

A stylized illustration of a government building with a large central dome and several smaller domes. The building is rendered in a sketchy, hand-drawn style with muted colors. A dove is shown in flight in the upper right corner. The background is a light blue sky. A dark grey semi-transparent box is overlaid on the right side of the image, containing the title and author information.

# **2019 Update Open Meetings Act (OMA) Freedom Of Information Act (FOIA) State Officials and Employees Ethics Act**

Marie Tipsord, General Counsel  
Tim Fox, Senior Attorney  
Richard McGill, Senior Attorney for Research & Writing  
Illinois Pollution Control Board

# Open Meetings Act

## 5 ILCS 120

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- OMA Policy
- 2019 Update
  - 4 PAC Binding Opinions
  - 3 Public Acts
- 4 Elements of a “Meeting”





ILLINOIS ATTORNEY GENERAL

Kwame Raoul

[www.IllinoisAttorneyGeneral.gov](http://www.IllinoisAttorneyGeneral.gov)

- The Public Access Counselor



# OMA Policy

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- “[P]ublic bodies **exist** to aid in the conduct of the **people’s** business”
- The “people have a **right to be informed** as to the conduct of their business”

§ 1

# Meeting Agenda & Final Action

## Agenda Specificity

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- “Any agenda . . . shall set forth the **general subject matter** of any resolution or ordinance that will be the subject of final action at the meeting.” § 2.02(c)

Pub. Acc. Op. No. 19-012 (Nov. 13, 2019)

**Newton**  
OMA § 2.02(c)

- General Assembly intended § 2.02(c) to “ensure that agendas provide **sufficient detail** to notify members of the public of the **types of final actions** that public bodies anticipate taking at their meetings”
- Newton City Council’s agenda stated: “**Consider and act on Ordinance 19-11 to Amend Section 33-4-4(F)**”
  - Sufficient to notify public of type of final action?



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Pub. Acc. Op. No. 19-012 (Nov. 13, 2019)

**Newton**  
OMA § 2.02(c)

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- Newton amended its Code by **increasing permit application fees** from \$100 to \$400
- Newton’s agenda violated “general subject matter” requirement because it only stated
  - **Number** of the ordinance; and
  - The ordinance would amend a section of an “**unspecified compilation**”



Pub. Acc. Op. No. 19-012 (Nov. 13, 2019)

**Newton**  
OMA § 2.02(c)

- “[A]t a minimum, the agenda **should have indicated** that the Council would consider an ordinance
  - [A]mending the **City Code** and
  - [C]oncerning **permit application fees.**”



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## Public Recital at Open Meeting

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“Final action shall be **preceded** by a public recital of the nature of the matter being considered and other information that will **inform the public of the business being conducted.**” § 2(e)



Pub. Acc. Op. No.  
19-004 (May 17,  
2019)

## Pinckneyville OMA § 2(e)

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- **Pinckneyville High Sch. Dist. 101 Bd. of Ed. Board President:** I would entertain a motion to approve resolution number 2019-1 authorizing a Notice to Remedy to be served on the teacher named therein. \*\*\*
- **Mr. Egbert (press):** As a point of order don't you have to disclose what you are voting on?
- **Dist. Superintendent:** It's Resolution 2019[-1]. Do you want me to read the resolution?
- **Mr. Egbert :** \*\*\* Yeah.
- **Dist. Superintendent:** We read it in closed session. It is moot. \*\*\*
- **Mr. Egbert :** The law says you have to tell the public the business you are conducting.
- **Dist. Superintendent:** It is a Notice to Remedy.
  - Does recital inform public of business being conducted?



PAC-AGO Pub.Acc.  
Op. No. 19-004 (May  
17, 2019)

**Pinckneyville**  
**OMA § 2(e)**

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- Pinckneyville **did not identify the teacher** who would be served with the Notice to Remedy
- “Because the District has numerous teachers in its employ,” this public recital “did not provide **sufficient detail to identify a particular transaction.**”
- Violated § 2(e) by not adequately informing the public of the business being conducted before voting





# Public Recital at Open Meeting

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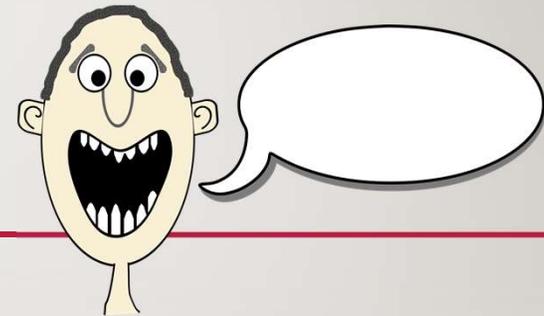
- Illinois Supreme Court held in 2017 that the recital must:
  - “[T]ake place at the open meeting **before** the matter is voted upon”; and
  - “[A]nnounce the **nature of the matter** under consideration, with **sufficient detail** to identify the particular transaction or issue,
    - ❖ **but need not** provide an explanation of its terms or its significance.” § 2(e)

*Springfield Sch. Dist. 186 Bd. of Ed. v. Attorney General*, 2017 IL 120343, ¶64 (emphasis added)

# Public Participation

## Right to Speak

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- “Any person shall be permitted an **opportunity to address** public officials under the **rules established and recorded** by the public body.” § 2.06(g)
- Nature of “**rules**” that a public body may enforce? OMA **does not** specifically address.

Pub. Acc. Op. No. 19-002 (Jan. 9, 2019)

**Lyons**  
**OMA § 2.06(g)**

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- Lyons Elem. Sch. Dist. 103 Bd. of Ed. hired a 6th grade teacher charged with **attempted murder**
  - **§ 2:230 of Lyons’ “policy manual”** limited public comments to 3 minutes per individual
  - At the open meeting, Lyons distributed a **“welcome handout”** that limited public comments to a total of 15 minutes per topic
  - Lyons **enforced both** the 3-minute individual and 15-minute total limits
- Many citizens were denied chance to speak



Pub. Acc. Op. No. 19-002 (Jan. 9, 2019)

**Lyons**  
**OMA § 2.06(g)**

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- 3-minute limit per individual: formally adopted by Lyons and incorporated into policy manual as § 2:230
  - Policy manual § 2:230 was a rule “**established and recorded**” within meaning of § 2.06(g)
- Lyons had used the welcome handout (with its 15-minute per topic limit) for at least the last 10 years but **never formally adopted it**
  - Lyons violated § 2.06(g) by imposing an “**unestablished and unrecorded rule**”



Pub. Acc. Op. No. 19-002 (Jan. 9, 2019)

**Lyons**  
OMA § 2.06(g)

- **What if the 15-minute per topic limit had been in an “established and recorded rule”?**
  - The PAC warned that enforcing such a rule **would likely be a violation** if the meeting agenda has “only one, highly-controversial topic”



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Pub. Acc. Op. No. 19-009 (Oct. 1, 2019)

**Rushville**  
**OMA § 2.06(g)**

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- Rushville City Council barred an individual from addressing it at open meeting because she **did not reside in Rushville**
- § 2.06(g) requires that “[a]ny person” be allowed an opportunity to address public officials
- “[A]n individual is a ‘person’ for purposes of OMA no matter where he or she resides.”



Pub. Acc. Op. No. 19-009 (Oct. 1, 2019)

## Rushville OMA § 2.06(g)

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- Gen. Assembly could have, but did not, limit § 2.06(g) to those living within **boundaries of the public body**
- Rushville violated § 2.06(g) by prohibiting the non-resident from speaking

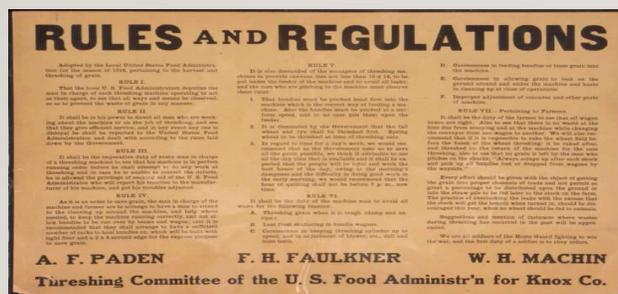


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# Right to Speak—Rules “Dos and Don’ts”

- § 2.06(g) rules should be formally **adopted and published**
- Rules’ restrictions must be **reasonable and narrowly tailored** to further a **significant governmental interest**, such as maintaining order and decorum
- For example, generally, the rules:
  - Must be **neutral** as to viewpoints of commenters
  - May impose reasonable **time limit** on each comment
  - May allow public body to cut off **repetitious or disruptive** comment
  - May set aside a specified **part of meeting** for comment



## Right to Speak—Rules Examples

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- E.g., rule requiring submission of request to address public body at least **5 working days** before meeting violated § 2.06(g). Pub. Acc. Op. No. 14- 012 (Sept. 30, 2014).
- E.g., rule requiring speaker to state **home address** violated § 2.06(g). Pub. Acc. Op. No. 14- 009 (Sept. 4, 2014).
- See *Roxana Comm. Unit Sch. Dist. No. 1 v. Env. Prot. Agency*, 2013 IL App (4th) 120825, ¶¶ 57-58 (Board violated § 2.06(g) by barring **verbal** public comment at open meetings)
  - Resulted in 35 Ill. Adm. Code 101.110(d) (public remarks at Board meetings)

# Closed Meetings

## Exceptions to Requirement That Meetings Be Open

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- Generally, “[a]ll meetings of public bodies **shall be open** to the public ...” § 2(a)
- Exceptions allowing a closed meeting are “in **derogation** of” this fundamental requirement. So, the exceptions:
  - Are “**strictly construed**”
  - Extend only to subjects “**clearly** within their scope.”
- § 2(b)
- Exceptions “authorize but **do not require**” holding closed meetings. § 2(b); see *also* § 2a
- **No final action** may be taken at a closed meeting. §2(e)

# Exceptions to Requirement That Meetings Be Open

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- **Over 30 exceptions**—they are very specific—§ 2(c)
  - “[A]ppointment, employment, compensation, discipline, performance, or dismissal of **specific** employees.” § 2(c)(I)
    - ❖ Not a general “personnel” exception
  - “Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is **pending** before a court or administrative tribunal, **or** when . . . an action is **probable or imminent.**” § 2(c)(II)
    - ❖ Not a “someday-we-might-get-sued-over-this” exception

# Exceptions to Requirement That Meetings Be Open

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- **P.A. 101-459** (effective Aug. 26, 2019)
  - Amended § 2(c)(1)
  - Broadened closed meeting exception for “employment/appointment” deliberations about specific employees or legal counsel to also include:
    - ❖ Specific individuals serving as **independent contractors** in a park, recreational, or educational setting; &
    - ❖ Specific **volunteers**

# Exceptions to Requirement That Meetings Be Open

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- **P.A. 101-31** (effective June 28, 2019)
  - New § 2(c)(36)
  - Added closed meeting exception on deliberations for **Illinois Gaming Board** decisions in which any of the following is discussed:
    - ❖ Personal, commercial, financial, or other info. obtained from a source that is **privileged, proprietary, confidential, or a trade secret**; or
    - ❖ Info. specifically **exempted from disclosure** by federal or State law.

## Exceptions to Requirement That Meetings Be Open

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- “**Evidence or testimony** presented in **open hearing** . . . to a **quasi-adjudicative** body, provided that the body prepares and makes available for public inspection a **written decision** setting forth its determinative reasoning.” § 2(c)(4)
- See *Roxana Comm. Unit Sch. Dist. No. 1 v. Env. Prot. Agency*, 2013 IL App (4th) 120825, ¶¶ 54-56, 58
  - Board violated § 2(c)(4) by using closed meetings to consider intervention petitions in tax cert. cases; petitions were not “evidence or testimony” from “open hearing”

# OMA Training

## OMA Designees—30-Day & Annual Training

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- Every public body must **designate** those “employees, officers, or members” who are to receive OMA compliance training & **submit** their names to the PAC
- The PAC develops and administers **electronic** training
- Each **OMA designee** must successfully complete the electronic training curriculum:
  - Within **30 days** after his or her designation; and
  - **Annually**

§ 1.05(a)

## Members of Public Bodies 90-Day, One-Time Training

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- Each elected or appointed **member of a public body** must successfully complete OMA compliance training developed and administered by the PAC. § 1.05(b).
  - New member must complete training **within 90 days** after taking oath or otherwise assuming responsibilities as a public body member. § 1.05(b).
- Specified public body members may get OMA compliance training **from sources other than the PAC**.
  - E.g.:
    - Elected school board member;
    - Drainage district commissioner;
    - Soil & water conservation district director. § 1.05(c), (d), (e).

# OMA Training By Municipal Organizations

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- **P.A. 101-233** (effective Jan. 1, 2020)
  - New § 1.05(g)
  - Allows **elected or appointed members** of a public body of a municipality to satisfy OMA training requirements by participating in **training courses sponsored or conducted** by an organization that represents municipalities
  - Specifies the usual minimum requirements for these alternative training courses

# Background: “Meeting”—4 Elements

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- A “meeting” is
  1. Any “**gathering**”
  2. Of
    - a. A “**majority of a quorum**” or
    - b. If 5 members, a “**quorum**” (generally, 3 members)
  3. Of a “**public body**”
  4. Held “for the purpose of **discussing public business.**” § 1.02

# I. “Gathering”

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- Not just “in person”
- Any “**contemporaneous interactive communication**”
  - E.g., public body **cannot avoid** OMA by discussing public business through texting
- Can meet electronically, but must comply with OMA

## 2. Majority of a Quorum v. 5-Member Rule

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- **General Rule—Majority of a Quorum**

- E.g., 13-member public body; quorum is 7; majority of quorum is 4
- 4 or more members = “meeting”

- **5-Member Rule—Quorum** 5-member public body, only a quorum (3 members) is necessary for a “meeting,” **not** a majority of a quorum

- Otherwise, 2 members = “meeting”
- But, 3 (not 2) affirmative votes for official action



### 3. “Public Body”

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- “Public body” is defined **very broadly**  
§ 1.02
  - Whether State or local
  - Whether legislative, executive, administrative, or advisory
  - Includes “subsidiary bodies of any of the foregoing”
  - But excludes General Assembly and its committees
- Each **subsidiary body** of members of the main public body is considered a separate “public body”
  - Is it a “meeting” of the subsidiary body?
  - Yes, if a majority of a quorum **of the subsidiary body** gathers to discuss public business.

## 4. “Discussing Public Business”

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- If a majority of a quorum of a public body’s members start discussing public business at a **social gathering**, that’s a “meeting”
- Not just taking action but also **deliberating**
  - Exchange of views and ideas among public body members **designed primarily to reach a decision**, at some point, on a matter of concern to the public body, even if action is ultimately never taken
  - Deliberative discussion, **not just information exchange**

# QUESTIONS?

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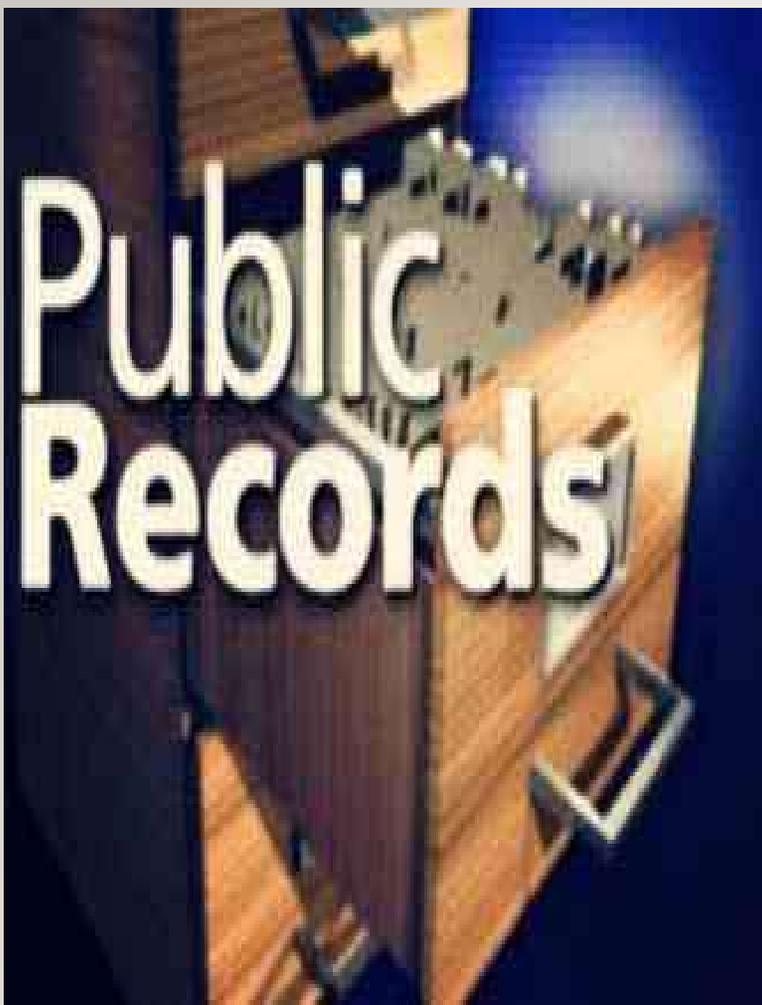


# FOIA

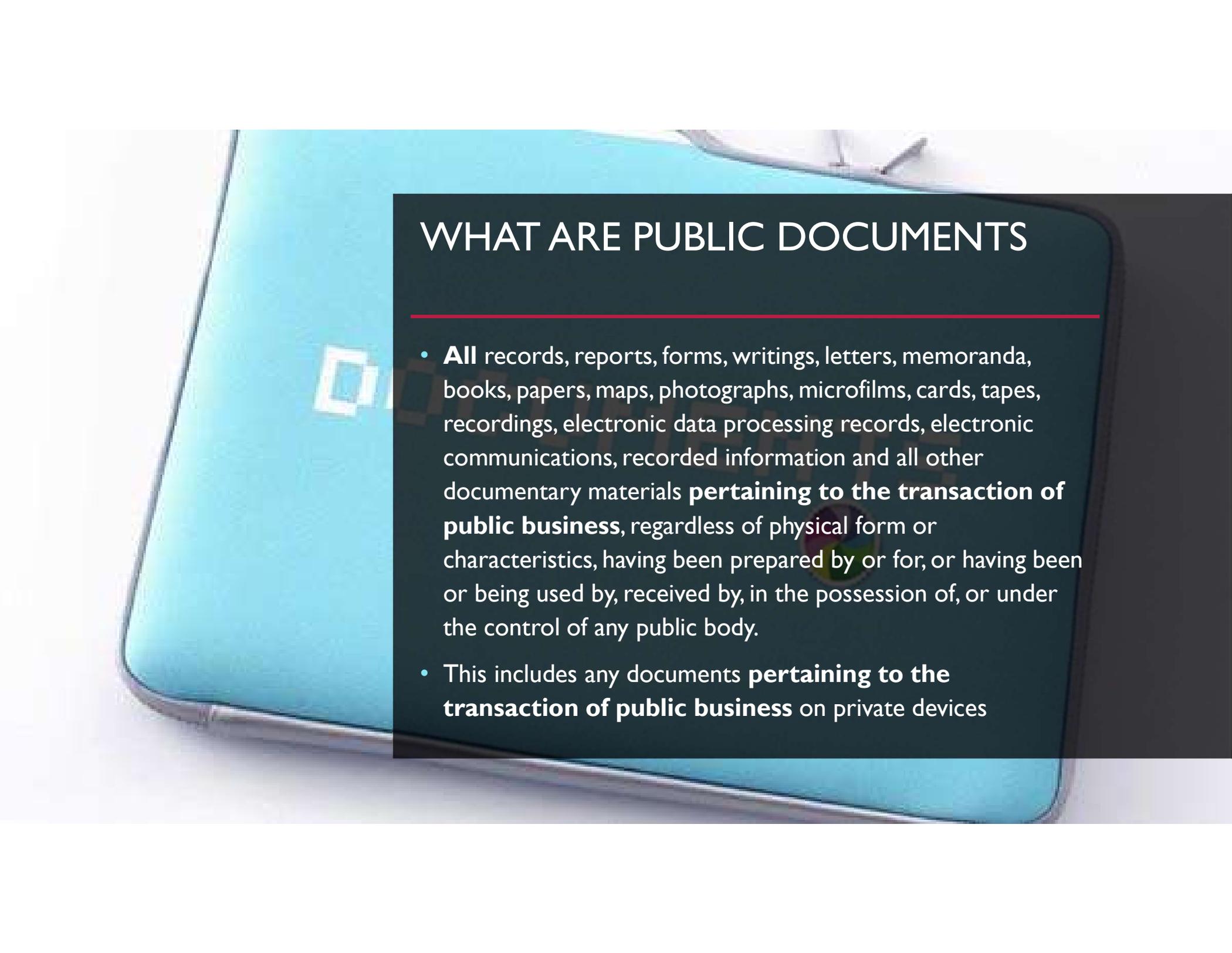
FREEDOM OF INFORMATION ACT

5 ILCS 140

STATUTORY AND CASE LAW UPDATES  
SINCE AUGUST 1, 2017



All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.



## WHAT ARE PUBLIC DOCUMENTS

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- **All** records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials **pertaining to the transaction of public business**, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.
- This includes any documents **pertaining to the transaction of public business** on private devices

# HANDLING REQUESTS

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- Respond in 5 working days and may extend response time
- Response must be in writing
- If applying an exemption, must include a detailed factual basis for the application of any exemption claimed
- The names and titles or positions of each person responsible for the denial and
- Notice of the right to review by the Public Access Counselor and provide the address and phone number for the Public Access Counselor.

PUBLIC ACTS  
EFFECTIVE  
SINCE  
AUGUST 1, 2017

- Series of Public Act which add exemptions to FOIA
- Generally materials are exempt within specific Act
- Exemption in FOIA refers to that Act

## P.A. 101-620 EFF. 12/20/2019

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- Section 7(1)(oo), (pp), (qq) exempts information that cannot be disclosed under Labor Relations Act, Educational Labor Relations Act, and Pension Code.
- No employer may provide under FOIA the six specific items listed in those Acts
- Subject of AFSCME Contract





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## WHAT IS EXEMPT? EMPLOYEE'S

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- Home address
- Date of birth
- Home and personal phone number
- Personal email address
- Information about any membership in labor organization
- Emails or other communications between a labor organization and its members

## PUBLIC ACTS ADDING EXEMPTIONS

P.A. 101-600	Insurance Code
P.A. 101-27	Cannabis Regulation & Tax Act
P.A. 101-236	Children's Advocacy Center Act
P.A. 101-466	State Treasurer Act
P.A. 101-13	Reproductive Health Act
P.A. 101-375	First Responders Suicide Prevention Act
P.A. 101-221	Human Rights Act
P.A. 101-452	Public Aid Code
P.A. 101-377	Sexual Assault Evidence Act
P.A. 101-433	law enforcement booking photos on social networking
P.A. 101-288	victim statements
P.A. 101-434	public bodies' financial account information
P.A. 101-455	records of school threat assessment team



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## COURT RULINGS ON EXEMPTIONS

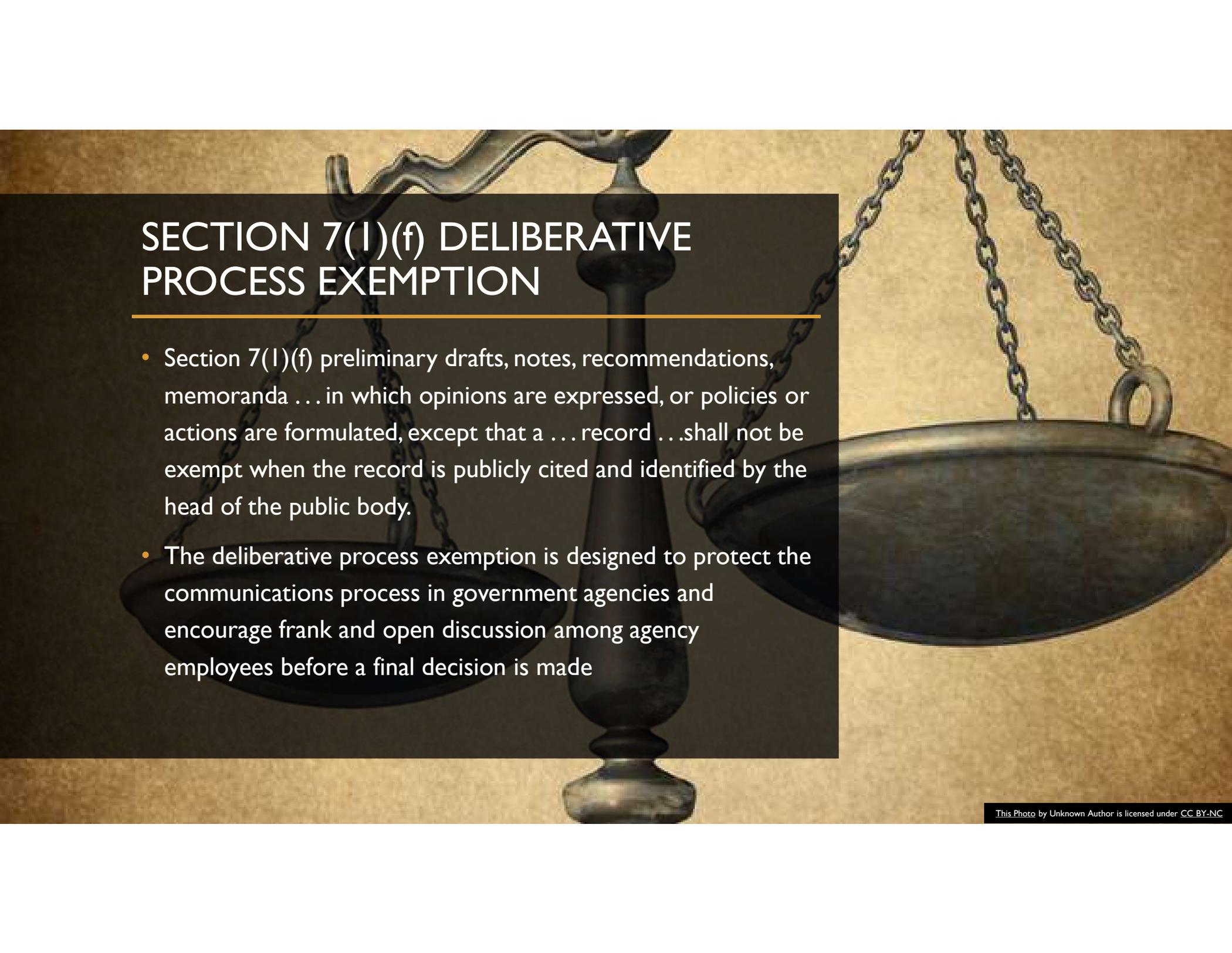
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- The Freedom of Information Act's purpose is to open government records to the light of public scrutiny
- Public records are presumed to be open and accessible.
- Based on the legislature's clearly stated intent, FOIA's exemptions are to be read narrowly.

# APPLYING EXEMPTIONS

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- Denial under Section 7 of this Act, must include specification of the exemption claimed and the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority.
- The burden is on the governmental agency to prove that specific documents fit within one of the statutory exemptions. To meet this burden the agency must provide a detailed justification for its claim of exemption, addressing the requested documents specifically and in a manner allowing for adequate adversary testing.



## SECTION 7(1)(f) DELIBERATIVE PROCESS EXEMPTION

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- Section 7(1)(f) preliminary drafts, notes, recommendations, memoranda . . . in which opinions are expressed, or policies or actions are formulated, except that a . . . record . . . shall not be exempt when the record is publicly cited and identified by the head of the public body.
- The deliberative process exemption is designed to protect the communications process in government agencies and encourage frank and open discussion among agency employees before a final decision is made

# CHICAGO TRIBUNE COMPANY V. COOK COUNTY ASSESSOR'S OFFICE, 2018 IL APP (1ST) 170455

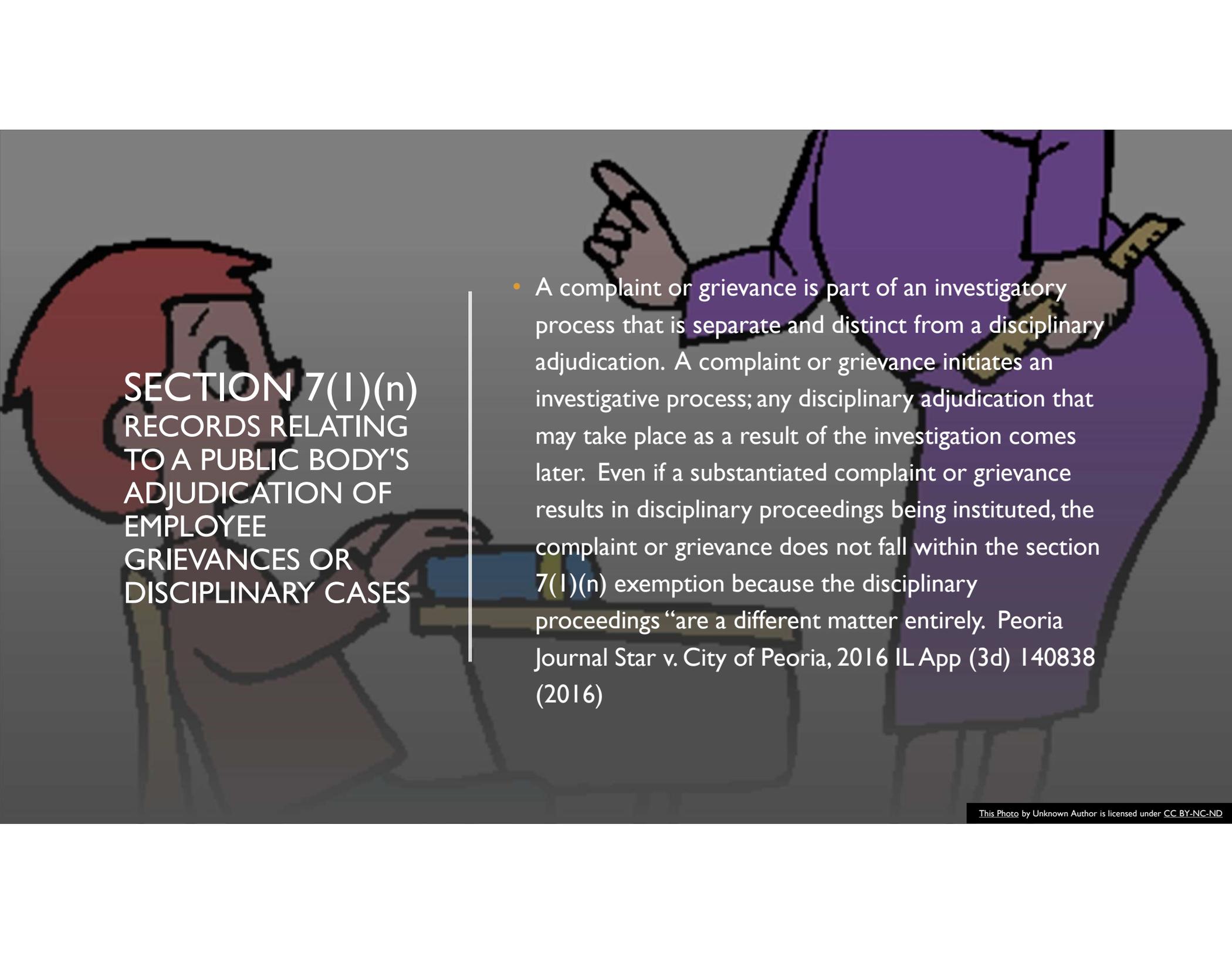
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- Applies to predecisional materials. ¶24
- The deliberative process exemption is designed to protect the communications process in government agencies and encourage frank and open discussion among agency employees before a final decision is made. ¶22
- In order to qualify for the deliberative process exemption, a document must be both predecisional in the sense that it is actually antecedent to the adoption of an agency policy, and deliberative in the sense that it is actually related to the process by which policies are formulated. ¶28

# CHICAGO TRIBUNE COMPANY V. COOK COUNTY ASSESSOR'S OFFICE, (CONT.)

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- The deliberative process exemption does not justify the withholding of purely factual material, nor does it permit the government to withhold documents reflecting its final policy decisions. ¶35.
- Court noted FOIA requests seek *the results* of a deliberative process, nothing other than the postdecisional final, factual product. ¶35.
- Court found “[w]ith the policy issues presented in this case, the public has a strong right to know about how they are being taxed by their government as opposed to the government’s fairly meek interest in secrecy. The balance in this case weighs in favor of the public, and in favor of disclosure. ¶36.



## SECTION 7(1)(n) RECORDS RELATING TO A PUBLIC BODY'S ADJUDICATION OF EMPLOYEE GRIEVANCES OR DISCIPLINARY CASES

- A complaint or grievance is part of an investigatory process that is separate and distinct from a disciplinary adjudication. A complaint or grievance initiates an investigative process; any disciplinary adjudication that may take place as a result of the investigation comes later. Even if a substantiated complaint or grievance results in disciplinary proceedings being instituted, the complaint or grievance does not fall within the section 7(1)(n) exemption because the disciplinary proceedings “are a different matter entirely. *Peoria Journal Star v. City of Peoria*, 2016 IL App (3d) 140838 (2016)

## SECTION 3(g) Unduly Burdensome

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- Public Access Opinion 18-013 (Oct. 9, 2018). Request for email identifying the individuals involved in sending or receiving the e-mails and describing the particular subject matter of the e-mails, reasonably identified public records in the possession of the Governor's Office. A search of record that produced 1,783 potentially response emails was not demonstrated to be unduly burdensome.

## SECTION 7(1)(g) Trade Secrets, And Commercial Or Financial Information.

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- Public Access Opinion 19-007 (Sept. 23, 2019). A public body that withholds a record pursuant to section 7(1)(g) must demonstrate that (1) the record contains a trade secret, commercial, or financial information; (2) it was obtained from a person or business where the trade secrets or commercial or financial information was furnished under a claim that it was either proprietary, privileged, or confidential; and (3) disclosure of the trade secrets or commercial or financial information would cause competitive harm to that person or business.
- While the department established commercial information was in the requested materials, and the information was both proprietary and confidential, it did not provide clear and convincing evidence to establish that the disclosure of the reports would cause competitive harm

QUESTIONS



# Ethics Update



Highlights of the  
State Officials and Employees Ethics Act

5 ILCS 430

Originally adopted through  
Public Act 93-615, effective November 19, 2003, and  
Public Act 93-617, effective December 9, 2003.



## **Ethics Training**

Under Section 1-5, "Employee" means

(i) any person employed full-time, part-time, or pursuant to a contract and whose employment duties are subject to the direction and control of an employer with regard to the material details of how the work is to be performed or

(ii) any appointed or elected commissioner, trustee, director, or board member of a board of a State agency, including any retirement system or investment board subject to the Illinois Pension Code or

(iii) any other appointee.



Section 5-10(a):

“Each officer, member, and employee must complete, at least annually beginning in 2004, an ethics training program conducted by the appropriate State agency.”

Section 5-10(c):

A person who fills a vacancy in an elective or appointed position that requires training and a person employed in a position that requires training must complete his or her initial ethics training within 30 days after commencement of his or her office or employment.

Under Section 5-10(a), “[e]ach ultimate jurisdictional authority must implement an ethics training program for its officers, members, and employees. These ethics training programs shall be overseen by the appropriate Ethics Commission and Inspector General appointed pursuant to this Act in consultation with the Office of the Attorney General.”

Under Section 5-10(c), “[e]ach Inspector General shall set standards and determine the hours and frequency of training necessary for each position or category of positions.”



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## **Public Act 101-221**

Adds to the Act Section 5-10.5(a-5):

“Beginning in 2020, each officer, member, and employee must complete, at least annually, a harassment and discrimination prevention training program,” which the Executive Inspector General and Executive Ethics Commission will oversee.

“The training shall include, at a minimum, the following:

- (i) the definition and a description of sexual harassment, unlawful discrimination, and harassment, including examples of each;
- (ii) details on how an individual can report an allegation of sexual harassment, unlawful discrimination, or harassment, including options for making a confidential report to a supervisor, ethics officer, Inspector General, or the Department of Human Rights;
- (iii) the definition and description of retaliation for reporting sexual harassment, unlawful discrimination, or harassment allegations utilizing examples, including availability of whistleblower protections under this Act, the Whistleblower Act, and the Illinois Human Rights Act; and
- (iv) the consequences of a violation of the prohibition on sexual harassment, unlawful discrimination, and harassment and the consequences for knowingly making a false report.”

## Prohibited Political Activities

Under Section 5-15(a), “State employees shall not intentionally perform any prohibited political activity during any compensated time (other than vacation, personal, or compensatory time off).”



Section 1-5 defines “prohibited political activity” to mean 15 acts, *e.g.*,

(1) Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.

(2) Soliciting contributions, including but not limited to the purchase of, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event.

(7) Soliciting votes on behalf of a candidate for elective office or a political organization or for or against any referendum question or helping in an effort to get voters to the polls.

(11) Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question.



Also under Section 5-15(a), “[s]tate employees shall not intentionally misappropriate any State property or resources by engaging in any prohibited political activity for the benefit of any campaign for elective office or any political organization.”

Even if it occurs during non-compensated time, the use of State property for prohibited political activity is prohibited.



Milano, No. 19-EEC-002

From January 17, 2017 to March 23, 2017, IDOT supervisor made or received ten phone calls on State-issued desk phone and cell phone in support of their campaign for suburban alderman.

Total duration of calls was 86 minutes, 30 minutes of which took place during State-compensated time



Executive Ethics Commission found that Respondent violated Section 5-15(a) of the Act by intentionally performing prohibited political activity and intentionally misappropriating State property or resources.

EEC levied fine of \$1,500.

- EEC does not appear to dispute respondent's statement of mitigation that his conduct was careless and arguing that he had not abused his title or position, that he cooperated in resolving this matter, and that he was a 30-year employee without previous violation.
- While respondent was himself the candidate for office, EEC does not indicate that its decision relied on this factor.
- Record does not indicate that respondent's actions resulted in any direct expense or other direct cost to the State.

Section 5-15(e) clarifies that the provisions addressing prohibited political activities do not prohibit “activities that are undertaken by a State employee on a voluntary basis as permitted by law.”



Section 5-15(b) provides that,

“[a]t no time shall any executive or legislative branch constitutional officer or any official, director, supervisor, or State employee intentionally misappropriate the services of any State employee by requiring that State employee to perform any prohibited political activity

(i) as part of that employee's State duties,

(ii) as a condition of State employment, or

(iii) during any time off that is compensated by the State (such as vacation, personal, or compensatory time off).”

Section 5-15(c) provides that

“[a] State employee shall not be required at any time to participate in any prohibited political activity in consideration for that State employee being awarded any additional compensation or employee benefit, in the form of a salary adjustment, bonus, compensatory time off, continued employment, or otherwise.”

Section 5-15(d) provides that

“[a] State employee shall not be awarded any additional compensation or employee benefit, in the form of a salary adjustment, bonus, compensatory time off, continued employment, or otherwise, in consideration for the State employee's participation in any prohibited political activity.”

## **Gift Ban**



Section 10-10 of the Act provides that,

“[e]xcept as otherwise provided in this Article, no officer, member, or State employee shall intentionally solicit or accept any gift from any prohibited source or in violation of any federal or State statute, rule, or regulation.

This ban applies to and includes the spouse of and immediate family living with the officer, member, or State employee.

## What is a Gift?

"Gift" means any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value

including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to government employment or the official position of an employee, member, or officer.



### **What is a Prohibited Source?**

A prohibited source is defined by the Act as any person or entity who

- 1) is seeking official Board action;
- 2) does business with or seeks to do business with the Board;
- 3) conducts activities regulated by the Board;
- 4) has interests that may be substantially affected by official Board duties;
- 5) is registered or required to be registered as a lobbyist; or
- 6) an agent of, a spouse of, or an immediate family member living with a prohibited source.

## Exceptions

Under Section 10-15 of the Act, gifts from a prohibited source do not violate the Gift Ban if they fall under one or more of the statutory exceptions:

- 1) Items available to the public under the same conditions;
- 2) Gifts for which the recipient pays fair market value;
- 3) Lawful campaign contributions or a fundraising event;
- 4) Educational materials or missions;
- 5) Travel expenses for a meeting to discuss State business;
- 6) Gifts received from a specified relative
- 7) Gifts provided by an individual on the basis of personal friendship;
- 8) Food or refreshments not exceeding \$75 per calendar day
- 9) Benefits related to outside business or employment activities
- 10) Intra-governmental and inter-governmental gifts
- 11) Bequests, inheritances, and other transfer at death; and
- 12) Gifts from one prohibited source with a cumulative value of less than \$100 during any calendar year.



Also, Exceptions 4 (educational missions) and 5 (travel expenses) do not apply to State Employees.

“This provision is not intended to preclude a Prohibited Source from paying for the cost of registration fees, travel, lodging, or meals, provided that, in addition to complying with all other applicable laws and regulations . . .

(a) the Prohibited Source makes or arranges payment or reimbursement of such costs directly with the State Agency, and

(b) the trip is approved in writing in advance by the Executive Director of the [Executive Ethics] Commission.”



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# Gift Ban Exception Request Form

Agencies and employees subject to Executive Order 15-09 may not claim Gift Ban exceptions #4 (**Educational Materials and Missions**) or #5 (**Travel Expenses to Discuss State Business**) unless the exceptions comply with the provisions of 2 Ill. Admin. Code 1620.700, the Prohibited Source makes or arranges payment or reimbursement directly with the agency, and the trip is approved in advance by the Executive Director of the Executive Ethics Commission.

**Gift Ban Exception Request Form**

I confirm that the travel identified above:

- 1) has a close connection to the recipient officer's or employee's State employment or the mission of the agency or office;
- 2) predominately benefits the public and not the employee or officer;
- 3) is for travel in a style and manner in character with the conduct of State business;  
and
- 4) is approved by me as the agency's ethics officer in advance.

I also confirm that the Prohibited Source has made or arranged payment or reimbursement of such costs directly with the State Agency.

Additional information to explain why approval should be granted. For example, explain (1) how expenses have a close relationship to State employment and (2) how travel is in a style and manner in character with the conduct of State business. Also, if available, please attach an agenda or other support documents (attach additional sheets).

I confirm that the travel identified above:

- 1) has a close connection to the recipient officer's or employee's State employment or the mission of the agency or office;
- 2) predominately benefits the public and not the employee or officer;
- 3) is for travel in a style and manner in character with the conduct of State business;  
and
- 4) is approved by me as the agency's ethics officer in advance.

I also confirm that the Prohibited Source has made or arranged payment or reimbursement of such costs directly with the State Agency.

Additional information to explain why approval should be granted. For example, explain (1) how expenses have a close relationship to State employment and (2) how travel is in a style and manner in character with the conduct of State business. Also, if available, please attach an agenda or other support documents (attach additional sheets).

Hernandez, 18-EEC-011

Respondent served as Director of Student Affairs or Interim Principal of Illinois Mathematics & Science Academy (IMSA), which had contract with vendor to provide food services. Since 2012, respondent had signed annual contract renewals.

Vendor's representative offered gift of \$1,000 golf outing fundraiser in June 2017. Respondent consulted with Ethics Officer, attended event, and made \$800 in charitable contributions in 2017 before attending the event and \$1,250 during the remainder of the calendar year.

It appears “that Respondent intended these contributions to be a proper disposal of the prohibited gift . . . [T]he Commission does not have sufficient facts to conclude that this golf outing constituted a violation of the Gift Ban.”

In December 2016, Respondent received from the vendor's representative a bottle of spirits valued at \$197.99 and a Topgolf gift card in the amount of \$100. The vendor reimbursed its representatives for both items, and the vendor's expense reports indicated that they were gifts.

Respondent acknowledged that he had received the gift card sent through his personal email account. Regarding the spirits, he recalled "that he gave the bottle away within a week to a retired IMSA employee who had stopped by the school."

EEC found that respondent had violated the Gift Ban when he received these gifts and that he “did not dispose of these gifts in a manner allowed under Section 10-30.”

EEC levied an administrative fine of \$1,000 for the violation.

“Gifts of this nature unnecessarily complicate the lives  
of public servants who receive them.”

**Questions?**