FOIA Webinar Questions and Answers

1. Can someone FOIA an employee's personnel file?

Generally speaking, records that bear on the public duties of a public employee are subject to disclosure. 5 ILCS 140/7(1)(c). There are some records in a personnel file, however, that may not be disclosed. For example, the Personnel Record Review Act (PRRA) states that employee evaluations are not subject to disclosure under FOIA. 820 ILCS 40/11.The PRRA also requires the employer to delete disciplinary reports, letters of reprimand, or other disciplinary actions that are more than four years old before disclosing a personnel record to a third party. 820 ILCS 40/8. If an employer discloses disciplinary reports, letters of reprimand, or other disciplinary actions to a third party that are less than four years old, it must provide notice to the employee. 820 ILCS 40/7. The applicable exemption in FOIA that relates to records prohibited from being disclosed under the PRRA is 5 ILCS 140/7.5(q). There are also records in a personnel file that might be subject to other FOIA exemptions. For example, private information is exempt under 5 ILCS 140/7(1)(b). Other types of personal information would be exempt under 5 ILCS 140/7(1)(c), if the disclosure would result in an unwarranted invasion of personal privacy. Of course, other exemptions in FOIA might apply based on the content of the personnel file.

2. Does it reset the response clock when you ask for a request to be narrowed?

A recent case, *Balzer v. Northeast Illinois Regional Commuter Railroad Corp. (Metra)*, 2026 IL App (1st) 232227, suggests that the answer to this question is "no." In *Balzer*, the FOIA requester sent a request to Metra. Unfortunately, the FOIA request was trapped in Metra's spam filter for 24 hours, and Metra considered the request "received" the next day, when Metra actually noticed it. Metra initially categorized the request as unduly burdensome, and asked the requester to narrow the request. The requester refused to do so. Metra denied the request as unduly burdensome on the 6th business day after the request had been caught in its spam filter. The court determined that the denial on the 6th business day was untimely. The main holding of the case is that even if a FOIA request is caught in the public body's spam filter, it is still considered "received" on that day for purposes of FOIA. But, importantly, the court did not consider the "response clock" to be reset when Metra asked the requester to narrow the request and the requester declined to do so.

In light of the *Balzer* decision, if a public body uses the unduly burdensome procedure, it should still consider the initial deadline to be 5 business days after the request was received, regardless of whether the requester agrees to narrow the request. Keep in mind, however, that if the public body will not be able to comply within 5 business days, it can also send a letter or an email to the requester (within 5 business days) taking the 5 business-day extension of time. See 5 ILCS 140/3(e).

3. **For recurrent requesters, are the 7-day and 30-day periods business days or calendar days?**

A "recurrent requester" in FOIA is defined, in part, as "a person that, in the 12 months immediately preceding the request, has submitted to the same public body (i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records in a 30-day period, or (iii) a minimum of 7 requests for records within a 7-day period." 5 ILCS 140/2(g). Since the statute does not use the term "business day" in this section (as it does in other sections), it makes sense to interpret the legislative intent to be "calendar days."

4. **If it is a commercial request, can and when can you take an extension?**

There are special procedures and timelines for responding to commercial requests. For commercial requests, a public body shall comply within "a reasonable period considering the size and complexity of the request, and giving priority to records requested for non-commercial purposes." But, an initial response, must be sent within 21 working days. 5 ILCS 140/3.1.

Here is the provision from the statute:

(5 ILCS 140/3.1)
Sec. 3.1. Requests for commercial purposes.
(a) A public body shall respond to a request for records to be used for a commercial purpose within 21 working days after receipt. The response shall (i) provide to the requester an estimate of the time required by the public body to provide the records requested and an estimate of the fees to be charged, which the public body may require the person to pay in full before copying the requested documents, (ii) deny the request pursuant to one or more of the exemptions set out in this Act, (iii) notify the requester that the request is unduly burdensome and extend an opportunity to the requester to attempt to reduce the request to manageable proportions, or (iv) provide the records requested.
(b) Unless the records are exempt from disclosure, a public body shall comply with a request within a reasonable period considering the size and complexity of the request, and giving priority to records requested for non-commercial purposes.
(c) It is a violation of this Act for a person to knowingly obtain a public record for a commercial purpose without disclosing that it is for a commercial purpose, if requested to do so by the public body.

5. **With the cybersecurity measure, are we required to click on a Google link to send information?**

Section 3(c) of FOIA states, in part, "[e]lectronic requests under this Section must appear in their entirety within the body of the electronic submission. As a cybersecurity

measure, no public body shall be required to open electronically attached files or hyperlinks to view or access details of a request." 5 ILCS 140/3(c).

This provision prohibits a FOIA request from being sent via hyperlink, but it does not specifically address whether a requester can require a public body to upload the responsive records to a hyperlink. Since this provision was added as a security measure, it would make sense that a public body should not be required to upload records to a hyperlink, but unfortunately, the statute does not specifically address this issue.

6. **If it's sent to a spam email inbox, is that considered junk mail?**

No. Even if a FOIA request lands in a junk mail folder (or other screening program), it is still considered "received" by the public body on that day, and the public still must respond to it within 5 business days.

There was a definition added to the statute for junk mail. It was intended to make clear that public bodies do not have to produce records in response to a FOIA request if the responsive records would be considered junk mail. "Junk mail" is specifically defined in a statute as "(i) any unsolicited commercial mail sent to a public body and not responded to by an official, employee, or agent of the public body or (ii) any unsolicited commercial electronic communication sent to a public body and not responded to by an official, employee, or agent of the public body." 5 ILCS 140/2(j).

7. **How does this apply to users using known high-risk domains to purposely get caught in the spam filter?**

There is nothing in the statute currently that distinguishes between safe and high-risk domains. A public body is still required to respond to a FOIA request, even if it gets caught in its spam filter. See Answer to No. 2 for more information.

8. **Are there any pending bills for BWC footage when the footage does not pertain to a victim/suspect and the requester uses it for personal gain (YouTube, TikTok, etc.)**

HB 3380 proposed some limitations along those lines, but it did not pass out of the House in the spring, so it is unlikely to be passed in the veto session. The bill would have amended the Body Worn Camera Act to limit disclosure of flagged footage to a person involved in the encounter or their legal representative, a witness to the encounter or their legal representative, or a representative of the news media. The bill would have also permitted disclosure pursuant to court order. But it is unlikely to make any progress in the veto session.

9. **We have a link to our FOIA Officer, but it doesn't include her name. Is that ok?**

Section 4(b) of FOIA states that a public body must post the following information:

> (b) A brief description of the methods whereby the public may request information and public records, a directory designating the Freedom of Information officer or officers, the address where requests for public records should be directed, and any fees allowable under Section 6 of this Act. If a public body does not maintain a website, it shall also post this information at each of its administrative or regional offices. 5 ILCS 140/4(b)(emphasis added).

This likely means that the FOIA Officer should be identified by name.

10. Are anonymous Facebook groups considered media?

FOIA specifically defines news media as "a newspaper or other periodical issued at regular intervals whether in print or electronic format, a news service whether in print or electronic format, a radio station, a television station, a television network, a community antenna television service, or a person or corporation engaged in making news reels or other motion picture news for public showing." 5 ILCS 140/2(f). If a request is sent by a "news service" or person or corporation engaged in making news reels or other motion picture news for public showing, they would meet this definition. Unfortunately, there is no provision in FOIA currently which would permit a public body to question a requester's claimed status as news media.

11. What office in a county government is usually the FOIA Officer?

Many counties have multiple FOIA officers serving different offices and departments because one office or department may not be familiar with the documents maintained by others. As a practical matter, it makes sense to have multiple FOIA officers to handle the work load, and to cover for one another during vacation or sick time. There is no one-size-fits-all approach. Each county and county office would have to evaluate its unique circumstances and determine how many FOIA officers are needed.

12. If the same requester requests the same information multiple times, do you have to send it every time?

No. FOIA section 3(g) states that, "[r]epeated requests from the same person for the same records that are unchanged or identical to records previously provided or properly denied under this Act shall be deemed unduly burdensome under this provision." Consider sending a denial letter citing this provision, and indicating that the responsive records are identical to those already produced to the person. 5 ILCS 140/3(g).

13. Does 7.1 h that exempts contract proposals apply to bid tabulations?

Section 7(1)(h) states that the following records are exempt: "Proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made." 5 ILCS 140/7(1)(h).

Because a bid tabulation could be "information which if it were disclosed would frustrate procurement or give an advantage to a person," the information is likely exempt, but only until the final selection is made.

14. **We have FOIA officers within individual offices/departments of our County. Is each separate department required to post the information on the County's website? Or is the requirement only for the County as a whole?**

When you have different FOIA Officers for different offices and departments, you should post the information for each office.