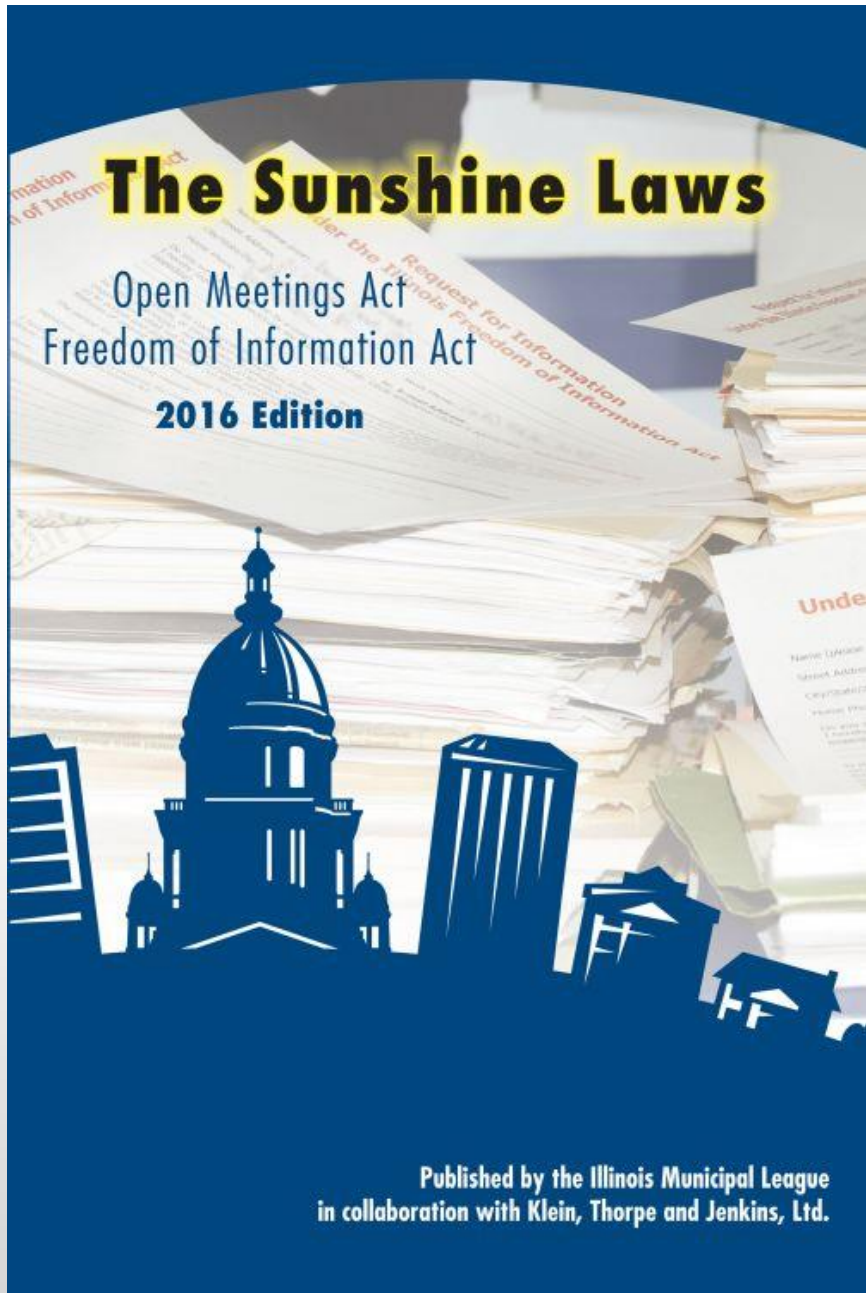


Illinois Open Meetings Act Training 2021

Illinois Municipal League
217.525.1220 | IML@iml.org





Background

- Open Meetings Act (OMA)(5 ILCS 120/1 *et seq.*)
- Illinois Attorney General's Public Access Counselor
- Training Requirement

Open Meetings Act

5 ILCS 120/1 *et seq.*

“It is the public policy of this State that **public bodies exist to aid in the conduct of the people’s business and that the people have a right to be informed as to the conduct of their business.** In order that the people shall be informed, the General Assembly finds and declares that it is the intent of this Act to ensure that the **actions of public bodies be taken openly** and that their **deliberations be conducted openly**...its citizens shall be given **advance notice of and the right to attend all meetings** at which any business of a public body is discussed or acted upon in any way.” 5 ILCS 120/1

Public Access Counselor

- Statutorily created, appointed position within the Illinois Attorney General's Office
 - Provide advice, training and education regarding Freedom of Information (FOIA) and OMA
 - Resolve complaints concerning compliance with FOIA and OMA without litigation, through mediation or binding opinions
 - 15 ILCS 205/7
- *Index of Open Meetings Act Binding Opinions From 2010 to Present.* Available on the Illinois Attorney General website.

Training Requirement

- Each elected or appointed member of a public body subject to OMA must successfully complete training.
- Not later than the 90th day after taking the oath of office or otherwise assuming responsibilities as a member of the public body.
- Electronic training curriculum developed and administered by the PAC, or alternative training for certain public body members as provided in OMA. 5 ILCS 120/1.05(b)
- IML OMA training pursuant to 5 ILCS 120/1.05(g) satisfies the OMA training requirement.

Training Requirement, cont'd

- Public body members must file a copy of the certificate of completion with the public body. 5 ILCS 120/1.05(b)
- A member is not required to complete training annually, *unless* that member is also an OMA designee.
- The PAC's OMA electronic training curriculum is updated each year, as is the IML training, therefore public body members may wish to periodically review the training to stay abreast of the law.

Public Body

OMA applies to all "public bodies" as defined in the Act. The definition of "**public body**" includes:

all 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 of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof. 5 ILCS 120/1.02

What is a Public Body?

See Section 1.02

City Council / Board of Trustees

and

Subsidiary Boards and Committees



Finance
Committee



Personnel
Committee



Ordinance
Committee



Planning &
Zoning
Committee



Committee of the
Whole

Board of Police &
Fire Commissioners

Zoning Board of
Appeals

Metropolitan Transit
Board



Meeting

OMA defines a meeting as “[a]ny ***gathering*** of a ***majority of a quorum*** for the purpose of ***discussing public business.***” 5 ILCS 120/1.02

- May be in person OR electronic – people may “gather” from remote locations through the use of telephones, audio- and video-conferencing, and the Internet, or other means of “contemporaneous interactive communication.”

5 ILCS 120/1.02

What is a gathering?

- Meetings of the Public Body
- Board, Commission and Committee Meetings
- Educational/Informational Meetings
- Social Events (may become a gathering)
 - A social gathering is not prohibited, but it may turn into a meeting if a majority of a quorum discusses public business in a deliberative fashion.
 - Such gatherings are NOT recommended.

Hypothetical 1

Unseasonal heavy rain and thunderstorms deluged Happy Town. The Happy Town Board President sent text messages to all eight Board members (individually) containing a warning about heavy rains, high water, and flooding throughout the town and attached pictures. The Board does not provide cell phones for its members, so the President used her personal cell phone and sent individual text messages to each member's personal cell phone. Five Board members responded to her individually by text message within the next fifteen minutes. Assume the Board President is not a member of any subcommittees of the board.

Did this exchange of text messages violate OMA?



Hypothetical 1

Did this exchange of text messages violate OMA?

1. Yes, because a majority of a quorum of the Board “gathered” through text messages and exchanged information about the weather conditions.
2. No, because the exchange of text messages was not contemporaneous, and did not meet all the requirements of a “meeting” under OMA.
3. No, because the communications were on the private cell phones of the board members.

Review the law: 5 ILCS 120/1.02

Hypothetical 1

Did this exchange of text messages violate OMA?

2. No, because the exchange of text messages was not contemporaneous, and did not meet all the requirements of a “meeting” under OMA.

Meeting

OMA defines a meeting as “[a]ny ***gathering*** of a ***majority of a quorum*** for the purpose of ***discussing public business.***” 5 ILCS 120/1.02

What is a majority of a quorum?

- A quorum is a majority of the members of a public body.
- Must have a quorum to begin a meeting and to take action.
- Majority of a quorum is more than one half of the quorum, and is required to pass simple motions. Ordinances may require more than a majority of a quorum.

Member Number	Quorum	Majority of Quorum
13	7	4*
11	6	4
8	5	3*
7	4	3
5	3	3**
3	2	2

*Quorum and majority are based on whole numbers, not fractions.

**Special rule for 5-member public body; safe harbor to discuss with one other person

Meeting

OMA defines a meeting as “[a]ny ***gathering*** of a ***majority of a quorum*** for the purpose of ***discussing public business.***” 5 ILCS 120/1.02

What is public business?

- **Discussing public business:** an exchange of views and ideas among public body members on any item germane to the affairs of the public body.
 - Not directed at casual remarks, but at discussions that are deliberative in nature. OMA extends to gatherings for deliberation as well as gatherings for taking action.
- **Deliberation:** discussion aimed primarily at reaching a decision on a matter of concern to the public body, regardless of whether the discussion will result in the taking of action, will set policy or is preliminary to either.

Attendance by Other Means

If a public body has adopted rules allowing for electronic attendance, and a quorum is physically present, the body may vote to allow a member to attend a meeting electronically only if the absence is due to:

- Personal illness or disability;
- Employment purposes or business of the public body; or
- Family or other emergency.

5 ILCS 120/7(a)

Note: *NOT* for vacation or other reasons.



Disaster Declarations

The COVID-19 pandemic necessitated changes to OMA due to distancing and stay at home guidelines.

P.A. 101-0640 codified provisions to allow for amended compliance with OMA **during disaster declarations**, allowing for remote meetings.

- Declaration of disaster by Governor or Director of Illinois Department of Public Health
- Determination by head of public body that in-person meeting is not practical or prudent
- Meeting by audio or video conference may occur without physical presence of a quorum of members if the following requirements are met:
 - At least one member at meeting location (unless unfeasible due to disaster declaration)
 - All present at meeting site must be able to hear all discussion and testimony
 - Alternative arrangements for contemporaneous public access
 - All votes by roll call
 - Verbatim recording of meetings

5 ILCS 120/7(e)



FACT SHEET

OPEN MEETINGS ACT

Remote Meetings During Disaster Declarations



[Public Act 101-0640 \(available via this link\)](#), which went into effect on June 12, 2020, includes changes to the [Open Meetings Act](#) (OMA) that allow public bodies subject to OMA to conduct remote meetings under certain conditions. Remote meetings are allowed only when a disaster declaration has been issued by the Governor or the Director of the Illinois Department of Public Health (IDPH) and the head of the public body has determined that an in-person meeting is not practical or prudent. Remote meetings are not required in these circumstances, but are allowed. The new requirements for public bodies to utilize these measures during a disaster declaration are as follows:

MEETING REQUIREMENTS DURING A DISASTER DECLARATION

- 1) Standard 48-hour notice of a meeting must be provided, except for an emergency meeting, to all members of the public body, posted at the meeting location, on the public body's website and provided to any news media that has requested notice;
- 2) During the meeting, participating members of the public body must be verified and must be able to hear one another, as well as hear all discussion and testimony;
- 3) During open meetings, members of the public who are present at the meeting location of the public body must be able to hear all discussion, testimony and votes of the members of the body;
- 4) If attendance at the regular meeting location is not feasible due to the disaster, alternative arrangements must be made and the notice of the meeting must include the arrangements that will provide live public access to hear all parts of the open meeting (i.e., phone number or web-based link);
- 5) At least one member of the public body, the chief legal counsel or the chief administrative officer must be physically present at the meeting location, unless it is not feasible due to the disaster (other members of the public body may attend in person or remotely);
- 6) All votes must be by roll call, identifying each member and recording their vote on each issue;
- 7) Standard minutes of all meetings must be kept, approved and made available for public review as usual; and
- 8) A verbatim audio or video recording of all meetings held under these provisions must be made and must be available to the public for review. These recordings are public records and must be maintained pursuant to OMA.

CONSTITUTING A QUORUM AND PARTICIPATION

Each member of the public body participating by audio or video conference for a meeting held under these provisions is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

IN THE EVENT OF A BONA FIDE EMERGENCY UNDER THESE PROVISIONS

If a disaster declaration is in place, these provisions may be utilized for emergency meetings. Notice of an emergency meeting must be given as soon as practicable prior to the meeting and to any news media that has requested notice. The presiding officer must state the nature of the emergency at the beginning of the meeting. The public body must comply with the verbatim recording requirements of [Section 2.06 of OMA](#).

ADDITIONAL RESOURCES

The Illinois Municipal League (IML) has additional resources about OMA available, including [The Sunshine Laws publication \(available for purchase via this link\)](#), and [Frequently Asked Questions \(available via this link\)](#) written and updated by IML legal staff.

Please consult with your legal counsel or retained attorney for legal advice prior to taking any formal or informal action during a declared disaster.

500 East Capitol Avenue | PO Box 5180 | Springfield, IL 62705-5180 | Ph: 217.525.1220 | Fx: 217.525.7438 | www.iml.org



Remote Meeting Notice

- If attendance at the regular meeting location is not feasible due to the disaster, alternative arrangements must be made and the notice of the meeting must include the arrangements that will provide live public access to hear all parts of the open meeting (i.e., phone number or web-based link)

Meeting Location and Accommodation



- All meetings of public bodies must be held at specified times and places which are “convenient and open to the public.”
- No meeting on a legal holiday unless the regular meeting day falls on that holiday.
- The accommodations must not be merely convenient to the members of the public who show up, but the public as a whole.

5 ILCS 120/2.01

Hypothetical 2

At its November meeting, the Board planned to address the item "suspension or dismissal of public works director" and expected a large crowd. A huge number of citizens showed up at the meeting. After the board's usual meeting room was at capacity, no additional members of the public were allowed entrance, nor were there any measures taken to accommodate the crowd. The Board considered moving to a larger alternative space in the building that was available. However, the Board decided to continue the meeting in the original location because they wanted to get past the vote.

Did the Board violate OMA?

Hypothetical 2

Did the Board violate OMA?

1. No, because switching rooms after notice had been posted would violate OMA.
2. Likely yes, because the Board did not make its meeting reasonably accessible to the public.
3. No, because some of the public was able to attend the meeting.

Review the law: 5 ILCS 120/2.01

Hypothetical 2

Did the Board violate OMA?

2. Likely yes, because the Board did not make its meeting reasonably accessible to the public.

Notice

- All public bodies are required to give public notice, at the beginning of each calendar or fiscal year, of the dates, times, and places of their regular meetings to be held during the year.
- Agenda to be posted:
 - Regular meetings = at least 48 hours in advance
 - Special meetings = at least 48 hours in advance
 - Emergency meetings = as soon as practicable

5 ILCS 120/2.02(a)

Notice

The requirement of public notice of reconvened meetings does not apply to any case where the meeting was open to the public and

- (1) it is to be reconvened within 24 hours, or
- (2) an announcement of the time and place of the reconvened meeting was made at the original meeting and there is no change in the agenda.

5 ILCS 120/2.02(a)

Notice, cont'd

- Public notice of the meeting must be posted at the principal office of the body holding the meeting.
 - If no principal office exists, notice must be posted where the meeting is held.
 - Website: Notice of regular meetings of a governing body must be placed on the website if the public body has full-time staff that maintains the website.

5 ILCS 120/2.02(b)

- Notice and agenda must be continuously available for public review during entire 48-hour period preceding the meeting – website posting satisfies this continuous posting requirement.

5 ILCS 120/2.02(c)



Agenda

- Must state “general subject matter” of any resolution or ordinance that will be subject of final action. 5 ILCS 120/2.02(c)
 - Agenda item must provide main element(s), specific details not required.
- A public body may discuss matters not on the agenda at a regular meeting (not at a special meeting). However, it may not take ***final action*** on any matter not on the agenda.
- At special meetings, only agenda items may be discussed.

Agenda

- Insufficient agenda item:
 - “Independent contractor agreement”
 - Fails to identify the general nature of what is being discussed and voted on about the agreement or what the independent contractor is doing.
- Acceptable agenda item:
 - “Approve contract for City Manager”
 - Item not required to specify length or amount, although additional detail helpful.

Hypothetical 3

The Green Village Board called a special meeting to discuss whether to purchase a parcel of land abutting the Village's wildlife conservation area that just went up for sale. The Village Clerk called all the Board members on Tuesday to let them know the meeting would be held at 4:00 p.m. the next afternoon, Wednesday. The agenda, which the Clerk posted 24 hours before the meeting, consisted of only one item, "Discussion of the purchase of real property at 1000 Wildlife Road."

Has the public received proper notice of the special meeting?

Hypothetical 3

Has the public received proper notice of the special meeting?

1. Yes, because the property just went up for sale.
2. Yes, because the meeting agenda only included a property purchase item for discussion, so no notice to the public was required.
3. No, the meeting notice and agenda should have been posted at least 48 hours in advance in accordance with OMA's requirements.

Review the law: 5 ILCS 120/2.02

Hypothetical 3

Has the public received proper notice of the special meeting?

3. No, the meeting notice and agenda should have been posted at least 48 hours in advance in accordance with OMA's requirements.

Public Recording

- "any person may record the proceedings at meetings required to be open by this Act by tape, film or other means," although "[t]he authority holding the meeting shall prescribe reasonable rules to govern the right to make such recordings." 5 ILCS 120/2.05
- Rules concerning taping and filming should be limited to those necessary to preserve the overall decorum and proceeding of the meeting. Ill. Att'y Gen. Op. No. S-867. It is not appropriate for public bodies to create rules "on the spot." Rather, rules should be written and published after appropriate public notice and deliberation.

Record Keeping

- Written minutes of all meetings, whether open or closed, are required and a verbatim recording of all closed sessions in the form of audio or video recording.
- Minutes must include:
 - Date, time, and place;
 - Summary of discussion of all matters proposed, deliberated or decided;
 - Names of all members present and absent; and
 - A record of any votes taken in open session.

5 ILCS 120/2.06(a)



Record Keeping, cont'd

- Approve the minutes of open meetings within 30 days or at the public body's second subsequent regular meeting, whichever is later.
- Open meeting minutes must be made available for public inspection within ten days of approval by the public body.
- A public body that has a website maintained by its own full-time staff shall also post open meeting minutes on its website within ten days of the approval of such minutes; post for at least 60 days after their initial posting.
- Closed session minutes must be reviewed semi-annually for determination of whether they need to remain confidential.

5 ILCS 2.06(b)



Public Comment

“Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.” 5 ILCS 120/2.06(g)

Public bodies must establish rules governing public comment which may generally include:

1. Reasonable time limits on comments (3-5 minutes);
2. Request name (not address);
3. Setting aside a specific portion of the meeting for public comments;
4. Allowing the public body to cut off disruptive comment; and
5. Other matters relating to decorum and procedure.

Hypothetical 4

The Village Board established and recorded rules for public comment in an ordinance entitled "Limitation of Debate." A portion of the Board's rules provides: "An individual may speak a maximum of three times per calendar year on the same topic." During public comment at the September Board meeting, Bob Smith, a local accountant, mentioned the subject of the village's property taxes having just paid his second installment of his property taxes on his residence. The Board interrupted him and said that, because he had already commented on property taxes three other times that year, including speaking on the levy ordinance, the annual budget and the compensation ordinance, he could not address the Board about property taxes again until the next calendar year.

Did the Board act properly?

Hypothetical 4

Did the Board act properly?

1. Yes, because the limitation is part of the Board's established and recorded rules concerning public comment.
2. No. The Rule is not narrowly tailored to advance a significant governmental interest and impermissibly restricts the public's right to address the Board.
3. Yes, because he can address the Board about property tax issues again next year.

Review the law: 5 ILCS 120/2.06

Hypothetical 4

Did the Board act properly?

2. No. The Rule is not narrowly tailored to advance a significant governmental interest and impermissibly restricts the public's right to address the Board.

Closed Session

- Section 2(c) of OMA authorizes exceptions that allow a public body to hold a closed session. Additional exceptions are found in other statutes. Exceptions authorize but do not require a closed session.
- Some common section 2(c) exceptions used by municipalities include:
 - 1) appointment, employment, compensation, discipline, performance, or dismissal of specific employee(s)
 - 2) fill a vacancy in public office
 - 3) litigation (Additional findings required for probable or imminent litigation.)
 - 4) land acquisition
 - 5) collective bargaining
 - 6) review of closed session minutes
 - 7) Self evaluation, practices and procedures when meeting with a representative of a statewide association of which the public body is a member. (IML provides this service to our members.)

5 ILCS 120/2

ARE THERE INTERNAL ISSUES CHALLENGING YOUR CITY COUNCIL OR VILLAGE BOARD?

If your municipality is a member of the Illinois Municipal League, our staff may be able to assist you with convening a discussion to develop solutions for issues that are impacting the effectiveness of your local elected governing board.

For more information, contact us today:
(217) 525-1220 or inquiry@iml.org



ILLINOIS MUNICIPAL LEAGUE
500 East Capitol Avenue
PO Box 5180
Springfield, Illinois 62705
217-525-1220
www.iml.org

9/18/17

SELF EVALUATION SERVICES

Illinois Municipal League (IML) provides self evaluation services that assist cities, villages and towns to meet their needs and explore solutions to meet their internal and external challenges.

Meetings Act
meetings of
to the public.
follows the
in closed

communications and relationships, meeting and business processes, roles of members and staff, ethical rules and conflicts of interest. A wide array of matters may be discussed and resolved using this process.

In addition to IML staff, in most circumstances, the municipality must retain a session facilitator that is capable of leading the meeting and assisting the participants in addressing the challenges facing that particular municipality. The facilitator may be a process or communications expert, a conflict resolution professional, or a local authority on the central dilemma being addressed. While IML may be able to assist in the preparation for the session, the selection of an appropriate facilitator is the municipality's responsibility.

MAKING IT HAPPEN

1. DEVELOP A CONSENSUS
In order for the meeting to be successful, all members of the corporate authority must attend and participate. That commitment from your members should be obtained in advance.

2. ENGAGE THE IML
IML staff will travel to your community on a pre-arranged date, subject to availability. The fee for this service is \$500, and the municipality may be expected to reimburse IML for additional direct travel and lodging expenses.

3. CHOOSE THE MEETING FACILITATOR
Select a qualified facilitator to assist in the meeting. The need for the meeting may arise from any number of events or circumstances. The right facilitator can make all the difference. The municipality is responsible for all costs incurred by a facilitator.



Closed Session

- The exceptions allowing closed sessions are to be *narrowly construed*—topics discussed must fit squarely within the cited exception.

5 ILCS 120/2

Closed Session Process

1. Motion must be made during a meeting in open session.
2. Cite to the specific exception(s) under section 2(c).
3. Vote of each member and specific exception(s) must be disclosed at time of vote and recorded in minutes.
4. A majority vote of the quorum present is required.
5. Exclude the public and enter the closed session.

5 ILCS 120/2a

MUST PRODUCE:

1. Verbatim recording (must record by audio or video means).
2. Closed session minutes.

NO FINAL ACTION



Hypothetical 5

5 ILCS 120/2(c) Exceptions. A public body may hold closed meetings to consider the following subjects:

(1) The appointment, employment, compensation, discipline, performance or dismissal of specific employees, (additional text omitted).

Hypothetical 5

The Director of Human Resources filed a request for review with the PAC alleging that the Board of Trustees violated OMA by discussing the termination of his employment contract in open session, rather than closed session.

What should the PAC decide?

Hypothetical 5

What should the PAC decide?

1. The PAC should decide that the Board violated OMA because the Board must discuss termination of the employment contract in closed session under the section 2(c) (1) exception.
2. The PAC should conclude that the request for review does not assert facts alleging a violation of OMA.
3. The PAC should review the open session discussion to determine whether the Board violated the Director's employment contract.

Review the law: 5 ILCS 120/2; 5 ILCS 120/2a

Hypothetical 5

What should the PAC decide?

2. The PAC should conclude that the request for review does not assert facts alleging a violation of OMA.

Final Action

Final action shall be preceded by:

- 1) Public recital of the nature of the matter being considered; and
- 2) Other information that will inform the public of the business being conducted.

The Board of Education of Springfield School District No. 186 v. Attorney General of Illinois, 2017 IL 120343 (January 20, 2017)

5 ILCS 120/2(e)

Violations

Any person may file a Request for Review with the PAC within 60 days of discovery of the alleged violation. 5 ILCS 120/3.5

PAC may determine no further action is warranted.

- If the PAC determines whether further action is warranted:
 - If unfounded, advise public body and requester, no further action; or
 - If founded, send a Request for Review to public body for response; requester has opportunity to reply.
- Follow up with additional questions as necessary.
- Resolution can be a lengthy process.

Violations, cont'd

If the PAC finds that an OMA violation has occurred, it may direct the public body to:

- Release closed session recording and minutes;
- Instruct the public body to re-vote on a matter; and/or
- Instruct the public body on how to avoid future violations.

Any person, including the state's attorney of the county, may bring a civil action in the circuit court where the alleged noncompliance has or is about to occur. 5 ILCS 120/3

Any person who violates OMA, other than the training provisions, may be prosecuted for a Class C misdemeanor.

5 ILCS 120/4



To Do:

1. Complete the online survey from the link on the introductory page for the online training to verify that you completed the training. IML will issue your Certificate of Completion once you have submitted the survey to the email you used to log on to the presentation.
2. Submit a copy of your Certificate of Completion from the training to the public body of which you are a member.
3. Follow the procedures and requirements of the Open Meetings Act in your official capacity.
4. If you are uncertain, request assistance from your municipal attorney, the Public Access Counselor or IML.

Thank You.

