

# ZUKOWSKI, ROGERS, FLOOD & McARDLE

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## *Municipal Matters*

Timely news in the area of municipal law  
promotional material

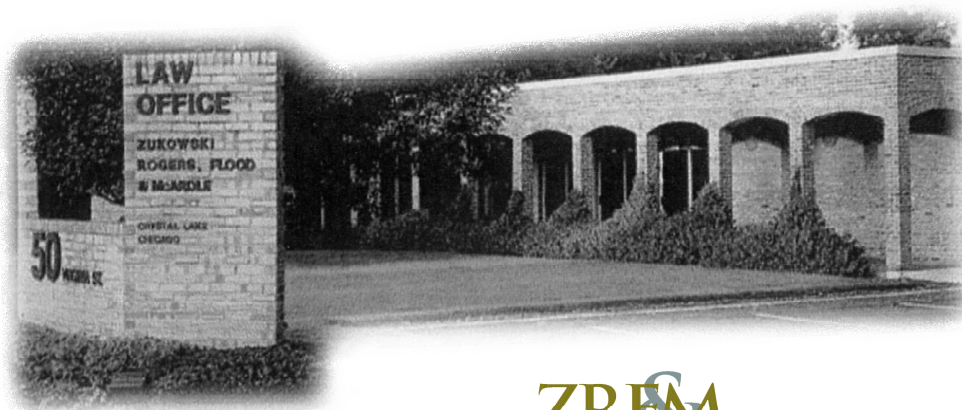
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Zukowski, Rogers, Flood & McArdle's quarterly newsletter that allows units of government and their employees to stay up-to-date on legal matters in an ever-changing legal climate.

### GOVERNMENT IN THE SUNSHINE: Open Meetings Act and Freedom of Information Act (Part 2)

By Ruth Schlossberg

In our last issue we offered Part I of a “refresher course” in an area that you are called to deal with as public officials, namely the so-called Sunshine Laws. The focus of Part 1 was on the Illinois Open Meetings Act. In this issue, we focus on the Freedom of Information Act. As was the case in our last issue with respect to the Open Meetings Act, this article is intended as a brief guide on some important concepts of the Sunshine laws of which you should be aware.

#### THE FREEDOM OF INFORMATION ACT

The Freedom of Information Act or FOIA is designed to ensure that the public is given access to the documents used by local governments in their function and decision making. Virtually all public bodies in Illinois - including cities, villages, towns, counties and townships as well as schools -- are subject to FOIA as are their various boards, committees and commissions. All public records of those bodies are subject to FOIA regardless of their physical form – electronic, paper or tape and regardless of whether they produced the documentation or it came into their control in some other manner. This means that not only are your agendas, records, letters and research reports subject to FOIA, but so are your e-mails and instant messages along with maps, photographs and other documentary material. Your public body must make these available to any party requesting those records for inspection or copying unless the record falls under a permitted exception.

The Act does exempt a number of types of documents from disclosure under FOIA

in order to protect competing public policy interests. However, the exceptions are to be read narrowly. When in doubt about the FOIA-ability of a document, you should consult with your attorney. Here is a partial list of some of the most relevant exceptions:

**Privacy:** Exceptions for personal privacy to avoid clearly unwarranted invasion of personal privacy without consent. This would include, among other things, certain medical files, personnel files and certain application and registration files, certain taxpayer information, protection of identity of persons filing complaints or providing information for certain criminal proceedings, and the name of registrants in certain government programs. The protected information is that which is “private and confidential” and not merely identification of a party. Information is not exempt from disclosure just because the party requesting it has a commercial purpose provided it does not invade on privacy issues.

**Law enforcement:** Exceptions for certain law enforcement proceedings and to protect certain security interests of correctional institutions and detention facilities.

**Security:** Post-9/11 Exceptions for security including exceptions for vulnerability assessments, security measures and response policies or plans that are designed to identify, prevent or respond to potential attacks on a community's population or system and information about systems, facilities or installations the destruction or contamination of which would constitute a clear and present dan-

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# Welcome

In this issue, the second of a two part article in which Ruth Schlossberg reviews the basics of Illinois Sunshine laws, specifically the Freedom of Information Act.

Also included in this issue are important dates from October 2008 to February 2009.

If you have any questions, comments, or suggestions for articles in upcoming issues, please contact us.

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ger to the health or safety of the community.

**Design and plans of public facilities:** Exceptions for architects' plans and engineers' technical submissions for water treatment facilities, airport facilities, sport stadiums, convention centers and all governmental owned, operated or occupied buildings.

**Otherwise exempt information:** Exception for information specifically prohibited from disclosure by federal or state law or rules.

**Preliminary material:** Exception for preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except when the record is publicly cited and identified by the head of the public body.

**Closed meeting minutes:** Minutes of closed meetings until the public body makes the minutes available to the public under the Open Meetings Act.

**Privileged information:** Attorney-client communications.

**Competitive information:** Certain business and finance related matters that may come into the possession of the municipality such as trade secrets, proposals and bids for any contract, grant or agreement, GIS files for private use (except for the news media's use).

**Labor negotiations:** Collective bargaining information except for the final agreement.

**Personnel policies:** Information related solely to the internal personnel rules and practices of a public body.

**Certain insurance information:** Insurance or self insurance (including any intergovernmental risk management association or self insurance pool) claims, loss or risk management information.

**Real estate:** Certain information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated.

**Eminent domain:** Certain information related to Eminent Domain Proceedings FOIA does not require a public body to cre-

ate records or summaries of records where no such document exists, and it does not require the municipality to retain certain records. However, it is unlawful to knowingly destroy records without authority. The Local Records Act (a different law) creates certain rules about what documents must be retained. While the record keeping requirements of the Local Records Act are beyond the scope of this article, your municipality should have a policy in place to ensure that the correct documents are retained. It is worth your time to review that policy or to ensure that one is put in place if your municipality does not already have one. In short, the Local Records Act requires that municipality retain all public documents made, produced, executed or received "in connection with the transaction of public business". A "non-record" under the Local Records Act may be legally destroyed, and if it has been destroyed, it need not be produced pursuant to a FOIA request. However, if it is in your possession when the request is made, it must be produced under FOIA.

By now you are probably thinking of some of the e-mails or notes you may have written in the past and are wondering, "gee, would I like those subject to public inspection?" That is a reasonable question to ask yourself. Fortunately, the act makes certain exceptions in the interest of other, competing public policy considerations. But not every exception will necessarily protect you from bad judgment. So, while you should not necessarily feel yourself constrained from vigorous public policy debates, you may want to think twice before creating any records containing personal attacks, dirty jokes or using inappropriate language. Any of these could find their way into the public domain. So while you serve as a local government official, conduct yourself and your correspondence in a manner that you would not be afraid to have your mother read about in the paper.

*See our Q & A column on Page 3 regarding a specific FOIA request, response and policy review recommendations.*

# Q's and A's of Municipal Government

Recently a resident asked for a copy of the treasurer's report for the previous fiscal year. We asked the resident to complete a Freedom of Information Act request form. The resident then took us to task for requiring their name, address, telephone number and reason for the request, stating the statute does not require that information. Getting more agitated, the resident then stated the report is "common knowledge" and should be readily available without having to "jump through hoops" to get a copy. Not wanting a scene, we quickly made a copy of the report and gave it to the resident without requiring the form or customary copy change. We know of other units of government that require a form to be filled out. However, now we wonder if our procedure should be changed.

Your resident was right. There is nothing in the statute that requires a requestor to state or provide a reason for the request. While you may want the reason for the request in order to help the requestor formulate a request that will actually get them what they want, you may not require such information. This line on your request form is likely a dated remnant from the past when units of government were permitted to deny requests made solely for commercial purposes. However, some courts have found that you may not deny FOIA requests solely because they are made for private commercial purposes (except for GIS data), so you may wish to remove this line from your request form. You also may wish to review your FOIA policies to make sure that you are only charging requestors for the cost of reproducing the material they request, as more excessive charges are prohibited under FOIA. In contrast, it is perfectly reasonable to request name and contact information of the requester so you can actually contact them when their information is ready.

This may be a good time to consider your FOIA policies in general. For instance, now that so much data is readily available on your web page, there are some requests that people really should not even need to FOIA anymore, such as, most notably, your municipal code. In most communities that information is now publicly posted on line. We urge you to take advantage of your municipal web site to provide routine information – this will not only reduce your work load and the time you spend processing FOIA requests, but it will enhance public access to information about your unit of government. On the other hand, if a lot of documents are requested and it could take some time to compile the copies, or if the requests are exempt from being produced or need to be reviewed before being disclosed to determine if they should be exempt, then, by all means, a written request should be made pursuant to the act.

Finally, you may wish to remember that the FOIA requires that municipalities post the following information: a brief description of the public body that includes its purpose, organizational chart, total amount of its operating budget, number and location of offices, approximate number of full-time and part-time employees, and membership of any boards, commissions, committees and council with advisory, control of oversight functions.

## Important Deadlines to Remember:

At least every 6 months: review executive session minutes in closed session to see if they can be released to the public. If any minutes can be released, this must be done in open session.

## Dates to Remember:

**Oct. 28:** First day nominating petitions can be circulated for the April 7, 2009, consolidated election (Sept. 16 for Woodstock and Crystal Lake).

**Oct. 31:** If your fiscal year started May 1, the municipal treasurer should have filed an annual account of moneys received and expenditures incurred during the preceding fiscal year with the municipal clerk. The clerk is required to publish the annual account if your population exceeds 500. (If your fiscal year started Jan. 1, the deadline is June 30.)

**Nov. 27 & 28:** The law offices of Zukowski, Rogers, Flood & McArdle are closed in observance of the Thanksgiving holiday.

**December (or sooner):** Not less than 20 days prior to the adoption of the tax levy ordinance the corporate authorities are required to determine the amounts of money estimated to be necessary to be raised by property taxes. We recommend a resolution be passed that contains the total estimated taxes that are anticipated, the total sum that was extended for the previous tax year and the percent of increase between the figures.

**December (or sooner):** If the total levy is more than 105% of the amount of property taxes extended for the previous tax year, plus any amount abated prior to the extension, a "Truth in Taxation" hearing is required before the levy is approved. A public notice, in substantially the form found in 35 ILCS 200/18-80, must be published not more than 14 days nor less than 7 days prior to the public hearing.

**Dec. 24 noon, 25, 26:** The law offices of Zukowski, Rogers, Flood & McArdle are closed in observance of the Christmas holiday.

**Dec. 30:** Last day to file a certified copy of your tax levy ordinance with the county clerk. Accompanying the ordinance should be a certification by the presiding officer certifying compliance with or inapplicability of the provisions of the Truth in Taxation Law.

**Jan. 19:** First day for filing nominating petitions for the April 7 consolidated election (Dec. 8 for Woodstock and Crystal Lake).

**Jan. 20:** Last day to file petitions for referenda for the April 7 consolidated election.

**Feb. 2:** Last day to adopt a resolution or ordinance for binding referenda or resolution for advisory referenda.

## ZRFM Attorney News

Rich Flood and Ruth Schlossberg were featured speakers for the Illinois Municipal League Conference on September 25 – 28, 2008 discussing impact fees and economic development. Carlos Arévalo spoke on the topic of pensions and catastrophic injuries to police and firefighter personnel.

Also, on October 30, 2008, ZRFM will be presenting a Municipal Tune Up Workshop for Lake County Municipal League's administrators and elected officials. Topics will include Open Meetings Act, Freedom of Information Act, Code Enforcement, Licenses and Risk Management.

