



# **Freedom of Information: *Other Sunshine Laws***

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# **Freedom of Information: Other Sunshine Laws**

## **Open Meetings Requirements**

In some circumstances, the Freedom of Information Act and the Open Meetings Act may coincide in their application. For instance, the minutes of meetings properly closed under the Open Meetings Act may be kept secret under the Freedom of Information Act. Additionally, during an open meeting having a discussion of documents that are otherwise exempt from disclosure under the deliberative process exemption may invalidate that exemption. Accordingly, understanding the basics of the Open Meetings Act is necessary for a full understanding of these particular exemptions.

"Meeting" is defined as "any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business." Thus, the emails generated between members of a public body may not only be documents subject to the Freedom of Information Act but may also constitute a meeting of the public body. The reference to "other means of contemporaneous interactive communication" limits e-mails to e-mails that are contemporaneously interactive. If a member of a public body sends an e-mail to another member of that body, this would not yet be a gathering. The other member would have to receive the e-mail and respond quickly for the communication to be a gathering. Unfortunately, the definition is not precise enough to tell us how quickly is too quickly. In analyzing the contemporaneous nature of the communication, the

speed of conversation is a useful measuring tool. If the communication is at a rate equivalent to the speed of conversation, then such communication would constitute a gathering. If slower than conversation, then the communication may not be a gathering. You should remember that most conversations have pauses so everyone knows that waiting ten seconds between responses does not exempt you from the definition of a meeting. Even if such communication does not constitute a meeting, any emails or texts generated would undoubtedly still be public records subject to the Freedom of Information Act.

The specific requirements of the contents of minutes of meetings are stated in Section 2.06 of the Open Meetings Act. Specifically, "All public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording. Minutes shall include, but need not be limited to: (1) the date, time and place of the meeting; (2) the members of the public body recorded as either present or absent and whether the members were physically present or present by means of video or audio conference; and (3) a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken." Further, these minutes must be made available to the public within 7 days of being approved. The verbatim record of a closed meeting must be kept for a minimum of 18 months from the time of the meeting recorded. After this time period passes the public body may approve the destruction of the verbatim recording if the public body also approve minutes that meet the above requirements. Even if the meeting is closed to the public, minutes must be prepared. If the meeting is open, then the minutes will be available to the public upon approval by the public body as they are preliminary drafts subject to the

deliberative process exemption until that time. The minutes of closed meetings are exempt from FOIA requests until such time as the public body determines that the need for confidentiality of those minutes no longer exists.

### **a. Website Availability Requirements**

In addition to the availability of information through FOIA request, some information must be made available to the public through a website. As has already been mentioned, certain mugshots cannot be made available in this fashion in Illinois. The pay of government employees, however, must be posted to a public portal in Illinois and notices of open meetings are also required to be posted to a website in addition to other publication requirements.

Increasingly, courts are moving to internet accessibility as well. Even though some court documents are restricted from the general public when placing court files on the internet, this still provides substantially greater access than previously existed, since most records not available on the internet were not available if requested in person previously, such as juvenile court records or files sealed due to expungement or for other reasons allowed by the courts. Property tax records are often available over the internet as well as various financial records of cities and counties. Whether this greater internet access will reduce FOIA requests or not remains to be seen. Remember, you still have to respond to a FOIA request for documents even if every single responsive document is available on the internet.

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