



2017 ILLINOIS FREEDOM OF INFORMATION ACT AUDIT

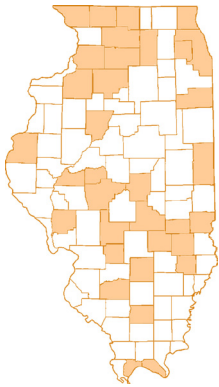
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EXECUTIVE SUMMARY

The Illinois Freedom of Information Act boldly states, “[I]t is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of their government.”

We sought to document Illinois counties’ ability to deliver on these promises in two areas:

- Response
- Statutory posting requirements



34 COUNTIES

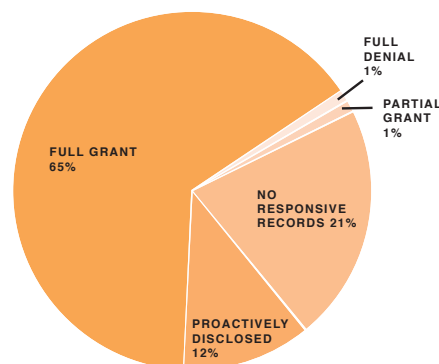
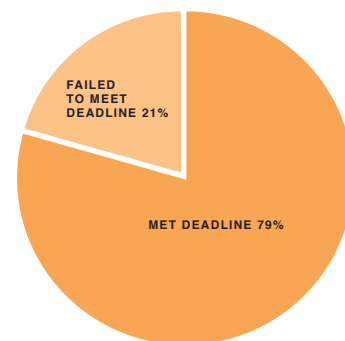
COUNTY CLERK
HEALTH DEP'T
SHERIFF'S OFFICE

102 ILLINOIS FOIA REQUESTS

STATUTORY POSTING RE- QUIREMENTS

- Only 49 percent of required information was posted online.
- Less than half, 47 percent, of the agency overview information was posted online.
- Slightly more than half, 51 percent, of the FOIA procedure information was posted online.
- Counties with smaller populations were 73 percent less likely to have the information posted.
- Counties with lower median household income were 94 percent less likely to have the information posted.

RESPONSE RATE



WHAT WERE THE OUT- COMES?

INTRODUCTION

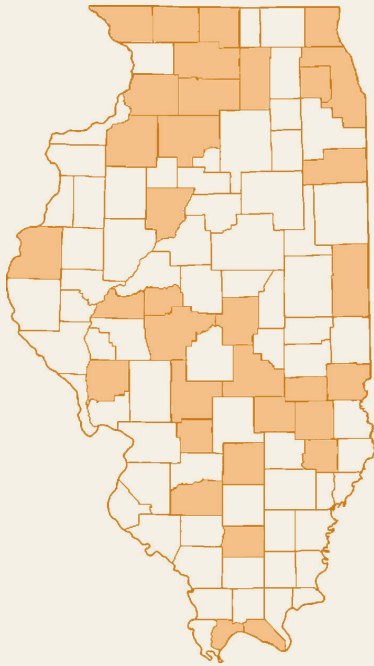
The Illinois General Assembly established the Freedom of Information Act (FOIA) in 1984, providing individuals access to the records of public bodies in the state of Illinois, standing as the primary method for ensuring the public's right to know about its government. The Illinois FOIA was modeled after the federal FOIA, and as a result functions in a similar manner. As a requester release mechanism, an individual contacts the public body believed to hold the record of their interest and formally requests the existing information. The public body has five days to respond and provide the requested records or issue a denial with an exemption. At present, there are 40 exemptions to the release of requested records.

The Illinois FOIA, like many state access to records statutes, makes bold claims on its objectives and abilities to deliver transparency to the state's citizens. The law is founded on democratic principles and promises as complete a record of Illinois government activity as is responsible. The import and purpose of the statute is explicitly affirmed in the opening paragraphs of the statute:

Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government...Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgements and monitoring government to ensure that it is being conducted in the public interest.

This audits seeks to document compliance among public bodies and determine the general effectiveness of the law. In the common absence of a more local access law, the Illinois FOIA applies to all underlying forms of government (*i.e.* counties, cities, municipalities), and the study seeks to determine whether Illinois counties abide by the statutory requirements, both in delivering on simple record requests and complying with the less obvious provisions of the law.

METHODS



COUNTIES SELECTED IN SAMPLE

In an effort to make this determination, a sample of 34 Illinois counties was randomly drawn. County-level analysis allows for a finer grained look than exploring state departments, while maintaining a uniformity in government structure not available in cities. The county sample also allows for socio-economic and population variables. Using U.S. Census Bureau Annual Estimates from 2016, the sampled counties' total population compared relatively favorably to all Illinois counties, skewing higher in total county population. The sample total population average was 250,537, while the median total population was 34,319. For all Illinois counties, the total population average was 125,505 and median total population was 26,321. In addition to being more populous, the sample was less affluent as well. Using the U.S. Census Bureau's American Community Survey from 2015, median household income for the sample was \$49,324. The state median household income, from the same source, was \$59,588.

The audit tested two types of FOIA compliance, responsiveness and statutory posting requirements. Response is likely the more familiar variety of FOIA audit where a request is submitted to the agency and the speed, accuracy and quality of the response are documented. Statutory posting requirement tested agency ability to conform to statutory obligations regarding the posting of information about the agency and the FOIA process.

RESPONSE

Section 3 of the Illinois FOIA outlines the requester release mechanism of the law. In this regard, it is not dissimilar from the federal FOIA statute: “Each public body shall, promptly, either comply with or deny a request for public records within five business days.” Though many public bodies provide a template for a FOIA request, the law explicitly states use of a standard form cannot be required of a requester. A five-day extension to the deadline is possible if the need for time falls under one of seven reasons. The agency waives the right to an extension, cannot treat a request as unduly burdensome and loses the right to impose a fee if they fail to respond within the five-day deadline period.

“Each public body shall, promptly, either comply with or deny a request for public records within five business days.”

FOIA response was audited across a disparate selection of county offices: the County Clerk, the Health Department and the Sheriff’s Office. An agency-specific, non-controversial record was sought from each via emailed request from a personal Gmail account. The subject line of each email was “Freedom of Information Act Request,” while the body of the email contained two brief sentences making clear the email was an Illinois FOIA request according to the state statute. The proper request was attached as a PDF document and developed from a template provided by the National Freedom of Information Coalition.

Each request stated a preference for any response to be produced in an electronic file format and identified the requester as an assistant professor at Bradley University.

An agency-specific FOIA request was submitted to the sample’s 102 public bodies on June 5. One week and one day after the requests were submitted – or one day after the statutory deadline – a cross-sectional response rate was documented. One month and one day after the initial round of requests, a second cross-sectional response rate was documented. Contact with the agencies was not limited to the two check-in dates. After the initial deadline, the audit’s investigators were persistent in following up with the agencies. The final closure date of each request was also recorded.

Aside from the time of the response, the audit documented the disposition on initial request:

- full grant
- partial grant
- full denial
- no responsive records
- proactively disclosed

Other components of request response were also logged, including fee requests, extension notices and response by physical mail.

REQUESTED FROM COUNTY CLERKS

“Union contracts and/or collective bargaining agreements signed with the county from Jan. 1 to May 1, 2017.”

REQUESTED FROM HEALTH DEPTS

“Records pertaining to foodborne illness complaints from Jan. 1 to May 1, 2017.”

REQUESTED FROM SHERIFF’S OFFICES

“Information on all arrests and/or crimes committed within the sheriff’s jurisdiction on April 1, 2017.”

STATUTORY POSTING REQUIREMENTS

Section 4 of the statute requires each agency to proactively disclose two sets of information. The law explicitly states the information should be “prominently” displayed and made available online if the public body maintains a website.

All public bodies are to post an agency overview and agency FOIA procedures. For purposes of analysis, the agency overview was broken into five individual requirements. As per the statute, the agency overview should include a short summary of the agency’s purpose, a block diagram of organizational subdivisions, the agency’s total operating budget, the number and location of all separate offices and a count of full and part-time agency employees. There are four specific requirements in posting agency FOIA procedure: a description of the FOIA process, a directory of FOIA officers, addresses for FOIA officers and mention of possible fees to the requester.

The audit’s investigators searched each public body’s website for the required information. If the information was available, it was marked as compliant; when it could not be found, it was marked non-compliant. In all instances, agencies were given the benefit of the doubt when determining whether the posted information qualified.

In analyzing the data, the study used U.S. Census Bureau information. Population data are 2016 Annual Estimates of the Resident Population, April 1, 2010, to July 1, 2016. Median household incomes were from the American Community Survey 5-Year Estimates, 2011-2015. As a simple method for categorizing counties, sample medians were determined for both total population and median household income, and above and below the median groups were created.

OVERALL

79.42%

AGENCY

County Clerk 82.35%

Health Dep't 76.47%

Sheriff's Office 76.47%

COUNTY POPULATION

High 86.27%

Low 72.55 %

COUNTY INCOME

High 84.34%

Low 74.51%

WERE THE DEADLINES MET?

RESPONSE

Of the 102 Illinois FOIA requests submitted, 81 were closed by the statutory deadline. There was little variance between the departments with County Clerks beating the deadline 82.35 percent of the time and Health Departments and Sheriff's Offices closing the request within five days 76.47 percent of the time. Only three, or 2.94 percent, of the 102 public bodies were unable to fulfill the request one month and one day after the request was submitted.

Counties above the median sample population were compliant with the five-day deadline 86.27 percent of the time, while counties below the median sample population were compliant only 72.55 percent of the time. When dividing the counties by the sample median household income, the counties above the median sample household income closed requests by the deadline 84.34 percent of the time, and counties below the income marker closed requests by the deadline. Three of the four public bodies unable to close the request in one month were located in counties whose total population and median household income were below the sample median.

Agencies in counties with total populations above the sample median were deadline compliant 86.27 percent of the time, while agencies in counties below the sample median met the deadline 72.55 percent of the time. Counties with a median household income above the sample median closed requests before the five-day deadline 84.34 percent of the time. Counties with a median household income below the sample median were deadline complaint 74.51 percent of the time.

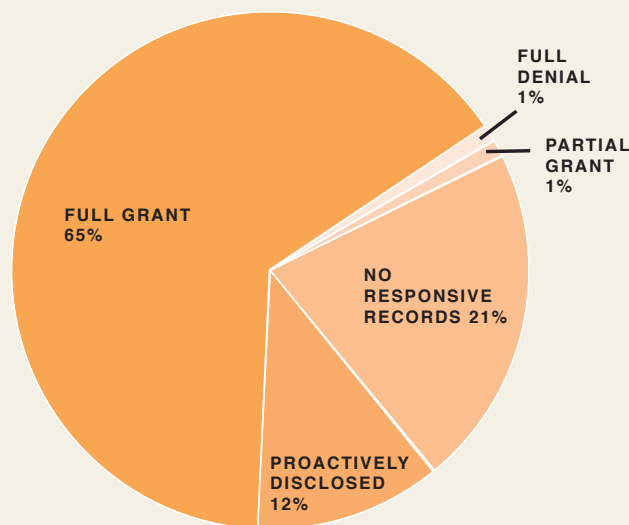
Of the 21 that missed the June 13 statutory deadline, the average time from request to closure was 10.41 days, and the median was six days. The Franklin County Clerk was a major outlier at 72 days. Montgomery County Sheriff's Office required 33 days. The Kankakee Health Department closed the request in 30 days.

FINDINGS

Seven agencies were unable to respond with digital records, as requested. Five of these were County Clerks. Two were Sheriff's Offices. The Cook County Health Department requested an extension but the statutory deadline had already passed, making the request invalid. The Richland County Clerk attempted to impose a fee, but after a discussion of the public interest provision waived the fee; but still requested a postage-paid, self-addressed envelope. Despite no legal protocol for such a requirement, the authors complied.

WHAT WERE THE OUTCOMES?

In considering the outcomes of the requests, a full grant was produced 64.71 percent of the time. The audit returned one partial grant and one full denial. Just over 21 percent of the requests produced no responsive records (*i.e.* the public body had no records that met the request) and nearly 12 percent had proactively disclosed the information (*i.e.* the sought records were already available online).



STATUARY POSTING REQUIREMENTS

DID AGENCIES POST THE REQUIRED INFO?

OVERALL

48.80%

AGENCY OVERVIEW

46.67

Public body info

63.73

Office info

37.25

Divisions

26.47

Employees count

75.49

Operating budget

30.39

AGENCY

County Clerk

45.10

Health Dep't

53.27

Sheriff's Office

48.04

FOIA PROCEDURE

FOIA officer

51.47

Contact info

45.10

FOIA process

62.75

FOIA fees

35.29

COUNTY POPULATION

High

61.00

Low

36.60

COUNTY INCOME

High

62.96

Low

34.64

AGENCY OVERVIEW

Analysis of public bodies' posting of general agency information demonstrated fairly low compliance rates. Across the five categories, only 47 percent of the required agency overview information was published online.

Seventy-five percent of public bodies published the number and location of all offices, and 63 percent posted a summary of the agency's purpose. Only 37 percent provided a block diagram of its functional subdivisions. Less than one-third, 30 percent, provided the number of employees, and only 26 percent posted their operating budget.

Health Departments scored highest, supplying 54.21 percent of the required information. Sheriff's Offices published 47.06 percent. While County Clerks produced just 38.82 percent of the compulsory descriptive data.

Seventeen of the 102 public bodies were fully compliant, posting all five required pieces of information. Peoria and Jo Daviess counties were fully compliant across all public bodies and categories of information.

Of the 17 counties with total populations below the sample median population, only 40.39 percent of the required information was available. When the county's total population was larger than the sample median, 52.94 percent of the agency overview information was posted. When splitting the counties along the median household income, a larger divide becomes apparent. For counties with a median household income below the sample's median, 34.12 percent of the information was published online. For counties above the sample median household income, 59.22 percent of the agency overview categories were available.

FOIA PROCEDURE

Agencies scored slightly higher when analyzing publication of FOIA procedural information. The statute requires four categories on how to navigate the FOIA process, and the majority either had all or none of the information. Thirty-five agencies fulfilled all four, while 37 agencies provided none of the required procedural information. In total, 51.47 percent of the required information was available online.

Sixty-four percent of the agencies identified their FOIA officer, while 62.75 percent provided contact information for the FOIA officer. Forty-five percent of public bodies offered an explanation of FOIA methods and purpose. Only 35.29 percent produced any information on FOIA fees in the FOIA process.

The three types of public bodies scored similarly with regards to posting FOIA procedures. County Clerks provided 52.94 percent of the required categories. Health Departments posted 52.21 percent, and Sheriff's Offices fulfilled 49.26 percent of their posting requirements.

When dividing the counties along the median population, the agencies in counties below the median population only managed to post 31.86 percent of the required FOIA procedure information. Above the median population mark, the agencies posted 71.08 percent of the same information categories. In counties with a median household income below the sample's median, 35.29 percent of the requisite FOIA procedures information was available online. The counties above the sample's median household income provided 67.65 percent of the information.

DISCUSSION

The audit demonstrates Illinois county agencies are fairly efficient and timely in responding to FOIA requests. Delay is considered one of the primary issues facing requester release systems like the Illinois FOIA. It does not appear to be as serious of a concern among county agencies. While the simple, non-controversial nature of the audit's requests gave agencies little reason to obfuscate or evade, the agencies did an admirable job replying to and closing the requests within the five-day window. There is certainly room for improvement, as nearly one-fifth of the agencies failed to complete on-time a request at its simplest and most straight-forward. With little-to-no review or redaction necessary, the request was little more than a clerical task. Nonetheless, public agencies completed the task more reliably than was to be expected.

However admirable the public bodies were in responsiveness, they were equally as poor in fulfilling statutory posting requirements. The majority of failed requests were directly related to the difficulty in directing the request to the appropriate individual or office. The co-investigators were savvy to the FOIA routine yet struggled to find FOIA officers and appropriate contact information. The magnitude of missing information is particularly notable. Less than half, 48.80 percent, of the 918 instances of required information were online.

The effects of this missing information are potentially quite large. For informed and motivated requesters, some tenacity and trial-and-error will likely overcome the issue. But for the uninitiated, this poses a serious threat to the Illinois FOIA's efficacy and effectiveness. The categories of information are encoded because the law intends to provide access to the law professor and the factory worker alike. Failure to provide an explanation of the procedure leaves the statute unexplained. Omitting the appropriate contact information leaves unworkable for many.

The preponderance of these failed instances of posted information are concentrated in lower population and lower income counties. There are myriad potential explanations for this event, but the results are disconcerting no matter the reasoning. In perhaps the most glaring outcome of the audit, the statutory posting requirements are significantly less likely to be published online in smaller, less affluent counties.

Despite the differences among the three agencies, there was little difference in how they performed their FOIA duties. County Clerks were more likely to have proactively disclosed information. Health Departments and Sheriff's Offices had lighter web presences, leading to slightly lower scores in statutory posting requirements. But save these minor observations, the disparate purposes, the difference between elected and appointed officials produced only slight differences in how they fulfilled the statute.



Though the audit is less interested in singling out individual counties or agencies, two counties stood out for exemplary performance. Peoria County met every measure, posting all 15 instances of required information and providing full grants of all requested records well before the statutory deadline. Jo Daviess County provided 14 of the 15 categories of required information and supplied two full grants and informed the requester of no responsive records in three business days.

LIMITATIONS

The transactional nature of this audit, one where a simple, non-controversial request was made, fails to consider access to records statutes at their most impactful – as a legal crowbar for prying out and publicizing information on government malfeasance and perfidy. This study is limited to considering requests for more common information and as a result are less likely engender agency suspicion, evasion and contentiousness and fails to represent this difficult but often publicly rewarding element of the Illinois FOIA.

Instead this study focused on the mundane details that are necessary to the everyday function of government transparency. In choosing to focus on simple response rates and the availability of contact information and details on process, the audit emphasizes the foundational, or first, step in establishing a functioning access to records statute.

The study also had to make conclusive claims regarding the existence or non-existence of online information, which is a difficult task. In determining whether there were pages with information identifying FOIA officers, personnel or record trees and fee structures, the authors made a sincere effort to discover these statutorily required FOIA elements. Both investigators are well versed in navigating the websites of public bodies and performed due diligence prior to all determinations. Nonetheless, absent a central county FOIA page, the statutory posting requirements were often scattered throughout various pages or mixed into reports, making search and conclusive decisions challenging.

CONCLUSION

The Illinois FOIA promises “full and complete information,” calling such access “necessary to enable the people to fulfill their duties.” The audit documents some successes and failures in delivering on this promise. And while the sampled counties scored admirably in delivering the requested information - frequently by the deadline and generally with little trouble - the counties performed poorly in the more mundane elements of FOIA compliance. They collectively struggled to provide the necessary information to file a FOIA request. Nearly all issues in obtaining the sought records could be traced back to an inability to contact the appropriate agency staffer. This also produced plausible excuses and multiple instances of delay.

The laudable response rate suggests many individuals at county agencies are motivated to help provide transparency for the citizens of Illinois. A more dedicated effort in supplying the citizens with an explanation of the law’s procedures and the appropriate contact information would go a long way in realizing the state’s commitment to transparency.