

INFORMATION, PLEASE...

An insider's guide to obtaining public records

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WHAT IS A FOIA?

The primary method for obtaining public records is through the “Freedom of Information Act” or FOIA.

There is a FOIA law passed by Congress for records related to United States Government Records, and there is a state law regulating state and local government records.

5 ILCS 140/1 *et. seq.*



WHO WANTS TO FILE A FOIA?

- Many attorneys run across FOIA at some point in their careers. For Example:
 - Personal Injury lawyers may want to FOIA the City or County for a particular accident report for a collision, or IDHHS for the records regarding a specific nursing home to see for a neglect case.
 - Divorce attorneys may want to FOIA to see if there is any domestic violence or child abuse claims related to any of the parties.
 - Criminal Defense lawyers may want to FOIA the records related to a particular police officer for impeaching character evidence.



WHO WANTS TO FILE A FOIA? (CONT'D)

- Real Estate attorneys may want to FOIA the code enforcement history of a particular address to see if there are any structural problems, or the engineering department to look into environmental issues.
- Education lawyers may want to FOIA their local school district to get the complete file for their client.
- Union attorneys may want to FOIA local governments to get copies of other Collective Bargaining Agreements.
- Insurance company in-house counsel may want to FOIA for records from the fire department in order to investigate whether a fire might be arson.
- Corporation counsel for construction companies may want to FOIA bid responses for public construction projects to ensure that the proper company was awarded the bid.





WHERE DO I GO TO FOIA SOMETHING?

Every unit of government is required to post their FOIA procedures on their website (if they have one) and also at the principal location (such as at the City Hall, County Building, etc.).

In the majority of cases, the Clerk that fields the receipt of the FOIAs and then forwards them to the appropriate department for processing.

Make sure that you are sending the appropriate request to the appropriate unit of government.



HOW TO FILE A FOIA- YOU CAN'T ALWAYS GET WHAT YOU WANT

- Filing a FOIA is essentially a written request for a copy of a document.
- Many units of local governments provide forms, but you do not HAVE to use their form.
- Under Illinois' FOIA laws, the unit of local government cannot ask you what the purpose of your request is other than commercial vs. non-commercial uses of the document to be provided.
 - However, if the person filling the request knows what the purpose is, they can more easily interpret your request to get you the correct document.



YOU CAN'T ALWAYS GET WHAT YOU WANT (CONT'D)

- If it's a commercial request, admit it.
 - If you any portion of the information you will receive is going to be used for “sale, resale, or solicitation or advertisement for sales or services,” it's a commercial purpose.
- Don't ask for a fee waiver unless you know you are entitled to one.
 - The first 50 regular sized pages are free anyway, so the costs are likely to be minimal; Fee waivers only apply in select not-for-profit circumstances.



IF YOU TRY, SOMETIMES YOU GET WHAT YOU NEED

- Give all information about the document you are requesting that you can.
 - Names, addresses, dates, dates of birth, etc.
- Give accurate and current contact information for yourself, in clearly legible writing.
- To save money for yourself and the government, please provide email, fax, or other means of receiving the documents that don't involve mailing and reproduction costs.
 - If you ask to receive documents electronically, you should include your email address in the request.



IF YOU TRY, SOMETIMES YOU GET WHAT YOU NEED(CONT'D)

- If you are asking for a document in connection with your legal representation of someone, then including a power of attorney, HIPPA, or other similar release, can often make processing go smoother and get you more information than if you do not include such a release.
 - Example: You represent wife in a divorce case. there is a police report when the police came out to the house, but no arrests were made. If you don't include a release, the address, the names of the parties, and other crucial information may be redacted.



IF YOU TRY, SOMETIMES YOU GET WHAT YOU NEED(CONT'D)

- Try to narrow your request to what you actually need at the particular time.
 - Example: do you really need each police call within a 3-block radius for the past 10 years or do you need all police calls from a particular address and/or involving specific names, dates of birth, etc.?
- Ask for what you need in a timely fashion so that it does not become destroyed.
 - 911 tapes, dispatch records, booking room videos, in-car dash videos, etc., all get recycled within 30-60 days in most municipalities.
- Don't wait until the day before court to ask for a document you need.



DO'S AND DON'TS OF FOIA'ING

Do:

City of Waukegan
Freedom of Information Act Request

TO BE FILLED IN BY REQUESTER:
Date: April 26, 2012
Name of requester: Generic Law Firm, LLC.
E-mail address: atty@glf.com
Telephone Number: (847) 555-1234
Address: 123 Generic Way
Anytown, IL 600XX

OFFICE USE ONLY: Received: _____ Disposition: <input type="checkbox"/> Document immediately available <input type="checkbox"/> Document emailed/ faxed/ sent to/ picked up by requester on: _____ (CIRCE ONE) <input type="checkbox"/> Cost: _____ pages @ \$.15/page (DOES NOT INCLUDE FIRST 50 FREE) <input type="checkbox"/> Other: _____

Document(s) requested: Any and all police reports, incident reports, or other documents related to domestic disturbance, battery, assault, child abuse, or other similar incident, for Mr. and Mrs. Whoever (Mr. Whoever born 1/1/79, Mrs. Whoever born 1/1/82), or any of the Whoever children (Larry Whoever, born 1/1/2001, Curley Whoever born 1/1/2004, or Moe Whoever born 1/1/3007), or at the address of 123 Stoooge Way, Anytown IL 600XX. I represent Mrs. Whoever in a divorce case and have attached hereto releases from Mrs. Whoever and on behalf of each of the three children. Please return the documents to me electronically.

Date of Document(s) requested: beginning in 2000 to present

City Department(s) related to request: Police Department

The purpose of this request is:

Commercial, pursuant to 5 ILCS 140/2(c-10)
 Not Commercial
 In the public interest, so as to qualify for a fee waiver pursuant to 5 ILCS 140/6(c)

Generic Attorney
Signature of Requester

NOTE: Return this form to the City Clerk's office ONLY, either via fax at (847) 360-9744, in person, or via mail. We are required to answer your request within a number of working days after receipt of the request. The length of time for the reply is dependent upon the type of information requested and the purposes for such information. To the extent possible, the majority of responses will be sent via electronic communication. If you wish to receive printed copies, please so advise us, and be aware that a charge of \$.15/page applies for black and white copies after the first 50 pages.

Don't:

Dear FOIA officer,

Please send me

a copy of police

report for my client

Mrs. Anyone!

Thanks,

Generic Atty



BE CAREFUL WHAT YOU ASK FOR- YOU JUST MIGHT GET IT

- Ask for precisely what you need.
 - Do you want a copy of the police report or do you want a copy of the police report, witness statements, crime lab reports, photos, and 911 tapes?
- Don't ask for what you don't need
 - Do you really want the complete code enforcement history on the house you want to buy, or do you just need the past 5 years?



IT'S MY FOIA RESPONSE AND I'LL CRY IF I WANT TO

- If you get the wrong thing
 - Contact them- either they don't have what you are looking for, or they didn't understand your request.
- If you get nothing within 5 business days
 - Follow up and see if it got lost in the shuffle or whether they never received it.



IT'S MY FOIA RESPONSE AND I'LL CRY IF I WANT TO

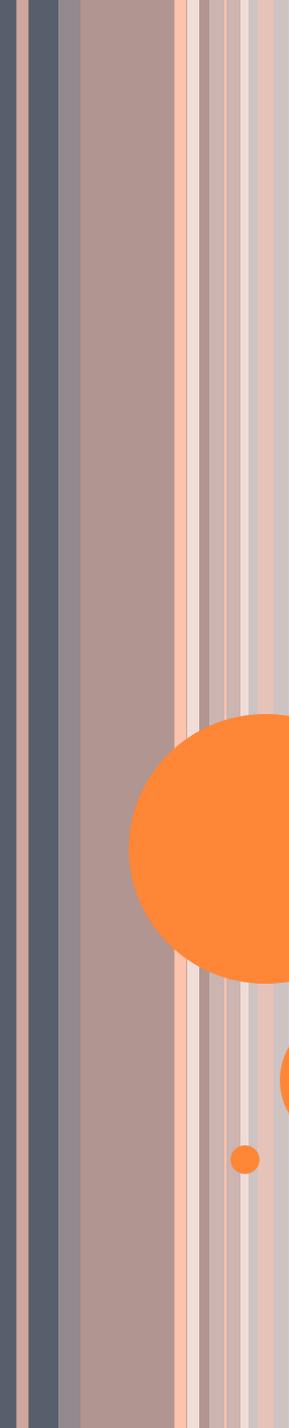
- If you get something, but the response is missing information/redacted.
 - You should get an explanation along with the response that explains the basis for the redaction.
 - Follow up to see if there is a way to get the additional information.



IT'S MY FOIA RESPONSE AND I'LL CRY IF I WANT TO (CONT'D)

- Still “can’t get no satisfaction”?
 - Send original request, what you received in response, and a description of any oral communication to the Public Access Counselor at the Attorney General’s office.
 - Sarah Pratt, Acting Public Access Counselor
Office of the Attorney General
500 S. 2nd Street
Springfield, Illinois 62706
 - PublicAccess@atg.state.il.us





ANY QUESTIONS?

FEEL FREE TO CONTACT ME!

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