an advisory committee may be covered depending on the number of members of the governing body involved and on the form of the delegation of authority from the governing body to the members.</p>	<p>Committees and sub-committees are covered by the law. Advisory groups are not expressly covered under the law and Ohio courts are split on whether advisory groups constitute public bodies.</p>	<p>Committees and sub-committees are covered by the law. Bodies created by a directive and advisory bodies created by a constitution, statute, ordinance, rule, or order and bodies created by a directive are also covered.</p>
<p>Coverage extends to gatherings of a governing body reaching a quorum, or a quorum of a committee, subcommittee board, department or commission at which members discuss, decide or receive information as a group on issues relating to the official business of that governing body.</p>	<p>Coverage extends to a prearranged meeting of a public body in which a majority of its members attend and discuss public business.</p>	<p>Coverage extends to gatherings of a majority of the public body where the body meets to engage in business, including discussion, decision, or information-gathering on issues within the body's responsibilities. A negative quorum (sufficient number of members to determine a public body's course of action if the group votes as a block) or walking quorum (series of meetings, telephone conferences, or some other means of communication such that groups of less than a quorum are effectively meeting) can satisfy the majority requirement.</p>

Open Meetings Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
<p>Exemptions: Closed Meetings</p>	<p>A meeting may be closed under 24 exemptions. Examples include personnel matters, purchase of property, probable or imminent litigation and collective bargaining.</p>	<p>A meeting may be closed under 10 exemptions. Examples include personnel matters, purchase of property, pending litigation and collective bargaining.</p>
<p>Public Notice of Time and Place for Meetings: Requirements for Agendas</p>	<p>Public bodies must post an agenda for each regular meeting at least 48 hours in advance at both the principal office of the public body and at the meeting location. A schedule listing the times and places of regular meetings must be available at the office of the public body. A public body that has a website maintained by the full time staff of the public body must post all agendas and notices on its website regarding all public body meetings.</p>	<p>Public bodies must post a notice containing the dates, times, and places of the public body’s regular meetings, as well as the name of the public body, its telephone number and its address at least 18 hours before a meeting. It is required that public bodies post this notice at their principal office and any other location deemed appropriate.</p>
<p>Procedures for Closed Meetings</p>	<p>A majority of a quorum of the public body must vote to hold a closed meeting. The vote of each member and the citation to the specific closed session exemption must be publicly disclosed and entered into the minutes of the meeting.</p>	<p>A 2/3 roll call of members of the public body is required, except for the closed sessions permitted. The roll call vote and the purpose for calling the closed session must be entered into the minutes of the meeting where the vote takes place.</p>

MINNESOTA	OHIO	WISCONSIN
<p>A meeting <i>must</i> be closed for a limited range of subjects, for instance if data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults, to discuss data regarding educational data, health data, medical data, welfare data, or mental health data that are not public data or for preliminary consideration of allegations against an individual subject to the government's authority. A meeting may be closed under limited conditions, for instance if disclosure of the information discussed would pose a danger to public safety or compromise security, for labor negotiations purposes, purchase of property or attorney-client privileged matters.</p>	<p>A meeting <i>may</i> be closed under 8 exemptions. Examples include personnel matters, purchase of property and collective bargaining.</p>	<p>A meeting <i>may</i> be closed under 11 exemptions. Exemptions include personnel matters, purchase of property, pending litigation and collective bargaining.</p>
<p>Public bodies must keep schedules of regular meetings on file at their offices. The law fails to specify agenda requirements for meetings covered by the statute. However, if printed materials relating to agenda items are prepared by or at the direction of the governing body, and are distributed or available to those members, one copy of these same materials must be available in the meeting room for inspection by the public. No time limit is provided in the statute for posting notices for regular meetings, though special meetings require at least three days' notice.</p>	<p>Public bodies must establish at least one reasonable method of informing the public of meetings (sign on the front door of town hall, published information in a general circulation). News media must be informed at least 24 hours before meetings (exempting emergency meetings).</p>	<p>Public notice must contain the time, date, place, and subject matter of the meeting, including issues that will be considered in a closed session. No detailed agenda is required. The public body must provide 24-hour notice of a meeting, which may be accomplished by posting in places likely to be seen by the public. The Wisconsin Attorney General has suggested a minimum of three locations.</p>
<p>A public body must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed. Special provisions apply to close a meeting to discuss labor negotiations or to evaluate the performance of an individual subject to the government's authority.</p>	<p>The public body must hold a roll call vote and have a majority of the quorum vote to enter executive session. The motion and vote must state which one or more of the closed session exemptions will be considered at the executive session.</p>	<p>The chief presiding officer must announce and record the nature of the business to be discussed and the closed session exemption that allows for the closed session. Then, the public body must pass a motion, by recorded majority vote, to meet in closed session.</p>

COMPARE AND CONTRAST

Open Meetings Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
<p>Recordkeeping for Meetings: Minutes Requirements</p>	<p>Minutes must include the date, time and place of the meeting, the members of the body recorded as present or absent and a summary of discussion on all matters proposed, deliberated or decided, and a record of any votes taken.</p>	<p>Meeting minutes must be kept for each meeting showing the date, time, place, members present or absent, any decisions made, the purpose for which a closed session is held and all roll call votes taken at the meeting. Proposed minutes must be made available for public inspection within 8 business days after the meeting to which the minutes refer, and approved minutes must be available for public inspection within 5 business days after the meeting at which the minutes are approved by the public body.</p>
<p>Taping of Filming Meetings</p>	<p>Taping or filming meetings is permissible so long as it does not interfere with the meeting.</p>	<p>Taping or filming meetings is permissible so long as it does not interfere with the meeting.</p>
<p>Are Electronic Mail Communications a Meeting?</p>	<p>Email and Internet chat room communications are considered communications for meeting purposes under the law.</p>	<p>The law does not address whether electronic mail communications are meetings.</p>
<p>Enforcement</p>	<p>State's Attorneys and individuals may sue to enforce the law in the circuit court. The Public Access Counselor's Office has no punitive authority but may respond to citizen's complaints and occasionally refers potential violations to the State's Attorney for investigation.</p>	<p>Individuals, the Attorney General, and the prosecuting attorney of the appropriate county all have the authority to enforce the law by filing a civil action in the circuit court to compel compliance or to enjoin further noncompliance.</p>

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<p>The law does not specifically require that minutes be taken at a regular meeting. The only statutory requirement is that votes taken at a meeting required to be public will be recorded in a journal kept for that purpose, which must be open to the public during normal business hours.</p>	<p>Minutes of regular or special meetings of any public body need to be prepared promptly, filed, and maintained so that they are available to public inspection.</p>	<p>Governmental bodies do not need to keep detailed minutes of their meetings. The body must keep a record of the motions and roll call votes at each meeting. Statutes outside the Open Meetings Law require the county, village, and city clerks to keep a record of proceedings of their governing bodies.</p>
<p>The law does not specifically address, however, a Minnesota Attorney General's Opinion states that taping is permissible if it does not have a significantly adverse effect on the order of the proceedings or impinge on constitutionally protected rights.</p>	<p>The law does not specifically address, however, an Ohio Attorney General's Opinion states that taping or filming meetings is permissible if it does not unduly interfere with a meeting.</p>	<p>Taping or filming meetings is permissible so long as it does not interfere with the meeting.</p>
<p>The law does not address whether electronic mail communications are meetings.</p>	<p>The law does not address whether electronic mail communications are meetings.</p>	<p>The law does not address whether electronic mail communications are meetings, but the state Public Records Law lists "electromagnetic information" in its definition of a record and courts interpreting that law have held that e-mail and other electronic records must be released on request.</p>
<p>Only individuals may sue to enforce the law in a district court.</p>	<p>Only individuals may sue to enforce the law in a court of common pleas. However, if a citizen suit results in an injunction against a public body, the attorney general or prosecuting attorney is responsible for bringing an action against officials who violate the injunction.</p>	<p>Individuals, the Attorney General and the district attorney have the authority to enforce the law in circuit court (though an individual must first file a verified complaint with the district attorney for his or her office to prosecute the case).</p>

Open Meetings Act

CATEGORIES OF CONCERN	ILLINOIS	MICHIGAN
Relief/Penalties for Violation	Available relief and penalties include mandamus, invalidation, injunction, costs and attorneys' fees. Criminal penalties include a fine of up to \$1,500 and imprisonment of up to 30 days.	Available relief and penalties include injunction, invalidation, damages up to \$500, criminal fines, costs and attorneys' fees. Criminal penalties for an intentional violation by a public official include a misdemeanor punishable by a fine of up to \$1,000, and a second intentional offense subject to a misdemeanor punishable by a fine of up to \$2,000 and/or imprisonment for up to 1 year.
Are Criminal Penalties Assessed Regularly?	Criminal penalties are rarely imposed for violations.	Criminal penalties are rarely imposed for violations.
Availability of Attorneys' Fees for OMA Litigation	Attorneys' fees are available for a prevailing party, but not for <i>pro se</i> plaintiffs.	Attorneys' fees are available where a violation was intentional and the plaintiff is successful, but not for <i>pro se</i> plaintiffs. Attorneys' fees will not be granted unless injunctive or declaratory relief is granted.
Whether Attorneys' Fees are Usually Granted	Attorneys' fees are usually not granted to prevailing parties.	Attorneys' fees are generally awarded when declaratory or injunctive relief is granted to a plaintiff.
Public Comment Mandated at Public Meetings?	No public comment required	Public comment <i>required</i>
Statute of Limitation to File Lawsuit	60 days	An action for injunctive relief must be filed within 180 days of the alleged violation. Litigation which seeks to invalidate a decision of a public body must be initiated within 60 days of the approved minutes, or within 30 days for decisions involving property, money, contracts or bond issuance.

MINNESOTA	OHIO	WISCONSIN
<p>Available relief and penalties include injunction, damages up to \$300, costs, attorneys' fees and removal from office. In addition, if a person is found to have intentionally violated the statute in three or more actions involving the same governing body, that person must forfeit any further right to serve on the governing body for a period of time equal to the term of office such person had served.</p>	<p>Available relief and penalties include injunction, \$500 civil forfeiture fine, costs, attorneys' fees, invalidation and removal from office. If the court deems the plaintiff's action was frivolous, the court may award all court costs and reasonable attorneys' fees to the public body.</p>	<p>Available relief and penalties include declaratory relief, injunction, mandamus, invalidation, damages from \$25 to \$300, costs and attorneys' fees.</p>
<p>Criminal penalties are not available for violations.</p>	<p>Criminal penalties are not available for violations.</p>	<p>Criminal penalties are not available for violations.</p>
<p>The court may award reasonable costs, disbursements, and attorneys' fees of up to \$13,000 to any prevailing party, but attorneys' fees may not be awarded against a member of the public body unless the court finds there was an intent to violate the law. Public bodies may recover attorneys' fees for frivolous lawsuits brought by plaintiffs without merit.</p>	<p>Attorneys' fees are available for a prevailing party if the court issues an injunction, but not for <i>pro se</i> plaintiffs. Public bodies may recover attorneys' fees for frivolous lawsuits brought by plaintiffs.</p>	<p>Attorneys' fees are available for a prevailing party, but not for <i>pro se</i> plaintiffs.</p>
<p>Attorneys' fees are usually granted to prevailing plaintiffs.</p>	<p>Attorneys' fees are generally granted to plaintiffs who prevail in winning injunctive relief. However, they are rarely awarded to defendant public bodies for frivolous lawsuits.</p>	<p>Attorneys' fees are usually granted to prevailing plaintiffs.</p>
<p>No public comment required</p>	<p>No public comment required</p>	<p>No public comment required</p>
<p>No time line</p>	<p>Two years</p>	<p>Once an individual files a verified complaint, the District Attorney has 20 days to enforce the law. After 20 days, if the District Attorney does not begin an enforcement action, the individual can bring the action in the name of the state for up to two years.</p>