



BUILDING DEMOCRACY FOR THE 21ST CENTURY

Government Transparency Remains Essential

Our nation faces an unprecedented crisis. Federal, state, and local governments are taking individual actions to protect public health in response to the prevalence and contagiousness of COVID-19. As important as ever, these government activities need monitoring. In responding to this crisis, every public body must maintain and actively promote transparency. In turn, government transparency builds the public's trust. Strong public trust is necessary to reassure a society despite the uncertainty created by COVID-19.

Importantly, Governor Pritzker's stay at home and other protective orders do not suspend Illinois' transparency laws, even while easing restrictions on burdened public bodies.

All public bodies should take to heart the principles underlying Illinois sunshine laws and do everything in their power to promote transparency voluntarily. The Governor's orders explicitly encourage public bodies to update the public via their websites and social media regarding their COVID-19 response and any impacts on normal government functions. By proactively promoting transparency over the coming weeks, public bodies will accomplish much towards building public trust.

Freedom of Information Act

"The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214 (1978).

Staffing constraints undoubtedly impact the efficiency with which public bodies can respond to FOIA requests. However, FOIA is still in effect, and public bodies must respond to FOIA requests. Public bodies can reduce the burden of FOIA requests by posting documents on their websites. Government employees or contractors who are working at home should be able to access electronic records and make them available proactively or in response to FOIA requests. Public bodies may dispense with some FOIA requests by pointing to the availability of records online. FOIA does not require public bodies to provide copies of records available on its website unless a requester cannot reasonably access the online record. During the current crisis, posting information about existing public business can significantly reduce the necessary workload of records requests.

There may be cases where a public body cannot immediately access documents located in a closed facility. In this case, the public body should explain the impediment to the requester and respond as soon as possible. The public body might set a timeframe depending on when an employee may visit the facility or when the facility reopens.

Public bodies at times may need to invoke FOIA's "unduly burdensome" provision where a request so burdens a public body that it outweighs the public interest in the information. However, the public body must offer a requester the chance to narrow such a request. CAC encourages requesters and public bodies to work together in such an instance to ensure public transparency and efficient government operation.



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Open Meetings Act

Like the rest of us, public officials and employees must practice social distancing when elected officials convene to conduct public business. They must be mindful of making their meetings available for public consumption. Media reports illustrate that public bodies have adapted to this reality in different manners. In essence, some meet remotely using technology, some practice social distancing on the dais, and some combine both strategies.

On March 16, Governor Pritzker explicitly eased Open Meetings Act provisions to allow members of public bodies to attend meetings remotely. Importantly, it did not alter requirements for public access and comment. However, the stay at home order prevents the public from attending meetings in most cases.

Public bodies should provide live access to meetings through a live stream or public broadcast. Even though the OMA doesn't require public bodies to make their meetings available to remote viewers, public bodies should be proactive to ensure that the public may view their meetings remotely. Public bodies that have not adopted this practice should take steps to provide the public with remote access during this crisis and beyond.

Public bodies must ensure that meetings continue to include public comments. They may elect to have a call-in number or other live option. Some public bodies have provided a means to submit written comments. These comments should be read into the record, subject to existing public comment guidelines such as a time limit.